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1941

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ATTORNEY GENERAL

Statutory Revision Department

VOLUME III

HELPFUL AND USEFUL MATTER

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PREFACE AND FOREWORD

VOLUME III, FLORIDA STATUTES, 1941, HELPFUL AND USEFUL MATTER, edited by and printed and published under the direction of the attorney general, is a continuation of the work of the Statutory Revision Department, under legislative mandate, as provided in Chapter 16, Florida Statutes, 1941. It is a companion book to Volume I, Florida Statutes, 1941, adopted as the statute law of the State of Florida, and Volume II (annotations), Florida Statutes, 1941. This Volume III is intended to provide helpful and useful matter to the legal profession of Florida, supplementing the material contained in the previously published Volumes I and II aforesaid, with contents as follows:

PART I. BRITISH STATUTES IN FORCE IN THE STATE OF FLORIDA.

Compiled by Leslie A. Thompson (1853), pursuant to an act of December 27, 1845; annotated and brought up to date (1943).

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Volume III will be kept up to date by means of supplements, issued from time to time.

J. TOM WATSON,
Attorney General.

ACKNOWLEDGMENT AND RECOGNITION

Grateful acknowledgment is made to the Honorable James Bryan Whitfield, a gentleman who has faithfully served his State for many years and recently retired from the Supreme Court of Florida, for his untiring efforts in collecting and recording the material used in Part II of this volume. He has graciously tendered his time and his gifted talents in that part of this compilation, and to him is due entire credit for this invaluable part of the volume.

Acknowledgment is due Guy W. Botts, of the Jacksonville Bar for his excellent work in annotating and bringing up to date Thompson's Compilation of British Statutes in force in the State of Florida; and to Assistant Attorney General Fred M. Burns, for his editorial supervision of the volume; and to Assistant Attorney General James B. Toney, for assisting in editing and supervision; and to Assistant Attorney General Shannon Linning, for the special editing by him of the Special and Local Laws Division; and to Harriette C. Pomeroy, Jewell H. Roberts, Ruth Payne Bomford, and to the entire secretarial staff of the Attorney General's office, for their splendid help in the preparation and final completion of this volume.

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PART I

BRITISH STATUTES IN FORCE IN THE STATE OF FLORIDA

COMPILED BY

LESLIE A. THOMPSON

1853

BROUGHT TO DATE AND ANNOTATED BY

GUY W. BOTTS

of the Jacksonville Bar

1943

FOREWORD

On November 6, A. D. 1829, the Governor and Legislative Council of the Territory of Florida enacted (See Section 2.01, Florida Statutes, 1941):

> "The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state."

The utilization of this easy facility for supplying the comparatively new government with a body of integrated law was prompted, I have no doubt, both from a necessity for acknowledged rules governing the relationships in a civilization and from a nostalgic desire on the part of the British element then ascendant in Florida to transplant their culture here. In any event, a large body of statutory law by virtue of the above act became a part of the Florida law the same as if originally enacted by the Territorial Legislative Council.

Available printed sources for the new law must have been few. The committee to approve "Thompson's Digest" in 1847 referred to the reports of the law as "the crude, perplexed and chaotic mass through which we have now to grope our uncertain way." In order to determine what **statute laws** of England were made a part of our law by virtue of the Act of November 6, 1829, the General Assembly enacted and the Governor of the State of Florida approved, on December 27, 1845:

> "SECTION 1. BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF FLORIDA IN GENERAL ASSEMBLY CONVENED, That his Excellency, the Governor, is hereby authorized to appoint some suitable person, to collect and arrange, under appropriate heads, all the Statutes of Great Britain, of force in this State; and upon the completion of said work, and its approval by the Governor, after having been first submitted to the examination of three skilful and experienced members of the bar, he, the said Governor, shall contract for the publication of such a number of volumes, not exceeding three thousand, subject to the future disposition of the General Assembly; and may issue his warrant upon the Treasury, in favor of said compiler, for such sum as he may deem reasonable and just."

Pursuant to the authority contained in this Act, the Governor commissioned Leslie A. Thompson, Esquire, to compile the British Statutes in force in Florida. Judge Thompson completed the assignment but for reasons lost in the obscurity of the past, his finished work was never officially approved by the Governor or published. The original manuscript now reposes in the Library of the Supreme Court of Florida. Although lacking technical validity under the Act of December 27, 1845, Judge Thompson's compilation is considered a magnificent work entitled to verity. His ability as a compiler was heartily acknowledged by his contemporaries. The committee appointed to approve his work, "Thompson's Digest," perceived "in its projection and execution, the operation of a logical and discriminating mind fully imbued with a knowledge of the subject." The committee cited instances to prove "the degree of accuracy with which this part of the task was executed," and concluded, "your committee is equally unanimous and decided in their approbation."

Such a work deserved a larger circulation than its original manuscript stored in one library gave it. The late Justice Fred H. Davis while Attorney General of Florida, caused to be published a summary of the statutes found by Judge Thompson to be in force, and this was made available to the Florida Bar.

In 1937 the writer annotated this summary list of the British Statutes with all Florida decisions pertaining to such statutes. At that time it was recognized that a great many of the statutes listed were superseded or repealed by enactments of the Legislature of Florida. These annotations were made available in 1940 to the Attorney General for possible use in the statute revision then in progress. In 1941, Attorney General Watson determined that there was a need for the compilation to be brought up to date, with annotations, and published. At his request, I undertook the task.

The project has not been without its problems. It has been difficult to determine whether a given Florida Statute, not as broad and inclusive in its terms as a British Statute covering the same subject matter, was superseded by the latter. The statute of uses is an example. Again I have found a British Statute to be not only the origin but also the current source of what is generally believed to be the settled, unwritten **common** law of this State. Close questions have been resolved in favor of considering the statute still in force.

The arrangement of Judge Thompson's compilation by subject has been preserved. Statutes not considered in force are listed in the same place they occupied in the original compilation. Concise reasons for the omission of a statute are given. Such of Judge Thompson's notes as were thought to be still helpful are placed at the bottom of each statute, with their source in each instance noted. The annotations and other notes were supplied by this writer.

I have been fortunate in having the helpful advice and encouragement of a great many learned members of the Bar and Bench of Florida. Acknowledgement must be made to Dr. Clifford W. Crandall of the faculty of the College of Law, University of Florida, who first suggested and then supervised my work in annotating the statutes, and to the College of Law for releasing its property rights in such annotations; and for the assistance and advice of Honorable H. L. Sebring, Justice, Supreme Court; Honorable Bayard B. Shields, Circuit Judge of Duval County; Donald K. Carroll of the Jacksonville Bar; Fred H. Burns, Assistant Attorney General and John C. Wynn, Assistant Attorney General; and especially to Honorable J. Tom Watson, Attorney General of the State of Florida, not only for his assistance but also for formulating the plan under which this work has been done and will be published.

Guy W. Botts

Jacksonville, Florida
April 2, 1943

TABLE OF REGNAL YEARS

Arranged Alphabetically by Sovereigns

Sovereign	Reign Began	Reign Ended
Anne	Mar. 8, 1702	Aug. 1, 1714
Charles I	Mar. 27, 1625	Jan. 30, 1649
Charles II	Jan. 30, 1649	Feb. 6, 1685
Commonwealth & Protectorate	Jan. 30, 1649	May 29, 1660
Edward I	Nov. 20, 1272	July 7, 1307
Edward II	July 8, 1307	Jan. 20, 1327
Edward III	Jan. 25, 1326	June 21, 1377
Edward IV	Mar. 4, 1461	Apr. 9, 1483
Edward V	Apr. 9, 1483	June 25, 1483
Edward VI	Jan. 28, 1547	July 6, 1553
Edward VII	Jan. 22, 1901	May 6, 1910
Edward VIII	Jan. 20, 1936	Dec. 11, 1936
Elizabeth	Nov. 17, 1558	Mar. 24, 1603
George I	Aug. 1, 1714	June 11, 1727
George II	June 11, 1727	Oct. 25, 1760
George III	Oct. 25, 1760	Jan. 29, 1820
George IV	Jan. 29, 1820	June 26, 1830
George V	May 6, 1910	Jan. 20, 1936
George VI	Dec. 11, 1936	Reigning
Henry I	Aug. 5, 1100	Dec. 1, 1135
Henry II	Dec. 19, 1154	July 6, 1189
Henry III	Oct. 28, 1216	Nov. 16, 1272
Henry IV	Sept. 30, 1399	Mar. 20, 1413
Henry V	Mar. 21, 1413	Aug. 31, 1422
Henry VI	Sept. 1, 1422	Mar. 4, 1461
Henry VII	Aug. 22, 1485	Apr. 21, 1509
Henry VIII	Apr. 22, 1509	Jan. 28, 1547
James I	Mar. 24, 1603	Mar. 27, 1625
James II	Feb. 6, 1685	Dec. 11, 1688
John	May 27, 1199	Oct. 19, 1216
Mary	July 6, 1553	July 24, 1554
Phillip & Mary	July 25, 1554	Nov. 17, 1558
Richard I	Sept. 3, 1189	Apr. 6, 1199
Richard II	June 22, 1377	Sept. 29, 1399
Richard III	June 26, 1483	Aug. 22, 1485
Stephen	Dec. 26, 1135	Oct. 25, 1154
Victoria	June 20, 1837	Jan. 22, 1901
William I	Oct. 14, 1066	Sept. 9, 1087
William II	Sept. 26, 1087	Aug. 2, 1100
William & Mary	Feb. 13, 1689	Dec. 27, 1694
William III	Dec. 28, 1694	Mar. 8, 1702
William IV	June 26, 1830	June 20, 1837

Although Charles II did not become King, de facto, until May 29, 1660, his regnal years were computed from the death of his father, January 30th, 1648-9, so that the year of his restoration is called the twelfth of his reign.

Oliver Cromwell assumed the title of "The Lord Protector of the Commonwealth of England, Scotland and Ireland" on Dec. 16th, 1653, with the title of "His Highness." Upon his death on Sept. 3d/13th, 1658, his son, Richard Cromwell, was proclaimed Protector the next day, Sept. 4th/14th, and resigned the office in May, 1659.

ACCOUNT

13 EDWARD I, CHAPTER 23—STATUTE OF WESTMINSTER, THE SECOND

25 EDWARD III, STATUTE 5, CHAPTER 5

31 EDWARD III, STATUTE 1, CHAPTER 11

For these statutes see post, title "Executors and Administrators."

4 ANNE, CHAPTER 16

Section 27 of this act was included in Judge Thompson's original compilation. It gave an action of account against the executors and administrators of every guardian, bailiff and receiver; and also by one joint tenant and tenant in common, his executors and administrators, against the other, as bailiff for receiving more than his share or proportion. Judge Thompson remarked that it was obsolete even before his compilation and it has been omitted here because, as a common law action, it seems to be inconsistent with our more modern remedies by debt, covenant, case or by bill in equity.

ALIENS

STATUTE 25 EDWARD III, STAT. 2, §5

And that all children inheritors, which from henceforth shall be born without the ligeance of the King, whose fathers and mothers at the time of their birth be and shall be at the faith and ligeance of the King of England, shall have and enjoy the same benefits and ad-

vantages, to have and bear the inheritance within the same ligeance, as the other inheritors aforesaid in time to come; so always that the mothers of such children do pass the sea by the license and wills of their husbands. 1 R. 3. s. 4. Dyer 224. Co. Sit. 8. 4 Geo. 2. cf. 21.

STATUTE 7 ANNE, CAP. 5, §3

And be it further enacted by the authority aforesaid, that the children of all natural-born subjects born out of the ligeance of her Majesty, her heirs and successors, shall be deemed, adjudged and taken to be natural-born subjects of this kingdom, to all intents, constructions, and purposes whatsoever. (The residue of this Chapter repealed by 10 Anne c. 5. A. D. 1711) Explained by 4 Geo. 2. c. 21.

STATUTE 4 GEORGE II, CAP. 21

An act to explain a clause in an act made in the seventh year of the reign of her late Majesty Queen Anne, for naturalizing foreign Protestants, which relates to the children of the natural-born subjects of the Crown of England, or of Great Britain. A. D. 1731.

§1. 'Whereas by an Act of Parliament made in the seventh year of the reign of her late Majesty Queen Anne, instituted, **An Act for naturalizing of foreign Protestants,** it is, amongst other things, enacted, That the children of all natural-born subjects, born out of the ligeance of her said late Majesty, her heirs and successors, should be deemed, adjudged and taken to be natural-born subjects of this kingdom to all intents, constructions and purposes whatsoever: And whereas in the tenth year of her said late Majesty's reign, another act was made and passed to repeal the said act (except what related to the children of her Majesty's natural-born subjects, born out of her Majesty's allegiance): And whereas some doubts have arisen upon the construction of the said recited clause in the said Act of the seventh year of her late Majesty's reign;' Now for the explaining the said recited clause in the said act, relating to children of natural-born subjects, and to prevent any disputes touching the true intent and meaning thereof, may it please your most Excellent Majesty that it may be declared and enacted, and be it declared and enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lord's Spiritual and Temporal, and the Commons, in this present Parliament assembled and by the authority of the same, That all children born out of the ligeance of the Crown of **England,** or of **Great Britain,** or which shall hereafter be born out of such ligeance, whose fathers were or shall be natural-born subjects of the Crown of **England,** or of **Great Britain,** at the time of the birth of such children respectively, shall and may, by virtue of the said recited clause in the said act of the seventh year of the reign of her said late Majesty, and of this present act, be adjudged and taken to be, and all such children are hereby declared to be natural-born subjects of the Crown of **Great Britain,** to all intents, constructions and purposes whatsoever.

§2. Provided always, and be it further enacted and declared by the authority aforesaid, That nothing in the said recited act of the seventh year of her said late Majesty's reign, or in this present act combined, did, doth or shall extend, or ought to be construed, adjudged or taken to be extended, to make any children born or to be born out of the ligeance of the Crown of **England,** or of the Crown of **Great Britain,** to be natural-born subjects of the Crown of **England,** or of **Great Britain,** whose fathers at the time of the birth of such children respectively were or shall be in the actual service of any foreign Prince or State then in enmity with the Crown of **England,** or **Great Britain,** but that all such children are, were and shall be and remain in the same state, plight and condition to all intents, constructions and purposes whatsoever, as they would have been in, if the said act of the seventh year of her said late Majesty's reign, or this present act, had never been made; anything herein, or in the said act of the seventh year of her said late Majesty's reign contained to the contrary in any wise notwithstanding.

(The portion of the second section omitted relates to children of persons attained of treason or felony &c. and the §3 also omitted relates to such children, coming within the proviso of §2 who resided two years or died within the Kingdom prior to March 25, 1731. &c. and is also inapplicable.)

STATUTE 13 GEORGE III, CAP. 21

An act to extend the provisions of an act, made in the fourth year of the reign of his late Majesty King George the Second, intituled, an act to explain a clause in an act made in the seventh year of the reign of her late Majesty Queen Anne, for naturalizing foreign Protestants, which relates to the children of the natural-born subjects of the Crown of England, or of Great Britain, to the children of such children. A. D. 1773.

§1. 'Whereas divers natural-born subjects of Great Britain, who profess and exercise the Protestant religion through various lawful causes, especially for the better carrying on of commerce, have been, and are obliged to reside in several trading cities and other

foreign places, where they have contracted marriages, and brought up families: and whereas it is equally just and expedient that the Kingdom should not be deprived of such subjects, nor lose the benefit of the wealth that they have acquired; and therefore that not only the children of such natural-born subjects, but their children also, should continue under the allegiance of his Majesty, and be intitled to come into this Kingdom, and to bring hither and realize, or otherwise employ, their capital; but no provision hath hitherto been made to extend farther than to the children born out of the ligeance of his Majesty, whose fathers were natural-born subjects of the Crown of **England,** or of **Great Britain:**' May it therefore please your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lord Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all persons born, or who hereafter shall be born, out of the ligeance of the Crown of **England,** or of **Great Britain,** whose fathers were or shall be, by virtue of a Statute made in the fourth year of King **George** the Second, to explain a clause in an act made in the seventh year of the reign of her Majesty Queen **Anne,** for naturalizing foreign Protestants, which relates to the natural-born subjects of the Crown of **England,** or of **Great Britain,** intitled to all the rights and privileges of natural-born subjects of the Crown of **England** or of **Great Britain,** shall and may be adjudged and taken to be, and are hereby declared and enacted to be, natural-born subjects of the Crown of **Great Britain,** to all intents, constructions, and purposes whatsoever, as if he and they had been and were born in this Kingdom; any thing contained in an act of the twelfth year of the reign of King **William** the **Third,** intituled, **An act for the further limitation of the Crown, and better securing the rights and liberties of the subject,** to the contrary in any wise notwithstanding.

§2. Provided always, and be it enacted and declared by the authority aforesaid, That nothing in this present act contained shall extend, or be construed, adjudged, or taken to extend, to make any persons born, or to be born, out of the ligeance of the Crown of **England,** or of the Crown of **Great Britain,** to be natural-born subjects of the Crown of **Great Britain,** contrary to all or any of the provisoes, exceptions, limitations, and restrictions, contained in the aforesaid act, made in the fourth year of the reign of his said late Majesty, or to repeal, abridge or alter the same; but all such clauses shall be and remain in the same state, plight, and condition, to all intents, constructions, and purposes, whatsoever, as they would have been if this present act had never been made.

(§§3. & 4. inapplicable, and not of force.)

The subject of alienage and citizenship is for the most part one of national and not state concern. A person may, however, be a citizen of a state and not of the United States 11 C. J. pg. 776, §3. Undoubtedly for this reason, Judge Thompson included in his compilation of British Statutes in force in this State, certain Statutes of Edward III, Anne, Geo. II and Geo. III. The national counterpart of these statutes will be found in the Nationality Act of 1940, Title 8, U. S. C. The practical application of the British Nationality Acts adopted in this State will be slight. Without attempting to anticipate all possible applications, it is suggested that children born in foreign countries to parents who are citizens of Florida may command privileges denied to aliens by certain license and fee acts of this State. See Sections 373.07 and 374.30, Florida Statutes, 1941. The Statute 25 Edward III, State. 2 §5, has become more or less useless through operation of Section 18 of the Declaration of Rights, Constitution of Florida, and Section 731.28, Florida Statutes, 1941, which grant to aliens the right of ownership, inheritance and disposition of real and personal property in Florida.

AMENDMENT AND JEOFAIL*

14 EDWARD III, STATUTE 1, CHAPTER 6

Item it is assented, That by the misprision of a clerk in any place wheresoever it be, no process shall be annulled, or discontinued, by mistaking in writing one syllable, or one letter too much or too little; but as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be hastily amended in due form, without giving advantage to the party that challengeth the same because of such misprision.

The Legislature of Florida has from time to time enacted statutes of amendment and jeofail which doubtless encompass much of the range of the British statutes on the same subject. However, the Courts of Florida have allowed certain amendments to pleadings and process because of British statutes found to be in force in Florida. As Judge Thompson points out, the Florida statutes are not as broad as the British statues, and the latter are effective in this State in those cases not covered by the Florida acts. In various cases, the Courts have referred to the power to amend as, being under the common law, inherent in the Courts. However, these British statutes seem to be not only the origin of the law respecting amendments and jeofails but also in many instances the current source of such law.

A mistake in the use of a form of writ of summons is amendable under section 47.06, Florida Statutes, 1941.

The English statute of Amendment, 14 Edw. III, c. 6, which is in force in this state, allows the amendment of the title of process both before and after judgment. Gilmer v. Bird, 15 Fla. 410.

The style of process is its title, and the title of process in civil cases has been the subject of amendment from a very early period in English history under 14 Edw. III, c. 6, and other British statutes (citing Thompsons' compilation) Weiskoph v. Dibble, 18 Fla. 22.

See also Crandall's Florida Common Law Practice, §26.

*Sometimes spelled *Jeofaile* by present day authorities.

9 HENRY V, STATUTE 1, CHAPTER 4

Item, Whereas it was ordained and established in the Statute made the fourteenth year of King Edward the Third after the Conquest, that for misprision of the clerk in any place wheresoever it be, the process of the plea should not be avoided nor discontinued, by mistaking in writing one letter or syllable too much or too little, but as soon as the thing is perceived, by challenge of the party, or in other manner, it should hastily be amended in a due form, without giving advantage to the party that challengeth the same because of such misprision; the King our Sovereign Lord, considering the diversity of opinions which have been upon the said statute, and to put the thing in more open knowledge, hath declared and ordained at this time, by authority of this present Parliament, That the Justices before whom such plea or record is made, or shall be depending, as well by adjournment, as by way of error, or otherwise, shall have power and authority to amend such record and process, as afore is said, according to the form of the same Statute, as well after judgment in any such plea, record, or process given, as before judgment given in any such plea, record, or process, as long as the same record and process is before them, in the same manner as the Justices had power to amend such record, and process before judgment given by force of the said Statute made in the time of the said King Edward. And that this Ordinance endure till the Parliament that shall be first holden after the return of our Sovereign Lord the King into England from beyond the sea.

This statute was enacted, Judge Thompson states, to remove any doubt as to whether the power of amendment conferred on the courts by 14 Edw. III, St. 1, Ch. 6 extended after judgment as well as before.

Dissenting opinion thought this statute allowed reference to superior court which had been abolished to be amended to show circuit court. Brown v. Hartley, 2 Fla. 159.

4 HENRY VI, CHAPTER 6

This statute merely confirmed and made perpetual the foregoing statutes 14 Edw. III, St. 1, Ch. 6 and 9 Hen. V, St. 1, Ch. 4, and is omitted as unnecessary.

8 HENRY VI, CHAPTER 12

§1. Item our lord the King hath ordained and established by the authority of this present Parliament, That for error assigned, or to be assigned, in any record, process, or warrant of attorney, original writ or judicial, panel or return, in any places of the same rased or interlined, or in any addition, substraction, or diminution of words, letters, titles, or parcel of letters, found in any such record, process, warrant of attorney, writ, panel or return, which rasings, interlingings, addition, substraction, or diminution, at the discretion of the King's Judges of the Courts and places, in which the said records or process by writ of error, or otherwise, be certified, do appear suspected, no judgment nor record, shall be reversed nor annulled.

§2. And that the King's Judges of the Courts and places in which any record, process, word, plea, warrant of attorney, writ, panel, or return, which for the time shall be, shall have power to examine such records, process, words, pleas, warrants of attorney, writs, panel, or return, by them and their clerks, and to reform and amend (in affirmance of the judgments of such records and processes) all that which to them in their discretion seemeth to be misprision of the clerks in such record, processes, word, plea, warrant of attorney, writ, panel, and return; except appeals, indictments of treason and of felonies, and the outlawries of the same, and the substance of the proper names, surnames, and additions left out in original writs and writs of exigent, according to the Statute another time made the first year of King Henry, father to our lord the King that now is, and in other writs containing proclamation; so that by such misprision of the clerk no judgment shall be reversed nor annulled. And if any record, process, writ, warrant of attorney, return, or panel be certified defective, otherwise than according to the writing which thereof remaineth in the Treasury, Courts, or places from whence they be certified, the parties in affirmance of the judgments of such record and process shall have advantage to alledge, that the same writing is variant from the said certificate, and that found and certified, the same variance shall be by the said Judges reformed and amended according to the first writing.

(§3. Provides the punishment for embezzling, or withdrawing a record, and is fully

provided for by the Florida Statute of Feby. 10, 1832 § 19. (See Thomp. Dig. 494. Ch. V § 4.) and therefore omitted here. § 4. declares the effect to be given to exemplifications of records &c. inrolled in the Court of Chancery, and being inapplicable is also omitted.)

This statute and the statute following most nearly approximate the Florida amendment acts. The previous statutes, it will be noted, extended only to process. This statute enlarged the power of amendment to include whatever in their discretion they should consider misprision of their clerks, in any record, process, plea, warrant of attorney, writ, panel or return. It may be that the Florida statutes are broad enough to allow every amendment allowable under this statute, but it is retained out of caution.

For statutory provision of this State see Florida Statutes, 1941: Sections 50:20, 50.21, 50.22, 50.23 for amendments generally in civil actions; Sections 63.26 and 63.29 for amendments generally in equity causes; Section 76.29 in attachment; Section 78.17 in replevin, Sections 59.06, 59.19, 59.29 and 59.30 as to amendment of bill of exceptions and appellate proceedings generally; Supreme Court Rule 11(8) as to amendment of record on appeal.

See Brown v. Harley, 2 Fla. 159.

8 HENRY VI, CHAPTER 15

Item, It is ordained and established, That the King's Justices, before whom any misprision or default is or shall be found, be it in any records and processes which now be, or shall be, depending before them, as well by way of error as otherwise, or in the returns of the same, made or to be made by Sheriffs, Coroners, bailiffs of franchises, or any other, my misprision of the clerks, of any of the said Courts of the King, or by misprision of the Sheriffs, under-sheriffs, coroners, their clerks, or other officers, clerks, or other ministers whatsoever, in writing on letter or one syllable too much or too little, shall have power to amend such defaults and misprisions according to their discretion, and by examination thereof by the said Justices to be taken where they shall think needful. Provided that this statute do not extend to records and processes in the parts of Wales, nor to the processes and records of outlawries of felonies, and treasons, and the dependences thereof.

Judge Thompson says this statute was passed to allow the Courts to amend the misprisions not only of their clerks but also of other officers.

32 HENRY VIII, CHAPTER 30

Forasmuch as the party plaintiffs and demandants in all manner of actions and suits, as well real as personal, at the common law of this Realm, before this time have been greatly delayed and hindered in their suits and demands, by reason of the crafty, subtile and negligent pleadings of the plaintiffs or demandents, defendants or tenants, where any action or demand hath been sued, had or made, as well in ministring of their declarations and bars, as also in their replications, rejoinders, rebutters, joining of issues, and other pleadings, to the great hurry, delay and hindrance of the said plaintiffs or demandants, or to the vexation of the defendants or tenants; insomuch that when the issues joined in the same actions between the parties to the same hath been tried and found by the verdict of twelve or more indifferent persons, for the said plaintiffs or demandants, or for the tenants or defendants, and the Justices ready to give judgment for the said parties for whom the same issue was found, the same parties have been compelled by the course and order of the common law of this realm afore this time, to replead, and the said verdicts so given, as is afore rehearsed, to be taken as void and of none effect; sometime because the issues have been misjoined, and jeofail, and sometime by taking advantages of the parties own mispleadings, or in the pursuing, miscontinuing or discontinuing of process of any of the parties, and for divers other causes, the which is thought as well a great slander to the said common law of this realm, and to the ministers of the same, as also a plain delay and hindrance unto the said parties, in that they should not have their judgments when the issue hath been found and tried as is aforesaid, to their great costs and charges: Be it therefore enacted by the King our sovereign lord, the lords spiritual and temporal, and the Commons, in this Present Parliament assembled, and by the authority of the same, That from henceforth if any issue be tried by the oath of twelve or more indifferent men, for the party plaintiff or demandant, or for the party of the tenant or defendant, in any manner of action or suit at the common law of this realm, in any of the King's Courts of record, that then the Justice or Justices by whom judgment thereof ought to be given, shall proceed and give judgment in the same; any mispleading, lack of color, insufficient pleading or jeofail, or any miscontinuance or discontinuance, or misconveying of process, misjoining of the issue, lack of warrant of attorney for the party against whom the same issue shall happen to be tried, or any other default or negligence of any of the parties, their counsellors or attorneys, had or made to the contrary notwithstanding; and the said judgments thereof, so to be had and given, shall stand in full strength and force to all intents and purposes, according to the said verdict, without any reversal or undoing of the same by writ of error, or of false judgment, in

like form as though no such default or negligence had never been had or committed.

(§§2. & 3. relate to the time of filing warrants of attorney, and the penalty of the omission, and being inapplicable are omitted.)

This is the first of the true jeofail statutes, the preceding statutes touching amendments only. This statute, however, subsantially enlarged the power of the courts in amendments.

The Florida statute of jeofails, Section 54.26, Florida Statutes, 1941, was enacted in 1828 but was not considered by Judge Thompson to entirely supersede the instant British statute. It is broad and so far as it does include the errors which the statute 32 Hen. VIII, c. 30 reached, the latter is superseded.

See also harmless error statute, Section 54.23, Florida Statutes, 1941, which prohibits reversal of judgment for certain errors deemed harmless.

Section 54.26, Florida Statutes, 1941, is patterned after the statute 16 and 17 Charles II and not the statute 32 Henry VIII. Edwards v. Union Bank of Florida, 1 Fla. 136.

This statute is substantially repeated in the following statutes. Indeed, it seems a common grievance against these old statutes that any desired amendment was effected through the enactment of a new statute which might or might not include the prior statutes verbatim. To be safe, this redundancy must be perpetuated.

18 ELIZABETH, CHAPTER 14

§1. Be it enacted by the Queen's Most Excellent Majesty, the lords spiritual and temproal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if any verdict of twelve men or more shall be hereafter given in any action, suit, bill, plaint or dement, in any Court of record, the judgment thereupon shall not be stayed or reversed by reason of any default in form, or lack of form, touching false **Satin** or variance from the Register, or other defaults in form, in any writ original or judicial, count, declaration, plaint, bill, suit or demand, or for want of any writ, original or judicial, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in the process, upon or after any **Aid Prier** or **Voucher**, nor any such record or judgment after verdict to be given hereafter, shall be reversed for any the defects or causes aforesaid; any law, statute or usage to the contrary notwithstanding.

§2. Provided always, and be it further enacted by the authority aforesaid, That this Act, or anything therein contained, shall not extend to any writ, declaration or suit of appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason or other matter, nor to any process upon any of them, not to any writ, bill, action or information upon any popular or penal Statute; anything aforesaid to the contrary notwithstanding.

(§3 relates to the entry of attorneys warrants and penalty for omissions, and is omitted because inapplicable.)

27 ELIZABETH, CHAPTER 5

This statute inserted post under title "Pleas and Pleadings."

21 JAMES I, CHAPTER 13

§1. Whereas in the two and thirtieth year of the reign of King Henry the Eighth of famous memory, a good and profitable law, intituled, **An Act concerning mispleading, Jeofails, and Attornies,** was made and enacted: And likewise another good and profitable law was made in the Eighteenth year of the reign of our late Sovereign lady Queen Elizabeth, intituled, **An Act for the reformation of jeofails;** by which laws many delays of judgments were prevented, and yet notwithstanding many things have and daily do fall out, not yet provided for, nor remedied by the laws before mentioned:

§ 2. Be it therefore enacted by the authority of this present Parliament, That if any verdict of twelve men or more shall hereafter be given for the plaintiff or demandant, or for the defendant or tenant, bailiff in assige, vouchee, pray in aid, or tenant by receipt, in any action, suit, bill, plaint or demand in any Court of record, the judgment thereupon shall not be stayed or reversed by reason of any variance in form only, between the original writ of bill, and the declaration, plaint, or demand; or for lack of any averment of any life or lives of any person or persons, so as upon examination the said person be proved to be in life; or by reason that the **venire facias, habeas corpora** or **distringas** is awarded to a wrong officer, upon any insufficient suggestion; or by reason the **visne** is in some part misawarded or sued out of more places, or of fewer places, than it ought to be, so as some one place be right named; or by reason that any of the jury which tried the said issue is misnamed, either in the surname or addition, in any of the said writs, or in any return upon any of the said writs, so as upon examination it be proved to be the same man that was meant to be returned; or by reason that there is no return upon any of the said writs, so as a panel of the names of jurors be returned and annexed to the said writ; or for that the Sheriff's name or other officer's name having the return thereof, is not set to the return of any such writ, so as upon examination it be proved that the said writ was returned by the sheriff or under sheriff, or any such other officer; or by reason that the plaintiff in an **ejectione firmae,** or in any personal action or suit, (being an infant under the age of one and twenty years) did appear by attorney therein, and the verdict pass for him; any law, custom, or usage to the contrary notwithstanding.

§3. Provided always, and be it further enacted, That this act, or anything therein contained, shall not extend to any writ, declaration, or suit of appeal of felony or murther, nor to any indictment or presentment of felony, murther, or treason, nor to any process upon any of them, nor to any writ, bill, action, or information, upon any popular or penal statute; anything therein contained to the contrary notwithstanding. 5 Geo. I. c. 13.

16 & 17 CHARLES II, CHAPTER 8

§1. Whereas great delay, trouble, and vexation hath been and still is occasioned to the people of this realm, as well by arresting and reversing of judgments, as by staying executions by writs of error and supersedeas: For remedy thereof, be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any verdict of twelve men shall be given in any action, suit, bill, or demand, to be commenced from and after the five and twentieth day of March, which shall be in the year of our Lord one thousand six hundred sixty and five, in any of his Majesty's Courts of record at Westminster, or in the Courts of record in the Counties Palatine of Chester, Lancaster, or Durham, or in his Majesty's Courts of the Great Sessions in any of the twelve Shires of Wales; judgment thereupon shall not be stayed or reversed, for default in form or lack of form; or by reason that there are not pledges, or but one pledge to prosecute, returned upon the original writ; or because the name of the sheriff is not returned upon such original writ; or for default of entering pledges upon any bill or declaration; or for default of alledging the bringing into Court of any bond, bill, indenture, or other deed whatsoever mentioned in the declaration, or other pleading; or for default of allegation of the bringing into Court of letters testamentary or letters of administration; or by reason of the omission of **vi et armis, or contra pacem;** or for or by reason of the mistaking of the christian name or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month, or year, by the clerk, in any bill, declaration or pleading, where the right name, surname, sum, day, month, or year in any writ, plaint, roll or record proceeding, or in the same roll or record where the mistake is committed, is or are once truly and rightly alledged, whereunto the plaintiff might have demurred and shown the same for cause; nor for want of the averment of **hoc paratus est verificare;** or for **hoc paratus est verificare per recordum;** or for not alledging **prout patet recordum;** or for that there is no right **venue,** so as the cause were tried by a jury of the proper county or place where the action is laid; nor any judgment after verdict, confession by **cognovit actionem,** or relicta **verificatione,** shall be reversed for want of **misericordia** or **capiatur;** or by reason that a **capiatur** is entered for a **misericordia,** or a **misericordia** is entered where a **capiatur** ought to have been entered; nor for that **ideo doncessum est per curiam** is entered for **ideo consideratum est per curiam;** nor for that the increase of costs after a verdict in any action, or upon a nonsuit in replevin, are not entered to be at the request of the party for whom the judgment is given; nor by reason that the costs in any judgment whatsoever are not entered to be by consent of the plaintiff; but that all such omissions, variances, defects, and all other matters of like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered, shall be amended by the Justices or other Judges of the Courts where such judgments are or shall be given, or whereunto the record is or shall be removed by writ of error.

§2. Provided always, and be it further enacted by the authority aforesaid, That this Act, or anything therein contained, shall not extend to any writ, declaration, or suit of appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason, or other matter, nor to any process upon any of them; nor to any writ, bill, action, or information upon any penal statute, other than concerning customs and subsidies of tonnage and soundage; anything in this act contained to the contrary thereof in any wise notwithstanding.

§§3, 4. These sections required and regulated supersedeas bonds and are fully covered by Florida Statutes, 1941. See Sections 59.13 and 59.14 as to supersedeas in civil actions and Sections 67.04 and 67.05 in equity causes. See also Supreme Court of Florida, Rule No. 35.

§5. Provided, That this act, nor anything therein contained, shall not extend to any writ of error to be brought by any executor or administrator; nor unto any action popular, nor unto any other action which is or hereafter shall be brought upon any penal law or statute (except actions of debt for not setting forth of titles); nor to any indictment, presentment, inquisition, information, or appeal; anything hereinbefore expressed to the contrary thereof in any wise notwithstanding.

§6. Provided always, That this act shall continue in force for three years, and to the end of the next session of Parliament after the expiration of the said three years, and no longer. (Made perpetual by 22 & 23 Car.2.c.4.)

The Statute of Jeofail in this State is the Statute 16 and 17 Charles II. Edwards v. Union Bank of Florida, 1 Fla. 136.

In an action of trespass against a corporation, the trespass being alleged to have been committed in one county, and the action brought in another where the corporation has its office and transacts its business, it is too late, after verdict, to object that the action was brought in the wrong county, or that it should have been brought where the trespass was committed. The defect is cured by Statute 16 and 17 Charles II which is in force in this State. Edwards v. Union Bank of Florida, 1 Fla. 136.

4 ANNE, CHAPTER 16

§1. For the amendment of the law in several particulars, and for the easier, speedier, and better advancement of justice, Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of Trinity term which shall be in the year of our Lord one thousand seven hundred and six, where any demurrer shall be joined, and entered in any action or suit in any Court of record within this realm, the Judges shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, or defect in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission, or defect might have heretofore been taken to be matter of substance, and not aided by the statute made in the twenty-seventh year of Queen Elizabeth, intituled, **An Act for the furtherance of justice in case of Demurrer and Pleadings,** so as sufficient matter appear in the said pleadings, upon which the Court may give judgment according to the very right of the cause; and therefore from and after the said first day of Trinity term, no advantage or exception shall be taken of or for an immaterial traverse; or of or for the default of entring pledges upon any bill or declaration; or of or for the default of alledging the bringing into Court any bond, bill, indenture, or other deed whatsoever mentioned in the declaration or other pleading; or of or for the default of alledging of the bringing into Court, letters testamentary, or letters of administration; or of or for the omission of **Vi Varmis et contra pacem,** or either of them; or of or for the want of averment of **hoc paratus est verificare,** or **hoc paratus est verificare per recordum;** or of or for not alledging **prout patet per recordum;** but the Court shall give judgment according to the very right of the cause as aforesaid, without regarding any such imperfections, omissions, and defects, or any other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer.

§2. And be it further enacted by the authority aforesaid, That from and after the said first day of Trinity term, all the Statutes of jeofails shall be extended to judgments which shall at any time afterwards be entered upon confession, **nihil dicit,** or **non sum informatus,** in any Court of record; and no such judgment shall be reversed, nor any judgment upon any writ of enquiry of damages executed thereon be staid or reversed, for or by reason of any imperfections, omission, defect, matter, or thing whatsoever, which would have been aided and cured by any of the said Statutes of jeofails in case a verdict of twelve men had been given in the said action or suit, so as there be an original writ or bill, and warrants of attorney duly filed according to the law as is now used.

§3. This section provided for the filing of warrants of attorneys and is omitted as inapplicable.

§6. This section regulated how every **venire facias** for the trial of any issue should be awarded and is omitted because superseded by acts of the Florida Legislature regulating same. See post, title "Jury."

§7. Provided always, and be it enacted by the authority aforesaid, That nothing in this act before contained shall extend to any writ, declaration, or suit of appeal of felony or murder, or to any indictment or presentment of treason, felony, or murder, or other matter, or to any process upon any of them, or to any writ, bill, action, or information upon any penal Statute.

§24. And be it further enacted by the authority aforesaid, That from and after the said first day of Trinity term, this act and all the Statutes of jeofails shall extend to all suits in any of her Majesty's Courts of record at Westminster, for recovery of any debt immediately owning, or any revenue belonging to her Majesty, her heirs or successors; and shall also extend to all Courts of record in the Counties Palatine of Lancaster, Chester and Durham, and the Principality of Wales, and to all other Courts of record within this Kingdom.

5 GEORGE I, CHAPTER 13

§1. Whereas great delay of justice hath of late years been occasioned by defective writs of error, which as the law now stands are not amendable: For remedy thereof, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all writs of error, wherein there shall be any variance from the original record or other defect, may and shall be amended and made agreeable to such record, by the respective Courts where such writ or writs of error shall be made returnable; and that where any verdict hath been or shall be given in any action, suit, bill, plaint or demand, in any of his Majesty's Courts of record at Westminster, or in any other Court of record within

England or Wales, the judgment thereupon shall not be staid or reversed for any defect or fault, either in form or substance, in any bill, writ, original or judicial, or for any variance in such writs from the declaration or other proceedings.

§2. Provided, nevertheless, That nothing in this act contained shall extend, or be construed to extend, to any appeal of felony or murder, or to any process upon any indictment, presentment or information of or for any offence or misdemeanor whatsoever.

The Supreme Court of Florida has had before it on at least two occasions the question of whether this statute remains in force in Florida.

In Loring et al. v. Wittich it ruled that a writ of error might be amended so as to make the plaintiffs in error the defendants in error, and remarked that the amendment was allowable under the instant statute, unless superseded by Section 50.20, Florida Statutes, 1941, and if so superseded the same power existed under the Florida Act.

To the same effect see Mutual Life Ins. Co. v. Hartley, 92 Fla. 237, 109 So. 421.

4 GEORGE II, CHAPTER 26

(§1. This section directs that all pleadings &c. shall be in English language, and is inserted post, title "Pleas and Pleadings.")

§4. And whereas several good and profitable laws have been enacted, to the intent that the parties in all manner of actions and demands might not be delayed and hindred from obtaining the effect of their suits, after issue tried and judgment given, by reason or any subtitle, ignorant or defective pleadings, nor for any defect in form, commonly called jeofails; It is hereby enacted and declared, That all and every Statute and Statutes for the reformation and amending the delays arising from any jeofails whatsoever, shall and may extend to all and every form and forms, and to all proceedings in Courts of Justice (except in criminal cases) when the forms and proceedings are in English; and that all and every error and mistake whatsoever, which would or might be amended and remedied by any Statute of jeofails, if the proceedings had been in Latin, all such errors and mistakes of the same and like nature, when the forms are in English, shall be deemed, and are hereby declared to be amended and remedied by the Statutes now in force for the amendment of any jeofails; and this clause shall be taken and construed in all Courts of Justice in the most ample and beneficial manner, for the ease and benefit of the parties and to prevent frivolous and vexatious delays.

APPRENTICE

STATUTE 6 GEORGE III, CHAPTER 25

§1. Whereas persons employed in several manufactories of this Kingdom frequently take apprentices who are very young, and for several years of their apprenticeships, are rather a burthen than otherwise to their masters: And whereas it frequently happens that such apprentices, when they might be expected to be useful to their masters, absent themselves from their service: And whereas the laws in being are not sufficient to prevent these inconveniences: For remedy whereof, may it please your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of **June**, one thousand seven hundred and sixty-six, if any apprentice shall absent himself from his master's services before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter, whenever he shall be found, be compelled to serve his said master for so long a time as he shall have so absented himself from such service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service; and so, from time to time, as often as any apprentice shall, without leave of his master, absent himself from his service before the term of his contract shall be fulfilled: And in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain, upon oath, to any justice of the peace of the county or place where he shall reside, which oath such justice is hereby empowered to administer, and to issue a warrant under his hand and seal for apprehending any such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and in case such apprentice shall not give security to make such satisfaction according to such determination, it shall and may be lawful for such justice to commit every such apprentice to the House of Correction for any time not exceeding three months.

§2. Provided always, That nothing in this act contained shall extend to any apprentice, whose master shall have received with such apprentice the sum of ten pounds.

§3. Provided also, That no apprentice shall be compelled to serve for any time or term, or to make any satisfaction to any master, after the expiration of seven years next after the

end of the term for which such apprentice shall have contracted to serve; anything herein contained to the contrary notwithstanding.

(§4. This section provides a remedy against workmen who do not fulfill their contracts of service, by arrest and imprisonment for not less than one nor more than three months, and is not considered of force here.)

§5. Provided always, That if any person shall think himself aggrieved by such determination, order, or warrant, of any justice of the peace as aforesaid, except an order of commitment, every such person may appeal to the next General Quarter Sessions of the Peace to be held for the County or place where such determination or order shall be made; such person giving six days notice of his intention of bringing such appeal, and entering into a recognizance within three days after such notice, before some justice of the peace for such County or place, with sufficient surety, conditioned to try such appeal at, and abide the order or judgment of, and pay such costs as shall be awarded by the Justices at such Quarter Sessions which said justices, at their said sessions, upon due proof of such notice being given, and of entering into such recognizances as aforesaid, shall and are hereby directed to proceed in, hear, and determine, the causes and matters of all such appeals; and shall give such relief and costs to the parties appealing or appealed against, as they, in their discretion, shall judge proper and reasonable; and their judgments and orders therein shall be final and conclusive to all parties concerned.

§ 6. Not applicable.

Prior to this statute, the master was without any effectual remedy against the apprentice for the grievance recited in the preamble of the Statute. Although the apprentice may have executed the indenture of apprenticeship, and it was for his advantage to be so bound to be instructed in a trade, yet the master could not maintain any action thereon against him, for departing his service, or for breach of any other covenant therein; *Gybert v. Fletcher* Cro. Car. 179; *Whitby v. Softus*, 8 Mod. R. 459; *Brand v. Ewington*. (Thompson)

Judge Thompson suggests that the authority conferred upon Justices herein would be properly exercised by the County Judges in Florida.

Where apprenticeship is required as condition to practicing a profession, the requirement is satisfied by a showing that the trade has been followed for the required period, and a formal binding is not necessary. State ex rel Attorney-General v. Jones, 16 Fla. 306.

ATTORNEYS AT LAW

The Statute 3 Edward I, Chapter 29, which provided a penalty for deceit practiced by an attorney on the courts, was included in Judge Thompson's original compilation. Deceit was not defined in the statute. The penalty was disbarment and imprisonment. The promulgation of a code of ethics for the bench and bar by the Supreme Court of Florida and the creation of legal machinery for the trial and punishment of offenses superseded this statute. See Rules Relating to Ethics Governing Bench and Bar, 145 Fla. 763.

The statute of Westminster First, 3 Edw. I, Chap. 29, which was before there was any recognized class of practitioners as attorneys, provided "that if any sergeant, counter, or other, do any matter of deceit or collusion in the King's Court, or consent to it, to deceive or entrap the court or one of the parties, he shall be no more heard in the court to plead for any one." Lord Coke says these practices "were against the common law, and therefore this act was made in affirmance of the common law." State v. Kirke, 12 Fla. 278 (283).

The statute 4 Henry IV, c. 18, made admission to practice law a matter within the power of the courts. Court remarked that it was adopted as law of this state by Act of Nov. 1829. Gould v. State, 99 Fla. 662, 127 So. 309.

BIGAMY

2 JAMES I, CAP. 11 (VULGO 1)

§§1, 2. Section 1 defines the crime of bigamy in substantially the same terms as Section 799.01, Florida Statutes, 1941, which superseded it. Section 2 excepts from the operation of Section 1, the marriage of a person whose spouse shall be beyond the seas or absent himself or herself for a stated term. Section 2 is superseded by Section 799.02, Florida Statutes, 1941.

§3. Provided also, and be it enacted by the authority aforesaid, That this Act, nor anything herein contained, shall extend to . . . . . any person or persons for or by reason of any former marriage had or made, or hereafter to be had or made, within the age of consent.

§4. Not in force. It provides that no attainder for this felony shall work corruption of blood, loss of dower, or disinheritance of heirs.

The omitted portion of §3 excepts from the statute the marriage of persons whose former marriages have been dissolved by divorce or annulment. It is, therefore, superseded by the similar legislation in this State. See Section 799.02, Florida Statutes, ~~1941~~. The portion of §3 set out above makes non-bigamous the marriage of a person who has formerly contracted a marriage within the age of consent. It is thought that the Florida statutes regulating marriage are not inconsistent with §3 since they are merely directory and do not affect the right to contract a marriage in common law form. See Caras v. Hendrix, 62 Fla. 446, 57 So. 345.

Several things must be kept in mind in connection with this Statute. At common law the age at which persons were deemed competent to contract marriages was 14 years for the man and 12 years for the woman. In absence of statute this rule is a part of the common law of Florida. Green v. Green, 77 Fla. 101, 80 So. 739. The Florida statutes regulating marriage (see Chapter 741, Florida Statutes, 1941) prohibit the issuance of marriage licenses to persons under the age of 21 years without the pareuts' consent, and with or without such consent, to a man under 18 years of age and a woman under 16 years of age. It may thus be that for persons consummating a commn law marriage there is one set of consent ages, and for those marrying under statutory regulation another set of consent ages which affect the application of §3 of Statute 2 James I, Cap. 11. This is a matter for judicial construction, however.

BILL OF EXCEPTIONS

13 EDWARD I, CHAPTER 31—STATUTE WESTMINSTER, THE SECOND

Judge Thompson states that the Florida statute governing bills of exception is not inconsistent with this statute and provides a cumulative remedy. This statute has, however, been superseded by Rule 11 of the Rules of Practice in the Supreme Court of Florida, adopted December 17, 1941, effective April 1, 1942.

The statute 13 Edw. I was enacted so that matters of law decided at the trial but not appearing on the record could be reviewed. Gray v. Belden, 3 Fla. 110.

The Florida law provides the method of securing a bill of exceptions, but leaves its effect to the Statute of Westminster 2, 13 Edward I, Chapter 31. Bailey v. Clark, 5 Fla. 516.

The correction in the appellate court of errors committed by the trial judge during the progress of the trial, such errors not appearing on the record, may be had under this statute. Dibble v. Truluck, 11 Fla. 135.

For the text of the Statute Westminster 2, 13 Edward I, Chapter 31, see Bowden et al. v. Wilson et al., 21 Fla. 165.

Under this statute, which first provided for review in the appellate courts of errors not apparent on the record, the presence of the defendant in a murder trial cannot be shown even though his presence does not appar on the record proper. Lovett v. State, 29 Fla. 356, 11 So. 172.

Statute 13 Edward I, Chapter 31, "is undoubtedly a part of our law applicable to civil causes." Brown v. State, 29 Fla. 543, 10 So. 736.

Section 1 of Chapter 5897, Laws of 1909, which allows the use by bill of exceptions of testimony taken at a former trial, is framed from the provisions of 1 and 2 P. and M. Ch. 13, §§4 and 5, and 2 and 3 P. and M. Ch. 10. The later British Statute, 11 and 12 Vict., Ch. 42, §17 adds the right to obtain testimony by depositions. Blockwell et al. v. State, 79 Fla. 709, 86 So. 224.

BILLS OF EXCHANGE AND PROMISSORY NOTES

STATUTE 9 & 10 WILLIAM III, CH. 17

This statute entitled "An Act for the Better Payment of Inland Bills of Exchange," passed in 1698, regulated the manner presenting, protesting and other acts necessary to fix the liability on inland bills of exchange. It was superseded by the Florida Negotiable Instruments Law. See Chapter 676, Florida Statutes, 1941.

3 & 4 ANNE, CH. 9

This statute is entitled "An Act for Giving the Like Remedy upon Promissory Notes As Is Now Used Upon Bills of Exchange, and for the Better Payment of Inland Bills of Exchange." It was passed in 1704. The subject matter comprehended by its provisions has been regulated by the Florida Negotiable Instruments Law and can be considered superseded by the latter. See Chapter 676, Florida Statutes, 1941.

The brief of counsel in Bellas v. Keyser, 17 Fla. 100, suggests that this statute is in force in Florida. However, the case was decided at the January Term, 1879, eighteen years before the Uniform Negotiable Instruments Law was enacted in Florida.

BURGLARY

12 ANNE, ST. 1, CH. VII, SEC. 3—A. D. 1713

§ 3. And whereas there has been some doubt, whether the entring into the mansion-house of another, without breaking the same, with an intent to commit some felony, and breaking the said house, in the night-time to get out, be burglary; Be it declared and enacted by the authority aforesaid, That if any person shall enter into the mansion or dwelling house of another, by day or by night, without breaking the same, with an intent to commit felony, or being in such house shall commit any felony, and shall in the night-time break the said house to get out of the same, such person is and shall be adjudged and taken to be guilty of burglary, and shall be ousted of the benefit of his or her clergy, in the same manner as if such person had broke and entred the said house in the night-time with an intent to commit felony there.

The Statute in the text is a declaratory act, passed in consequence of the doubts expressed by Lord Holt and Trever, C. J. in the case of Elizabeth Clarke at the Old Bailey in 1707 upon a special verdict found by the direction of the former judge. 2 East Cr. Law, 490. (Thompson)

It would appear at first inspection that this statute is comprehended by the provision of Sections 810.01 and 810.03, Florida Statutes, 1941. However, it is not clear from the Florida Statutes whether the crime of burglary has been committed by a person who enters a dwelling house for a lawful purpose and thereafter forms an intent to commit a felony and breaks the dwelling during the night in leaving. It is probable that a court would construe the Florida Statutes as being intended by the Legislature to cover the whole field of the subject and as superseding the British law of the same subject.

CARRIERS

7 GEORGE II, CHAPTER 15

By this act the common law liability of carriers was narrowed, so far as respects the owner of the vessel, who was released from liability for losses arising from the fraud, embezzlement or treachery of the master or mariners in excess of the value of the ship and freight charge. Superseded by Section 350.57, Florida Statutes, 1941. See also Section 350.11 and Chapter 353, Florida Statutes, 1941.

CHAMPERTY

3 EDWARD I, CAP. 25—STATUTE WESTMINSTER THE FIRST

No officer of the King by themselves, nor by other, shall maintain pleas, suits, or matters hanging in the King's Courts, for lands, tenements, or other things, for to have part or profit thereof by covenant made between them; and he that doth, shall be punished at the King's pleasure.

13 EDWARD I, CAP. 49—STATUTE WESTMINSTER THE SECOND

The Chancellor, Treasurer, Justices, nor any of the King's Counsel, no clerk of the Chancery, nor of the Exchequer, nor any Justice or other officer, nor any of the King's house, Clerk ne lay, shall not receive any Church, nor advowson of a church, land, nor tenement in fee, by gift, nor by purchase, nor to farm, nor by Champerty, nor otherwise, so long as the thing is in plea before us, or before any of our officers; nor shall take no reward thereof. And he that doth contrary to this act, either himself, or by another, or make any bargain, shall be punished at the King's pleasure, as well he that purchaseth, as he that doth sell.

28 EDWARD I, STATUTE 3, CAP. 11

And further, because the King hath heretofore ordained by statute, that none of his ministers shall take no plea for maintenance, by which statute other officers were not bounden before this time; The King wills, that no officer nor any other (for to have part of the thing in plea) shall not take upon him the business that is in suit; nor none upon any such covenant shall give up his right to another; and if any do, and he be attainted thereof, the taker shall forfeit unto the King so much of his lands and goods as doth amount to the value of the part that he hath purchased for such maintenance. And for this attaindre, whosoever will, shall be received to sue for the King before the Justices, before whom the plea hangeth, and the judgment shall be given by them. But it may not be understood hereby, that any person shall be prohibit to have counsel of pleaders, or of learned men in the law for his fee, or of his parents and next friends.

33 EDWARD I, STATUTE 3, THE STATUTE OF CHAMPERTY

§1. Where it is contained in our Statutes, that none of our Court shall take any plea to champerty by craft nor by engine; and that no pleaders, apprentices, atturnies, stewards of great men, bailiffs, nor any other of the realms, shall take for maintenance, or the like bargain, any manner of suit or plea against another, whereby all the realm is much grieved, and both rich and poor troubled in divers manners; it is provided by a common accord, That all such as from henceforth shall be attained of such emprises, suits, or bargains, and such as consent thereunto, shall have imprisonment of three years, and shall make fine at the King's pleasure. Given at **Berwick** upon **Tweed** the twentieth year of the reign of King **Edward**. Our lord the King, at the information of **Gilbert Rowberry**, Clerk of his Council, hath commanded, That whosoever will complain himself of conspirators, inventors, and maintainors of false quarrels, and partakers thereof and brokers of debates, that **Gilbert Thornton** shall cause them to be attached by his writ, that they be before our Sovereign lord the King, to answer unto the plaintiffs by this writ following:

§2. The King, to the Sheriff, Greeting: We command you, that if A. of G. &c. make you secure of prosecuting his claim, then put by gage and safe pledges, G. of C. &c. so that he be before us in the Octave of St. John the Baptist, wheresoever he shall then be in England, to answer the aforesaid A. in a plea of trespass and conspiracy according to the form of our ordinance in such case made and provided, so that the said A. may reasonably show that he thereupon ought to answer to him, and have you there the names of the pledges and this writ. Witness &c.

CHARITABLE USES

43 ELIZABETH, CHAP. 4, SECTIONS 1 to 10

This statute is entitled an "Act to Redress the Mis-employment of Land, Goods and Stocks of Money Heretofore Given to Certain Charitable Uses." It provides a mode for inquiring into the administration of charitable trusts by commission appointed by the Lord Chancellor or Keeper of the Great Seal of England, and by the Chancellor of the Duchy of Lancaster, in their respective jurisdictions. Such commissions as were appointed were charged with the duty of reviewing the trustee's acts and of making such orders and decrees as would effectuate the intent and purpose of the donor of the trust. The orders and decrees of the commissioners were required to be certified to the Court of Chancery of England, or the Court of Chancery within the County Palatine of Lancaster, as the case should be. Orders for the execution of the commissioners' decree were issuable by the Lord Chancellor or the Chancellor of Lancaster. The statute has been omitted here because there is no officer of the state government which corresponds exactly with the Lord Chancellor of England, and because the political theory of separation of power which pervades our government seems opposed to the type of proceedings authorized by the statute. The Lord Chancellor of England, Keeper of the Great Seal and the King's conscience, was both a judicial and a law enforcement officer. His nearest complement in the Florida government is the Attorney General. To retain a British Statute in our law which would give to the Attorney General power to supervise charitable trusts by the appointment of a commission to check the administration of the trust, certify its orders to the Chancery Court and depend for the enforcement of its orders upon writs of execution issued by the Attorney General, would clearly be opposed to our system of organically constituted jurisprudence.

9 GEORGE II, CHAPTER 36

This act required all gifts to charitable uses involving lands, or personal property to be laid out in lands, to be evidenced by deed, executed with prescribed formalities and within a designated time prior to the death of the donor or grantor. All other gifts to charitable uses were void. The statute has been superseded by Sections 689.05 and 731.19, Florida Statutes, 1941.

The practice of applying the lands and goods limited to a certain purpose which could not be performed to another and similar purpose was authorized by this statute.

The doctrine of cy pres which originated under 43 Elizabeth, Chap. 4. is recognized in this state, not as a special prerogative of the High Chancellor, but as an ordinary equitable doctrine of a liberal construction in favor of public charitable bequests, especially where the bequest has once vested. Lewis et al. v. Gaillard, 61 Fla. 819, 56 So. 281.

Judge Thompson thought this statute pertained in Florida, but for the reasons given I think it should now be removed.

At the time of Judge Thompson's compilation the mode of proceeding by commission directed by the Act had been abandoned, and the former practice of proceeding by information in the name of the Attorney General substituted.

The present practice of inquiring into the proper administration of a charitable trust in states that have no statutory proceeding is in the Chancery Court. The inquiry may be by a plaintiff or plaintiffs where a designated charitable institution or a defined group of persons is the beneficiary of the trust. Where the general public is the beneficiary, the Attorney General should institute the proceeding. See Zollman, American Law of Charities §613 and Annotations, 62 ALR 881 and 124 ALR 1238.

CHEATS

I FALSE TOKENS AND PRETENSES

33 HENRY VIII, CHAPTER 1

A bill against them that counterfeit letters or privy tokens to receive money or goods in other men's names. Superseded by Sections 817.01 and 831.01, Florida Statutes, 1941.

At common law the offense of cheating by a false symbol or token must be of a public character, calculated to impose upon the public generally. To remedy this, the Statute Henry VIII was passed. The Florida statute includes the cheating of an individual by a privy or false token as well as by false representations orally made. Smith v. State, 74 Fla. 594, 77 So. 274.

30 GEORGE II, CHAPTER 24

An act for the more effectual punishment of persons who shall attain, or attempt to attain, possession of goods, or money, by false and untrue pretenses; for preventing the unlawful pawning of goods; for the easy redemption of goods pawned; and for preventing gaming in public houses by journeymen, labourers, servants and apprentices. The provisions regarding false pretenses were included by Judge Thompson because the subject had not been covered by a Florida enactment at that time. Now superseded by Sections 817.01-34, and Section 836.05, Florida Statutes, 1941.

II FALSE PERSONATION OF ANOTHER

21 JAMES I, CHAPTER 26

An act against such as shall levy any fine, suffer any recovery, acknowledge any statute, recognizance, bail, or judgment, in the name of any other person or persons, not being privy and consenting thereto. Superseded by our forgery statute which is broad enough to cover all the acts enumerated. See Sections 831.01-02, Florida Statutes, 1941.

CONSPIRACY

33 EDWARD I, STATUTE 2, **de conspiratoribus**

This statute defined conspiracy substantially in accord with, and may be considered superseded by, Section 833.01, Florida Statutes, 1941.

33 EDWARD I, STATUTE 3

This statute furnished the form of a writ of conspiracy and is superseded by our own system of criminal practice and procedure. For form of indictment and information, see Sections 906.05 and 906.06, Florida Statutes, 1941.

2 AND 3 EDWARD VI, CHAPTER 15

This statute is divided into two parts. First, it makes unlawful any conspiracy, covenant or promise on the part of butchers, brewers, bakers, poulterers, cooks, costermongers, or fruiters to maintain a certain price for a given commodity. This subject matter is comprehended by Chapter 542, Florida Statutes, 1941, and thus superseded. Second, it makes unlawful the conspiracy, covenant or promise of artificers, workmen or laborers not to work except at a certain price or rate, not to finish or take work started by another, not to work but a certain number of hours each day, nor work but at certain hours and times. None of the things enumerated, when done individually, would be unlawful in this state. The doing of them in concert, unless the result should be different, would not, therefore, be unlawful in Florida. The statute is inconsistent with our advanced philosophy of labor rights and is not brought forward. See Jetton-Dekle Lumber Co. v. Mather et al., 53 Fla. 969, 43 So. 590.

COSTS

23 HENRY VIII, CHAPTER 15

24 HENRY VIII, CHAPTER 8

43 ELIZABETH I, CHAPTER 6

4 JAMES I, CHAPTER 3

22 & 23 CHARLES II, CHAPTER 9, §136

8 & 9 WILLIAM III, CHAPTER 11

These statutes regulated the imposition of costs on the failing party, either at judgment or in case of a nonsuit. Our court rules and statutes upon particular actions and proceedings have so far regulated costs that these statutes must be considered superseded.

None of these statutes gave costs to the party prevailing upon a default but it remained for 3 and 4 Wm. IV, c. 42 to authorize costs in such event. Brown v. Harley (counsel's brief), 2 Fla. 159.

DISTRESS

51 HENRY III, STATUTE 4

52 HENRY III, CHAPTERS 1,4 AND 15

3 EDWARD I, CHAPTER 16

13 EDWARD I, CHAPTERS 2, 36 AND 37

7 HENRY VIII, CHAPTER 4

21 HENRY VIII, CHAPTER 19

32 HENRY VIII, CHAPTER 37

1 AND 2 PHILIP & MARY, CHAPTER 12

17 CHARLES II, CHAPTER 7

2 WILLIAM & MARY, CHAPTER 5

8 ANNE, CHAPTER 14

4 GEORGE II, CHAPTER 28

11 GEORGE II, CHAPTER 19

A distress is defined by Judge Blackstone to be, the taking of a personal chattel, without legal process, from the possession of the wrongdoer, into the hands of the party grieved, as a pledge for the redress of an injury, the performance of a duty, or the satisfaction of a demand. * * * The several injuries for which a distress may be taken are laid down by Judge Blackstone as the following: (1) The most usual is for the nonpayment of rent; (2) For neglecting to do suit to the Lord's Court, or other personal service; (3) For amercements in a court, or in a court baron if there be a prescription to warrant it in the latter case; (4) For hurt or damage done to one person by the beasts of another trespassing upon him and treading down his grass, etc.; (5) For nonperformance of duties and for penalties imposed by acts of Parliament, as in case of assessments for relief of the poor, taxes, etc. (Thompson)

The practice of taking the property of another, without judicial intervention, for redress of a wrong done to one by the owner of the property is opposed to our constitutional guarantee that a person's property may not be taken except upon due process of law. See Sec. 12, Declaration of Rights, Florida Constitution. The statutes, therefore, which regulated the exercise of this general right are not in force in Florida. In addition, the greater number of these statutes, which regulated distress for rent arrearages, are superseded by our own legislative enactments. See Chapter 83, Florida Statutes, 1941. It is, therefore, considered that none of the distress statutes listed are in force in Florida.

The Statutes of 7 Henry VIII. and 21 Henry VIII, Ch. 19 allowed certain damages to defendants who should prevail in court against plaintiff in a rent distress. Hopkins and Moody v. Burnly, 2 Fla. 42. The same relief is now accorded by Sec. 83.18, Florida Statutes, 1941.

At common law, landlord could seize and hold as distress any property found on premises. Statute 2 Wm. & M. Ch. 5 gave right of sale, with certain exceptions later grafted on by courts. Our statute provides exceptions but limits right of sale to lessee's or tenant's property. See Ch. 83, Florida Statutes, 1941. Matthews et al. v. McCain, 125 Fla. 840, 170 So. 323.

For §§1 & 8 of 8 Anne, Ch. 14, see post, Execution.

For the Statute 4 Geo. II, Ch. 28 see post, Leases and Terms for Years.

Under the Statute of 11 Geo. II, Ch. 19, Sec. 14, which is in force in this State (by enactment, see Sec. 83.07, Florida Statutes, 1941), a landlord may recover a reasonable satisfaction for the demised premises, held or occupied by the defendant under parol agreement; and if there appear in evidence at the trial, any parol demise, or any agreement not being by deed where a certain rent is reserved, the plaintiff in such action shall not be nonsuited, but may make use thereof as evidence of the quantum of damages to be recovered. Ward et al. v. Bull et al. 1 Fla. 271.

DOWER AND JOINTURE

20 HENRY I, CHAPTER 1

This statute gave a widow damages for detention of her dower if she had to enter a plea for it. The Florida dower statute affords her a remedy by petition if the personal representative fails to petition for allotment of dower. In addition, a widow is entitled to the mesne profits accruing after the death of decedent, which approximates the damages allowable under this statute. It is not in force in Florida. See Sections 731.34, 731.35, 731.36 and 733.09 to 733.14, both inclusive, Florida Statutes, 1941.

3 EDWARD I, CHAPTER 49

Superseded by Florida dower statutes. See citations above.

13 EDWARD I, CHAPTER 4

Not in force. It guarantees to a widow dower in land which the husband has collusively allowed to be taken in judgment by another. The same right is inherent in the Florida dower statute.

13 EDWARD I, CHAPTER 7

Superseded by Florida dower statutes. See citations above.

13 EDWARD I, CHAPTER 34

It is Provided, - - - And if a wife willingly leave her husband, and go away, and continue with her adventerer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coercion of the church, reconcile her, and suffer her to dwell with him, in which case she shall be restored to her action.

The first clause of this chapter declares a rape to be a felony, and is omitted here. So also is subsequent clause providing a penalty for carrying a nun from her house. (Thompson)

The English statute of Westminster 2, 13 Edward 1, Ch. 34, provides that a wife who leaves her husband and lives in adultery with another man, shall forever forfeit her dower interest in her husband's lands; unless he shall, without coercion, condone her act and take her again to live with him. Henderson and Chaires v. Chaires, 25 Fla. 26, 6 So. 164.

27 HENRY VIII, CHAPTER 10

§6. And be it further enacted by the authority aforesaid, That whereas divers persons have purchased, or have estate made and conveyed of and in divers lands, tenements and hereditaments unto them and to their wives, and to the heirs of the husband, or to the husband and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to the wife for term of their lives, or for term of life of the said wife; or where any such estate or purchaser of any lands, tenements, or hereditaments, hath been or hereafter shall be made to any husband and to his wife, in manner and form expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointer of the wife; that then in every such case, every woman married, having such jointer made or hereafter to be made, shall not claim, nor have title to have any dower of the residue of the lands, tenements or hereditaments, that at any time was her said husband's, by whom she hath any such jointer, nor shall demand nor claim her dower of and against them that have the lands and inheritance of her said husband; but if she have no such jointer, then she shall be admitted and enabled to pursue, have and demand her dower by writ of dower, after the due course and order of the common laws of this realm; this act, or any law or provision made to the contrary thereof notwithstanding.

§7. Provided always, That if any such woman be lawfully expulsed or evicted from her said jointer, or from any part thereof, without any fraud or covin, by lawful entry, action or by discontinuance of her husband, then every such woman shall be embarred of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expulsed shall amount or extend unto.

§9. Provided also, That if any wife have, or hereafter shall have any manors, lands, tenements or hereditaments unto her given and assured after marriage, for time of his life, or otherwise in jointer, except the same assurance be to her made by act of Parliament, and the said wife after that fortune to outlive her husband, in whose time the said jointer was made or assured unto her, that then the same wife so overliving shall and may at her liberty, after the death of her said husband, refuse to have and take the lands and tenements so to her given, appointed or assured during the coverture, for term of her life, or otherwise in jointer, except the same assurance be to her made by Act of Parliament, as is aforesaid, and thereupon to have, ask, demand and take her dower by writ of dower or otherwise, according to the common law, of and in all such lands, tenements and hereditaments as her husband was and stood seized of any State of inheritance at any time during the coverture; anything contained in this act to the contrary thereof notwithstanding.

Another statutory bar to dower is created by the above sections of the Stat. of Uses, 27 Hen. 8 c. 10, which is termed a *jointure* strictly speaking, this term signifies a joint estate, limited to both husband and wife; but in common acceptation, extends also to a sole estate limited to the wife only, and is, according to Lord Coke's description, "competent livelihood of freehold for the wife of lands or tenements, to take effect presently in possession

or profit after the death of the husband, for the life of the wife at least, if she herself be not the cause of the determination or forfeiture of it." 2 Black. Comm. 137.

"The rule of the common law," says M. Roper, "that the widow's accentance of a collateral satisfaction of or out of lands in which she was not dowable, was no bar to her title to dower in those to which that title attached, united with the inconvenience which would have ensued after the passage of the Statute of Uses, induced the legislature by that act to enable the husband to bar effectually his wife's right to dower by making a provision for her before marriage in lieu of it, and which is known by the name of her jointure. 1 Rop. Husb. & Wife. 461.

The inconvenience alluded to in the above paragraph, which would have arisen but for the sections of the Statute in the text, will be readily seen from the following statement of the law and condition of titles generally. Before the Statute a very large proportion of the titles in England was vested in feoffees to uses, of which estate, that is, a use, a woman could not be embarred, because it was not a freehold; it became therefore a practice for the wife's friends upon her marriage, to procure the husband to take a conveyance to himself, and wife of some specific property, as a provision for her after his death. This however did not bar her of her dower as before stated; and as the effect of the Statute of Uses would be that every one who had the *use* of land would become seised of the land itself a title of dower would accrue to his wife, and if she had already an estate in jointure she would take a double provision. 3 Bacon Abr. 227. 1 Bright Husb. & wife. 443.

To make the jointure a perfect *legal* bar four requisites must be punctually observed:

1. The estate must, and even be so limited that it must, take effect immediately from the death of the husband. The Statute designed nothing as a satisfaction of dower but that which came in the same place, and is of the same use to the wife; therefore if an estate be made to J. S. for his life, remainder to the husband for life, remainder to the wife for her jointure, this is no good jointure; and though J. S. dies during the life of the husband, yet it is not good. 3 Bac. Abr. 228, citing Shurwell's case, Hatton, 51. 4 Co. Rep. 3. See also Bright Husb. & Wife, 434 and authority cited. The jointure will be valid whether it be limited to the widow solely, or to her and her husband jointly. Thus, if the estate be limited to the husband and wife in fee simple, it will be a good jointure; because such a limitation, although not within the expression, is yet within the intention of the Statute; for if she survives, she will have a larger estate than if simply limited to her for life after her husband's death, and if she die before him, there is no occasion for the provision. 1 Bright on H. & W. 437, citing Dennis' Case, Dyer R. 248, a. 4 Co. Rep. 3.b.

In equity, the rule is the same as at law, with respect to the first requisite, with the single exception, that where the intended wife, being of full age and a party to the deed, by executing it, consents to accept a more uncertain and disadvantageous provision in lieu of dower; in such case she will be bound and completely barred of her common law right; and an infant will be bound by an equitable jointure also, provided it be not precarious, but be as certain a provision as is required to operate as a legal bar. *Caruthers v. Caruthers*, 4 Bro. Ch. R. 500. *Smith v. Smith*, 5 Vesey R. 189. *Simpson v. Gutheridge*, 1 Madd. R. 609. *Corbet v. Corbet*, 1 Sim. & Stu. R. 612.

2. The jointure must be for the term of the wife's life, or a greater estate; therefore an estate to the wife for the life of another, or for the lives of two or more persons, is not a good jointure under the Statute, for she may outlive all of them. 3 Bac. Abr. 229. Co. Litt. 36.b. But it is said an estate limited to the wife, *durante viduitate*, or upon condition that she performs the will of her husband, is a good jointure: for it cannot determine but by her act; 3 Bac. Abr. 229, citing 4 Co. Rep. 3.a. Dyer R. 228. But see Bright on Husb. & W. 438.

In equity this legal requisite does not exist as necessary to make the jointure a bar to dower, where the intended wife is of age, and a party to the deed. Bright on H. & W. 448.

3. The jointure must be made to the wife herself, not to any other in trust for her. This rule, says Lord Coke, is so necessary to be observed, that though the wife should assent to a jointure made in trust for her, yet it would not be good; for the Statute only bars the dower when by it the possession, (which was formerly a use) is executed in her. Co. Lit. 36.b. But, as the intention of the Statute was to secure the wife a competent provision, and also to exclude her from claiming dower, and likewise her settlement, it seems that a provision or settlement on the wife, though by way of trust, if in other respects it answers the intention of the Statute, will be enforced in a Court of Equity. 3 Bac. Abr. 230. *Harvey v. Harvey*, 1 Atk. R. 561.

4. The jointure must be made, and so in the deed particularly expressed to be, in satisfaction of her whole dower, and not of any particular part of it Co. Litt. 36.b. To this Wm. Jacob (in his note to 1 Roper's Husb. & W. 471) adds, or, the intention to make a provision in bar of dower must appear by necessary implication from the contents of tbe instrument.

It is said, that if it is not so expressed in the deed, to be a satisfaction of dower, yet it may be so averred and supported by parol evidence. Vernon's Case, 4 Co. Rep. 1. *Tracy Ives.* 1 Leon. R. 311. *Villers v. Beaumont,* Dyer R. 146. pl. 68. Anon. Owen R. 33. But these cases were decided before the St. 29 Car. 2.c.3. and it is said are superseded by its provisions; and the case of *Tinney v. Tinney* decided since by Lord Hardwicke (3 Atk. R. 8.) is opposed to the reception of parol evidence, because it is within the St. of frauds. See Bright on Husb. & Wife 442-443. As to the doctrine of a Court of Equity as to this requisite, see Bright H. & W. 450. and the cases before cited, from which it would seem that in such Court it is not necessary that the provision for the wife should be expressly stated to be in satisfaction of dower, but that it will be sufficient if it can be clearly collected from the contents of the instrument that the provision was intended to be so.

For the purpose of protecting the wife from the influence of the husband, the Statute expressly directs that when the jointure is made after marriage, she shall be entitled, after the death of the husband, to elect between the settlement and her dower. Entry upon the lands so settled, and perception of the profits, will be considered a confirmation of the jointure, and a bar to dower. See 3 Co. Rep. 26. a. and b. 3 Leon. R. 271. Dyer R 220. 4 Co. Rep. 4. And if, by writ of dower, she waives her jointure, she will at law be confined to such title, and not be permitted to claim both dower and jointure. *Gosling v. Warburton,* Cro. Eliz. 128. (Thompson)

Under English Statute of 27 Henry VIII, Ch. 10, an indenture or marriage settlement whereby a wife released her claim to dower in her husband's estate would be no bar of dower. This is the rule in Florida. Tavel. v. Guerin, 119 Fla. 624, 160 So. 665.

See also on antenuptial agreement, Northern Trust Co. v. King, et al. (Fla.) 6 So. (2d) 539.

ESTATES, FOR LIFE, &c.

20 HENRY III, CHAPTER 2

This statute provided that a widow might bequeath the crop of her lands. Not in force, since such right is inherent in the fee simple and absolute ownership given a widow as dower in Florida. See Section 731.34, Florida Statutes, 1941.

4 EDWARD I, CHAPTER 6

This statute defined by what words in a feoffment a feoffor should be bound to warranty. Not in force in Florida since it was expressly applicable to certain feudal estates not existent in this State.

6 EDWARD I, CHAPTER 3

This statute made void an alienation of land by the tenant by curtesy with warranty, unless the heir should inherit property from his father. Not in force in Florida since estates by the curtesy do not exist in Florida.

6 EDWARD I, CHAPTER 7

This statute gave an heir a writ of entry to recover land where a woman alienated her dower. Not in force in Florida since dower interest in this state is fee simple and absolute.

9 RICHARD II, CHAPTER 3

This statute provided that the holders of reversions might have a writ of attaint or of error during the life of the particular tenant to correct errors and injustices in judgments against the life tenant, entered validly or in collusion with such tenant. Not considered in force in Florida since effect of judgment against or conveyance by life tenant upon remainder or reversionary interest has been sharply changed by equity courts.

In absence of power to convey a greater estate, a bill of sale of personal property by a life tenant conveys only his interest therein and grantee acquires no interest against remainderman, who is not bound to take any action until accrual of his cause of action by termination of the life estate. Haydon v. Weltmer et al., 137 Fla. 130, 187 So. 772.

Life tenant may convey his interest—no more. Anno. Ann. Cas. 1917A, page 579. And general warranty cannot enlarge estate conveyed. Reid et al. v. Barry, 93 Fla. 849, 112 So. 846.

Our statute of uses (Sec. 689.09, Florida Statutes, 1941) vests title in grantee of deed executed according to requirements of law, providing livery of seisin can lawfully be made at the time of the execution of the deed. This latter provision prevents deed of life tenant from passing fee simple title. Scott v. Fairlie, 81 Fla. 431, 89 So. 128.

Ordinarily, limitations will not run against a remainderman until death of life tenant, Anderson v. Northrop., 30 Fla. 612, 12 So. 318 and Scott v. Fairlie, supra; but see Commercial Bldg. Co. v. Parslow, 93 Fla. 143, 112 So. 378, where court held remainderman could bring suit in chancery to protect his interest at any time, and, under certain circumstances would be guilty of laches in not so doing.

On rights of remaindermen to require security of life tenants for their protection, see 14 ALR 1066 and 101 ALR 271, Annotations.

If it is desirable to dispose of a fee simple estate in property limited for life to one person, remainder to another, a court of equity may control the disposition of, and the conservation of, the values of the remainder. Mosgrove v. Mach, 133 Fla. 459, 182 So. 786.

11 HENRY VII, CHAPTER 20

This statute rendered void certain alienations made by the wife, of the land of her husband in which she held an estate in dower, or for term of life, or in tail. The purpose of the statute was to protect remaindermen against the consequences of a discontinuance, which were to prevent the entry of him in reversion or remainder, and to drive him to his action for the recovery of his right. Not in force in Florida since equity has so far developed the relationship of life tenant and reversioners or remaindermen as to render our practice inconsistent with this statute. See cases cited under Statute 9 Richard II, Ch. 3, supra.

31 HENRY VIII, CHAPTER 1.

§§1. & 2. These sections extended the right of compulsory partition of property to include joint tenants, tenants in common and coparceners, and are in force in this state by virtue of the Florida Statutes of March 14, 1844. (See Sec. 66.03, Florida Statutes, 1941.)

§3. Provided always, and be it enacted, That every of the said joint-tenants and tenants in common, and their heirs, after such partition made, shall and may have the aid of the other, of their heirs to the intent to dereign the warranty paramount, and to recover for the rate, as is used between coparceners after partition made by the order of the common law; anything in this act contained to the contrary notwithstanding.

"* * * the only part of this statute considered operative here and proper to be incorporated is the Section 3 which provides that after partition each tenant shall have the aid of the other in designing a warranty and recovering the rate.

By the common law a warranty must remain entire as it was created without the voluntary division of the party; hence if a warranty be made to two joint-tenants, and one make a feoffment of his part, he loses his warranty, but the other may vouch for his part; if they make partition, both lose it by the common law. Roll v. Osborn, Hob Rep. 20-25 a. If the partition be made between them by judgment in a writ of *partitiche facienda* by force of the statute in the text, the warranty remains: but if they make partition by deed, by consent after said act, the warranty is gone. *Morrices case* 6. Coke R. 12 b." (Thompson)

32 HENRY VIII, CHAPTER 34

This statute abrogated the common law rule that no grantee of a reversion could take advantage of a reentry by force of any condition such as for the failure to pay rent. The common law rule worked particular hardship upon persons to whom the King had granted the estates of the monastaries, dissolved and suppressed by him, since such grantees were unable to take advantage of the conditions in the leases covering the properties. Hence, the statute was passed. Since in this State an assignment or endorsement of all bonds, notes, covenants, deeds, bills of exchange, and other instruments of writing vests the assignee or endorsee with the same rights, powers and capacities as were possessed by the assignor or

endorser, this statute is considered as not being in force in Florida. See Section 52.08, Florida Statutes, 1941. This decision is reached despite the fact that this statute was included in Judge Thompson's compilation at the time of which the cited Florida statute was in force. All rights are considered assignable in Florida (except a thing in action not arising out of contract) and enforceable by the assignee to the same extent and manner as could be enjoyed by his assignor. See also Real Party in Interest Statute, Section 45.01, Florida Statutes, 1941.

19 CHARLES II, CHAPTER 6

§1. Whereas divers lords of Manors and others have used to grant estates by copy of Court roll for one, two or more life or lives, according to the custom of their several Manors; and have also granted estates by lease for one or more life or lives, or else for years determinable upon one or more life or lives; and it hath often happened, that such person or persons for whose life or lives such estates have been granted, have gone beyond the seas, or so absented themselves for many years, that the lessors and reversioners cannot find out whether such person or persons be alive or dead, by reason whereof such lessors and reversioners have been held out of possession of their tenements for many years, after all the lives upon which such estates depended are dead, in regard that the lessors and reversioners, when they have brought actions for the recovery of their tenements, have been put upon it to prove the death of their tenants, when it is almost impossible for them to discover the same.

§2. For remedy of which mischief, so frequently happening to such lessors or reversioners, be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords, spiritual and temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if such person or persons, for whose life or lives such estates have been or shall be granted as aforesaid, shall remain beyond the seas, or elsewhere absent themselves in this realm, by the space of seven years together, and no sufficient and evident proof be made of the lives of such person or persons respectively, in any action commenced for recovery of such tenements by the lessors or reversioners; in every such case the person or persons upon whose life or lives such estate depended, shall be accounted as naturally dead; and in every action brought for the recovery of the said tenements by the lessors or reversioners, their heirs or assigns, the judges before whom such action shall be brought, shall direct the jury to give their verdict as if the person so remaining beyond the seas, or otherwise absenting himself, were dead.

§3. And be it further enacted, That in any such action wherein the life or death of any such person or persons shall come in question between the lessor or reversioner and tenant in possession, it shall and may be lawful for the lessor or reversioner to take exception to any of the jurors returned for the trial of that cause, that the greatest part of the real estate of any of such jurors is held by lease or copy for lives, who upon proof thereof shall be set aside as in case of other legal challenges.

(§4. This section is local and temporary and therefore omitted here.)

§5. Provided always, and be it enacted, That if any person or persons shall be evicted out of any lands or tenements, by virtue of this act, and afterwards if such person or persons upon whose life or lives such estate or estates depend, shall return again from beyond seas, or shall on proof in any action to be brought for recovery of the same, be made appear to be living, or to have been living at the time of the eviction; that then and from thenceforth the tenant or lessee, who was outed of the same, his or their executors, administrators or assigns, shall or may re-enter, repossess, have, hold, and enjoy the said lands or tenements in his or their former estate, for and during the life or lives, or so long term as the said person or persons upon whose life or lives the said estate or estates depend, shall be living; and also shall upon action or actions to be brought by him or them against the lessors, reversioners, or tenants in possession, or other persons respectively, which since the time of the said eviction received the profits of the said lands or tenements, recover for damages the full profits of the said lands or tenements respectively, with lawful interest for and from the time that he or they were outed of the same lands, or tenements, and kept and held out of the same by the said lessors, reversioners, tenants, or other persons, who after the said eviction received the profits of the said lands or tenements, or any of them respectively, as well in the case when the said person or persons upon whose life or lives such estate or estates did depend, are or shall be dead at the time of bringing of the said action or actions, as if the said person or persons were then living.

It is a well established rule of law that when the issue is upon the life or death of a person whose existence at one time is established, the proof of the facts lies upon the party who assents the death, for the presumption is that the person continues alive until the contrary be proved. *Throgmorton v. Walton*, 2 Roll Rep. 461. *Wilson v. Hodges* 2 East R. 312. The inconvenient operation of this rule which occasioned the passing of this act is fully set forth in the preamble.

Where a lease was made in reversion to S. D. for 99 years to commence after the death or sooner determination, of the estates of I. D. the father and I. D. the son lessees in possession for the like term, if they or either of them so long lived, in ejectment, the death of I. D. the son was positively proved; but as to the father, the proof was that he was reputed dead, and not heard of in fifteen years. Holt, C. J. was of opinion that this case is within the statute, because S. D. the plaintiff's lessor in the eject-

ment had a term in reversion in the lands, and so was a reversioner within the letter of the statute; and the defendant not being able to prove that J. D. the father was alive at any time within seven years last past, the plaintiff had a verdict. The Chief Justice was also of opinion that a *remainderman* was within the equity of the statute. *Holman v. Exton,* Carth. R. 246.

The measure of time adopted by this act, and by the statute of Bigamy, (1 Jac. I, C. 11) as presumptive evidence of the deaths of persons absent and unheard of has been adopted and applied by the Courts to cases not within the statute. Thus where a husband was absent seven years, and no proof of his being alive during that time, the claim of the wife to dower was allowed; *Thorne v. Rolfe,* Dyer R. 185. a. pl. 65. So, if tenant for life of an estate goes abroad, and no accounts are received of him for seven years, the remainderman will be adjudged entitled to the possession. *Doe dem of Lloyd v. Deakin,* 4 Barn. & Ald. R. 433. And where a younger brother of the person last seised had gone abroad, and that the repute of the family was that he had died there, and that the witness had never heard in the family of his having been married, is *prima facie* evidence that the party was dead without lawful issue, to entitle the next claimant by descent to recover in ejectment. *Doe dem. Banning v. Griffin,* 15 East R. 293. "The presumption of the duration of life," says Ld. Ellenborough, "with respect to persons of whom no account can be given, ends at the expiration of seven years from the time when they were last known to be living. Therefore in the absence of all other evidence to show that he was living at a later period there was fair ground for the jury to presume that he was dead at the end of seven years from the time when he last went to sea." *Doe v. Jepson,* 1 East. R. 80. But in *Sellick v. Booth,* the Vice Chancellor Bruce held it as a presumption that the party died at a particular time within the seven years after he had been last heard from; the particular time being the hurricane months, and the party having sailed from Damarara for England and was at sea during that period. 1 Young & Coll. N. C. 117.

Although the presumption of the law from mere lapse of time does not attach to any period short of seven years, yet the jury may find the fact of death from the lapse of a shorter period, if other circumstances concur, as if the party sailed on a voyage, which should long since have been accomplished, and the vessel has not been heard from. 1. Greenl. on Ev. §41. In re Hatton, 6 Eng. Eccl. R. 405, *Rex. v. Twyning,* 2 Barn. & Ald. R. 385. (Thompson).

Section 734.32, Florida Statutes, 1941, creates a presumption of death after an absence of seven years, but the efficacy of the presumption is limited to administration of such person's estate. The instant statute is included because it is believed that the mentioned Florida statute does not necessarily cover the situations encompassed by this statute.

10 AND 11 WILLIAM III, CHAPTER 16

§1. Whereas it often happens, that by marriage and other settlements, estates are limited in remainder to the use of the sons and daughters, the issue of such marriages, with remainders over, without limiting an estate to trustees to preserve the contingent remainders, limited to such sons and daughters, by which means such sons and daughters, if they happen to be born after the decease of their father, are in danger to be defeated of their remainder by the next in remainder after them, and left unprovided for by such settlements, contrary to the intent of the parties that made those settlements; Be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this Parliament assembled, and by the authority of the same, That where any estate already is or shall hereafter, by any marriage or other settlement, be limited in remainder to, or to the use of the first or other son or sons of the body of any person lawfully begotten, with any remainder or remainders over to, or to the use of any other person or persons, or in remainder to, or to the use of a daughter or daughters lawfully begotten, with any remainder or remainders to any other person or persons, that any son or sons, or daughter or daughters of such person or persons lawfully begotten or to be begotten, that shall be born after the decease of his, her, or their father, shall and may, by virtue of such settlement, take such estate so limited to the first and other sons, or to the daughter or daughters, in the same manner, as if born in the life-time of his, her, or their father, although there shall happen no estate to be limited to trustees, after the decease of the father, to preserve the contingent remainder to such after-born son or sons, daughter or daughters, until he, she, or they come in esse, or are born, to take the same; any law or usage to the contrary in any wise notwithstanding.

§2. Provided always, That nothing in this act shall extend, or be construed to extend, to divest any estate in remainder, that by virtue of any marriage or other settlement, is already come to the possession of any person or persons, or to whom any right is accrued, though not in actual possession, by reason or means of any afterborn son or sons, or daughter or daughters not happening to be born in the life time of his, her, or their father.

By the rules of the common law, where the event on which a contingent remainder was limited to take effect did not happen by the time at which the preceding estate determined, it could never arise or take effect at all. *Archer's case.* 1 Co. Rep. 66. Such was the decision of the Court of King's Bench in *Reeve v. Long;* but the case being carried to the House of Lords, the judgment was reversed against the opinion of all the judges; who, it is said, were much dissatisfied with the reversal, so much so, as to blame the judge who tried the cause for suffering a special verdict to be found. 1 Salk. R. 228.

The consequence of this dissatisfaction of the judges, was the enactment of the statute in the text, it being supposed, as it is said, that the judges would not follow the decision. But according to the opinion of Ld. Rosslyn, this was not so; he says the statute was not to affirm the decision of the House of Lords, although it did by implication affirm it; but as the case of *Reeve v. Long,* was upon a limitation in a devise, the law was considered as settled by the decision in that case; and the object of the statute was to establish that the same principle should govern the case where the limitation was by deed of settlement. *Thellusson v. Woodford,* 4 Vesey Jr. R. 342.

A posthumous child is entitled, under this statute, to the intermediate profits of the lands settled, as well as to the lands themselves; *Bassett v. Bassett,* 3 Atk. R. 203. But his right is otherwise in cases of *descent,* when he is only entitled to the rents and profits from the time of his birth. *Ibid.* Swalso, *Co. Lit.* 55 b. *Goodtitle v. Newman,* 3 Wils. R. 526-7. (Thompson)

4 ANNE, CHAPTER 16

This statute extended the remedy afforded by the Statutes of Gloucester, 6 Edw. I, Ch. 3 and of 11 Henry VII, Ch. 20, by making void all warranties by a tenant for life, and all collateral warranties by a person who had no inheritance in possession in the lands warranted. Not in force in Florida for same reasons which rendered inoperative other statutes mentioned.

6 ANNE, CHAPTER 18

Not in force. This statute provided a remedy for the discovery of the death of persons pretended to be alive to the prejudice of others claiming estates after their death. Upon proper affidavit of belief that a certain person, upon the duration of whose life an estate depended, was deceased, the Court of Chancery might order such person to be produced as often as once a year. It was primarily designed for cases where the person for whose life the estate was held lived in a distant part of the realm or over sea and the facts of his demise were difficult of proof. It is not consistent with our practice and procedure, and would be nearly worthless as a practical matter due to the territorial limitations on our Chancery Courts. A bill of interpleader, resulting from a claim by remainderman that his interest had matured, would serve the same purpose in Florida.

DURESS

31 HENRY VI, CHAPTER 9

This statute provided a new remedy for relief against contracts or engagements entered into under duress. It is omitted here because inconsistent with our criminal and chancery practice and procedure.

EXECUTION

13 EDWARD I, CHAPTER 18—STATUTE WESTMINSTER, THE SECOND

This statute gave a judgment creditor the right, at his election, to have a writ of fieri facias or a writ of elegit for enforcement of his judgment. Not in force.

Judge Thompson included this statute because he thought the writ of elegit remained an available form of execution in Florida after the enactment of the Florida statute providing for a *fieri facias*. However, the Supreme Court of Florida held this statute not of force in Florida in Union Bank v. Powell, 3 Fla. 196, and that view has prevailed. See Crandall's Florida Common Law Practice, §541, pg. 840.

The writ of elegit directed the sheriff to deliver the goods and chattels of the debtor, with certain exception, together with one-half his land to the judgment creditor to be held by him until such time as the rents and profits therefrom should have fully satisfied the creditor's judgment.

Under this statute it was held that a prior judgment creditor who held a dormant judgment was not defeated by sale under execution on a subsequent judgment. See Moseley v. Edwards, 2 Fla. 429.

13 EDWARD I, CHAPTER 45—STATUTE WESTMINSTER, THE SECOND

Because that of such things as be recorded before the Chancellor and the Justices of the King that have record, and be inrolled in their rolls, process of plea ought not to be made by summons, attachments, essoin, view of land, and other solemnities of the Court, as hath been used to be done of bargains and covenants made out of the Court; from henceforth it is to be observed, That those things which are found inrolled before them that have record, or contained in fines, whether they be contracts, covenants, obligations, services, or customs acknowledged, or other things whatsoever inrolled, wherein the King's Court, without offence of the law and custom, may execute their authority, from henceforth they shall have such vigour, that hereafter it shall not need to plead for them. But when the plaintiff cometh to the King's Court, if the recognizance or fine levied be fresh, that is to say, levied within the year, he shall forthwith have a writ of execution of the same recognizance made. And if the recognizance were made, or the fine levied of a further time passed, the Sheriff shall be commanded, that he give knowledge to the party of whom it is complained, that he be afore the Justices at a certain day, to show if he have anything to say why such matters inrolled or contained in the fine ought not to have execution. And if he do not come at the day, or peradventure do come, and can say nothing why execution

ought not to be done, the Sheriff shall be commanded to cause the thing inrolled or contained in the fine to be executed. In like manner, an ordinary shall be commanded in his case, observing nevertheless as before is said of a mean, which by recognizance or judgment is bound to acquit.

Scire facias was available at common law in real actions, but if the plaintiff did not take out execution within the statutory period in a personal action, it was necessary that he start a new action on his judgment. This statute made *scire facias* available to revive all judgments.

The time within which a judgment remains active has been enlarged to three years, and this statute is thus amended in this respect. Section 55.15, Florida Statutes, 1941.

Under 13 Edw. I. c. 45, a part of the law of this state, a judgment creditor who has allowed his judgment to become dormant may revive the same by *scire facias* or he may bring an original suit on his judgment. Jordan v. Petty et al., 5 Fla. 326.

See Crandall's Florida Common Law Practice, §542 and Day's Common Law Practice (4th ed.), pg. 148.

32 HENRY VIII, CHAPTER 5

This statute prescribed certain rights and privileges which could be pursued by a tenant by elegit who was dispossessed of the property held by him. Not considered in force since writ of elegit not available in Florida.

16 & 17 CHARLES II, CHAPTER 5

This statute provided that no extent (Execution of a writ of elegit) made against less than all of the property extendible for the debt should be defeated by reason of the fact that any extendible property was omitted. Not in force since writ of elegit does not exist in Florida.

29 CHARLES II, CHAPTER 3

§§10, 11. These sections made the interest of a judgment debtor in a trust subject to levy of execution on a judgment at law. They also declared any trust passing by descent to the heir of the judgment debtor should descend burdened with the obligation of the judgment which, to the extent of the value of the trust, should be assumed by the said heir. Not in force. Section 55.20, Florida Statutes, 1941, enumerates what property shall be subject to execution. Equitable interests, except equities of redemption, are not included. See Thalheimer v. Tischler, 55 Fla. 796, 46 So. 514; Tischler v. Robinson, 56 Fla. 699, 48 So. 45; First National Bank v. Peel, 107 Fla. 413, 145 So. 177; and Macfarlane v. Dorsey, 49 Fla. 341, 38 So. 512. See also Section 45.16, Florida Statutes, 1941, as to effect of death of a party after judgment and before execution, as well as the Probate Act.

§16. And be it further enacted by the authority aforesaid, That, from and after the said four and twentieth day of June no writ of **fieri facias**, or other writ of execution, shall bind the property of the goods against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the Sheriff, under Sheriff, or Coroners, to be executed: And, for the better manifestation of the said time, the Sheriff, under Sheriff, and Coroners, their deputies and agents, shall, upon the receipt of any such writ, (without fee for doing the same) endorse upon the back thereof the day of the month or year whereon he or they receive the same. (Made perpetual by 1 Jac. II. c. 17, §5.)

The writ of *fieri facias* was not altered by 29 Charles II. Moseley v. Edwards, 2 Fla. 429.

This statute, which provided that a judgment should be a lien on personal property only from the time the writ of execution was delivered to the Sheriff, is in force in this State. Love, Sheriff v. Williams, 4 Fla. 126.

Among the British statutes adopted as a part of our law is that of 29 Chas. II, Ch. 3, §16. Kimball v. Jenkins, admr., 11 Fla. 111.

See also Goodyear Tire & Rubber Co. v. Daniell, 72 Fla. 489, 73 So. 592; Pasco v. Harley, 73 Fla. 819, 75 So. 30; Evins v. Gainesville Nat. Bank, 80 Fla. 84, 85 So. 659; Crandall's Florida Common Law Practice, §546.

8 ANNE, CHAPTER 14

Section 1 of this statute prohibited the taking of any property of a tenant under a writ of execution unless the party at whose suit the execution was sued out should pay to the landlord, before the removal of any goods levied upon, all arrearages of rent not exceeding one year's rent. Section 83.08, Florida Statutes, 1941, provides that the landlord's lien for rent shall be superior in certain instances to all other liens, whenever created, and must be considered superseding. Section 8 of this statute contained a saving proviso in favor of executions sued out by the Crown and is likewise omitted as not of force.

EXECUTORS AND ADMINISTRATORS

13 EDWARD I, STATUTE 1, CHAPTER 23

This statute gave to executors a writ of accompt, the same as their testators enjoyed. Superseded by Sections 45.11 and 733.37, Florida Statutes, 1941.

4 EDWARD III, CHAPTER 7

Item, Whereas in times past, executors have not had actions for a trespass done to their testators, as of the goods and chattels of the same testators carried away in their life, and so such trespasses have hitherto remained unpunished; it is enacted, that executors in such cases shall have an action against the trespassers and recover their damages in like manner as they, whose executors they be, should have had if they were in life.

For discussion of British Statutes 4 Edw. III, Ch. 7, and 3 and 4 William IV, Ch. 42, Sec. 3, relating to survival of action against executors and administrators see Jacksonville Street Ry. Co. v. Chappell, admix. 22 Fla. 616, 1 So. 10.

By the early British Statutes of 4 Edw. III, Ch. 7 and 31 Edw. III, Ch. 11, which constitute a part of the common law of this state, the common law rule that any action sounding in tort, enforceable by action ex delicto, did not survive the death of the party in whose favor the action existed, was so modified as to give an action in favor of a personal representative for certain injuries to personal property. Waller v. First Savings and Trust Co., 103 Fla. 1025, 138 So. 780.

All personal actions, except ones enumerated in Section 45.11, Florida Statutes, 1941, and all other actions survive death of either party. State v. Parks, 129 Fla. 50, 175 So. 786.

See also Lee v. Puleston, 102 Fla. 1079, 137 So. 709; Corlett v. Oliver, 107 Fla. 403, 144 So. 877; F. E. C. Ry. Co. v. McRoberts, 111 Fla. 278, 149 So. 631; Young v. Douglass, 97 Fla. 899, 122 So. 520.

9 EDWARD III, STATUTE 1, CHAPTER 3.

This statute provided that in an action or writ of debt against several executors the latter should have but one essoin, or excuse for not appearing, before appearance, the same as the decedent would have had. Not in force in Florida. Time for pleading and extensions of time within which to appear and plead and excuses for not doing so are all regulated by our practice and procedure.

25 EDWARD III, STATUTE 5, CHAPTER 5

This statute extended the benefits of the preceding statutes hereunder to executors of executors, by providing that the latter may have the same actions as the original testator. Not in force in Florida. See in addition to Florida Statutes cited supra, Sections 733.02 and 734.21, Florida Statutes, 1941.

31 EDWARD III, STATUTE 1, CHAPTER 11

This statute required the ordinary to appoint as administrator of an intestate his "next and most lawful friends," and prescribed the duties and powers of such representative. Superseded by our Probate Act.

21 HENRY VIII, CHAPTER 5

This statute requires the ordinary to appoint as administrator of an intestate certain next of kin, conferred power on him to appoint administrators cum testamento annexo in case the executor refused to act, and gave the ordinary a discretion to appoint one or more of several applicants for letters who were of equal kindred to decedent. Superseded by our Probate Act, Chapters 731-736, incl., Florida Statutes, 1941. See particularly, Sections 732.44 and 734.14, Florida Statutes, 1941.

The statute of 21 Henry VIII does not affect the powers of the judges of probate in Florida to revoke letters of administration issued by them. Gadsden v. Jones, Adm'r., 1 Fla. 332.

This statute was passed in order to divest the ordinary of the balance of the intestate's goods remaining after the payment of his debts as required by 13 Edw. I. c. 19. Blewitt v. Nicholson et al., 2 Fla. 200.

32 HENRY VIII, CHAPTER 37

Not in force. See Topic "Distress," supra.

43 ELIZABETH, CHAPTER 8

This statute prescribed who should be considered executors de **son tort** and the duties and liabilities of such executors. Superseded by Section 732.53, Florida Statutes, 1941.

17 CHARLES II, CHAPTER 8

For this statute see Topic "Judgments," infra.

22 AND 23 CHARLES II, CHAPTER 10

This statute conferred on the ordinary or probate judge the power to order distribution of the estate of an intestate. Formerly there was no such power in the judge. Superseded by Florida Probate Act. See particulary, Sections 732.01, 732.03, 732.61, 732.66, 733.49 and 733.50, Florida Statutes, 1941.

This statute gave a remedy to force an executor to distribute proceeds remaining in his hands after the payment of debts and legacies. Gregory v. Harrison, 3 Fla. 56.

29 CHARLES II, CHAPTER 3, SECTIONS 12 AND 25

Section 12 of this statute made estates **pur auter vie** devisable, and provided that in cases where devise of such an estate was not made, the same should, as to the heir holding under a special occupancy, be assets by descent and if there should be no special occupant then such estates should be assets in the hands of executors or administrators. Superseded by Sections 731.05 and 731.23, Florida Statutes, 1941, which make all property devisable and inheritable.

Section 25 of this statute withdrew from its operation the estates of **femmes covert** and provided that their husbands might demand administration of their estates without accounting therefor or distributing the same. Not in force in Florida since husband's sole interest in wife's estate is defined by Section 731.23, Florida Statutes, 1941.

30 CHARLES II, STATUTE 1, CHAPTER 7

This statute made an executor or administrator of a person, who, as executor or administrator had committed a devastavit, liable for such wastes. Formerly, a devastavit by an executor or administrator was considered a personal tort which did not survive the death of the tortfeasor. Superseded by Section 733.53, Florida Statutes, 1941, which likewise makes a personal representative of an executor or administrator liable for the devastavits of the latter.

By the statute 30 Charles 2, c. 7, explained and made perpetual by 4 and 5 Wm. and Mary, c. 24, §12, the executors or administrators, whether rightful or of their wrong, who shall waste or convert to their own use, the estate of their testator or intestate, shall be liable and chargeable, in the same manner as their testator or intestate would have been if they had been living; and the statute of limitation of five years is not a good plea in bar to an action thereunder. Brokenbrough's Admix. v. Campbell's Admix. 5 Fla. 83.

The statute 4 and 5 Wm. and Mary, Ch. 24, a part of the law of this state, explained and perpetuated the rule laid down in 30 Charles II, Ch. 7, that an administrator for an executor was chargeable for the waste the first executor committed in the estate of his testator; thus, in effect, creating privity where none existed before. Gregory, Adm'r, d. b. n. v. Harrison, 4 Fla. 56.

Since 30 Charles II, an action may be brought against the administrator of an executor, who has committed a devastavit, without having first obtained a judgment against the devastating executor. Id.

1 JAMES II, CHAPTER 17

This statute revived and continued several Acts of Parliament. Section 5 hereof made perpetual the Statutes 17 Charles II, Ch. 8, (see topic, Judgment) and 22 & 23 Charles II, Ch. 10, as explained by 29 Charles II, Ch. 3. (see this topic, supra). For applicability of this reviving and perpetuating act see discussion of statutes mentioned.

Section 6 hereof provided that administrators should be compellable to account only to persons having an interest in the estate. Superseded by Section 733.50, Florida Statutes, 1941, which designates the persons who may compel a personal representative to account.

Section 14 hereof extended for seven years the Statute 30 Charles II, Statute 1, Chapter 7. Not in force. See this statute, supra.

4 & 5 WILLIAM AND MARY, CHAPTER 24

This statute, Section 12, explained and made perpetual the Statute 30 Charles II, Statute 1, Ch. 7. Not in force. See that statute, supra, this topic.

14 GEORGE II, CHAPTER 20

This statute, Section 9, explained the meaning of 29 Charles II, Ch. 3, §12 supra, this topic. Not in force. See this statute also, post, title Fines and Recoveries.

FINES AND RECOVERIES

18 EDWARD I, STATUTE 4

This statute prescribed the manner of levying fines and the requirements necessary to give them validity. Not in force since conveyance by fine or by common recovery in Florida is expressly forbidden by Section 689.08, Florida Statutes, 1941.

The above Florida statute was enacted Feb. 4, 1835, and was in force at the time Judge Thompson included the statutes under this topic as being in force in this state. He makes no reference to the statute.

A fine, as explained by Judge Thompson, is a solemn amicable agreement or composition of a suit, whether such suit be real or fictitious, made between the demandant and the tenant, with the consent of the Judges, and enrolled among the records of the court, where the suit was commenced; by which agreement, freehold property may be transferred, limited and settled. It was considered more efficient in England as a mode of transferring real property than the usual conveyances because (1) it extinguished dormant titles by barring strangers unless they claimed within 5 years; (2) it barred the issue in tail immediately but not the reversions or remainders dependent upon the estate tail barred, except where such remainder or reversion was also held by the tenant in tail; and (3) it bound femmes covert.

27 EDWARD I, STATUTE 1, CHAPTER 1

Provided that no exception should be taken to a fine by parties thereto or their heir on the ground that the demandant was seized at the time the fine was levied. It also required fines to be openly read in court on certain days in each week. Superseded by Section 689.08, Florida Statutes, 1941.

STATUTE OF CARLISLE, 15 EDWARD II, STATUTE 4

Required the parties to a fine to appear in court personally or be heard by a commission if such appearance in court was impossible. Superseded by Section 689.08, Florida Statutes, 1941.

34 EDWARD III, CHAPTER 16

This statute destroyed the plea of nonclaim of fines which supported the demandant's title against all who failed to object within a limited time. Superseded by Section 689.08, Florida Statutes, 1941.

5 HENRY IV, CHAPTER 14

This statute required the recording of the proceeding of all fines. Superseded by Section 689.08, Florida Statutes, 1941.

4 HENRY VII, CHAPTER 24

This statute modified 34 Henry III, Ch. 16, by providing that fines with proclamations should conclude all persons, privies and strangers, unless they assent their claims within five years from date of the fine or within five years from removal of disability for persons under some disability. Superseded by Section 689.08, Florida Statutes, 1941.

27 HENRY VIII, CHAPTER 36

This statute interpreted certain applications of the Statute 4 Henry 7, Ch. 24. It includes in the category of "privies" who are bound by a fine, persons who must derive their descent from the cognizor of the fine. Superseded by Section 689.08, Florida Statutes, 1941.

1 MARY, SESSION 3, CHAPTER 7

This statute provided that proclamation of fines, required to be made at three succeeding terms of the court where enrolled might be made in term time although the term had been adjourned. Superseded by Section 689.08, Florida Statutes, 1941.

14 ELIZABETH, CHAPTER 8

This statute provided that a recovery had by the assent of parties against a tenant for life without the assent of the reversioner or remainderman should be void. Superseded by Section 689.08, Florida Statutes, 1941.

23 ELIZABETH, CHAPTER 3

This statute provided for the enrollment of fines and recoveries, and also provided that no recovery should be reversed for matters of form but for matters of substance only. Superseded by Section 689.08, Florida Statutes, 1941.

31 ELIZABETH, CHAPTER 2

This statute reduced the number of times a proclamation upon a fine was required to be read. Superseded by Section 689.08, Florida Statutes, 1941.

14 GEORGE II, CHAPTER 20

This statute allowed valid common recoveries to be had without surrender of the freehold leases covering the property, except that a tenant for life who was first taker could not be barred without his joinder. This statute also regulated the manner of proving title through a common recovery as against a bona fide purchase or a judgment creditor in case the record or enrollment of the recovery could not be found or was defective. Superseded by Section 689.08, Florida Statutes, 1941.

FRAUDULENT CONVEYANCES

50 EDWARD III, CHAPTER 6

This statute made void gifts of lands and goods made for the purpose of deceiving creditors and persuading them to accept small settlements. This statute was included in Judge Thompson's compilation with the explanation that it had geen virtually superseded by the more complete statute against fraudulent conveyances of 13 Elizabeth, Ch. 5. Because our statute on the subject was copied from the latter British statute and meant to be comprehensive, I have omitted the caption statute as not being in force in Florida. See Section 726.01, Florida Statutes, 1941.

3 HENRY VIII, CHAPTER 4

That statute made void which were in fraud of creditors all "deeds of gift of goods and chattels made or to be made of trust, to the use of that person or persons that made the same deed of gift." Not considered in force in Florida for same reasons preceding statute omitted.

The Statute of 13 Elizabeth, Chap. 5, makes unlawful grants, gifts and feoffments which are made to defraud the grantor's creditors and other of their just and lawful actions, suits, debts and accounts. Gibson v. Love, 4 Fla. 217.

The Florida Statute of Jan. 28, 1823 (Sec. 726.01, Florida Statutes, 1941), against conveyances to delay, hinder or defraud creditors is a transcript from the British Statute of 13 Eliz. c. 5. Barrow v. Bailey, 5 Fla. 9.

A bona fide purchase from a fraudulent grantor is protected under the Statutes of 13 and 27 Elizabeth (cited only in counsel's brief) Roper v. Hackney et al., 15 Fla. 323.

The English Statute of 13 Eliz. c. 5, is regarded as the foundation of all subsequent law relating to fraudulent conveyances. The Florida statutes (Sections 726.01 and 726.07, Florida Statutes, 1941) are but restatements of the law on fraudulent conveyances as declared by 13 Eliz. c. 5 and 27 Elizabeth. Beasley v. Coggins, et al., 48 Fla. 215, 37 So. 213; Williams, et al. v. Finlayson, 49 Fla. 264, 38 So. 50; and Bay View Estate Corporation, et al. v. Southerland, 114 Fla. 635, 144 So. 894.

See also Strong v. Willis, 3 Fla. 124, and Henry Gassett & Co. v. Wilson & Brown, 3 Fla. 235.

16 CHARLES II, CHAPTER 7

§1. Whereas all lawful games and exercises should not be otherwise used, than as innocent and moderate recreations, and not as constant trades or callings to gain a living, or make unlawful advantage thereby; and whereas by the immoderate use of them, many mischiefs and inconveniences do arise, and are daily found, to be maintaining and encouraging of sundry idle, loose, and disorderly persons in their dishonest, lewd, and dissolute course of life, and to the circumventing, deceiving, consening, and debauching of many of the younger sort, both of the nobility and gentry, and others, to the loss of their precious time, and the utter ruin of their estates and fortunes, and withdrawing them from noble and laudable employments and exercises:

§2. Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That if any person or persons of any degree or quality whatsoever, at any time or times after the nine and twentieth day of September, which shall be in the year of our Lord God one thousand six hundred sixty and four, do or shall, by any fraud, shift, consenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, tables, tennis, bowles, kittles, shovelboard, or in or by cock-fightings, horse-races, dog matches, foot-races, or other pastimes, game or games whatsoever, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides of hands of such as do or shall play, act, ride, or run as aforesaid, win, obtain, or acquire to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever; that then every person or persons so offending as aforesaid, shall **ipso facto** forfeit and lose treble the sum or value of money, or other thing or things so won, gained, obtained, or acquired; the one moiety thereof to our sovereign lord the King, his heirs and successors, and the other moiety thereof unto the person or persons grieved, or who shall lose the money, or other thing or things so gained; so as every such loser and person grieved, in that behalf, do or shall prosecute and sue for the same within six calendar months next after such play: And in default of such prosecution, the same other moiety to such person or persons as shall or will prosecute or sue for the same within one year next after the said six months expired: And that the said forfeitures shall or may be sued for, or recovered by action of debt, bill, plaint, or information, in any of his Majesty's Courts at Westminster, wherein no essoin, protection, or wager of law shall be allowed: And that all and every such plaintiff or plaintiffs, informer or informers, shall in every such suit and prosecution have and recover his and their treble costs against the person offending and forfeiting as aforesaid; any law, statute, custom or usage to the contrary in anywise notwithstanding.

§3. And for the better avoiding and preventing of all excessive and immoderate playing and gaming for the time to come, be it further ordained and enacted by the authority aforesaid, That if any person or persons shall at any time or times after the nine and twentieth day of September aforesaid, play at any of the said games, or any other pastime, game or games whatsoever (other than with and for ready money), or shall bet on the sides on hands of such as do or shall play thereat, and shall lose any sum or sums of money, or other thing or things so played for, exceeding the sum of one hundred pounds at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he or they shall so lose the same, the party and parties who loseth or shall lose the said monies, or other thing or things so played or to be played for, above the said sum of one hundred pounds, shall not in that case be bound or compelled or compellable to pay or make good the same; but the contract and contracts for the same, and for every part thereof, and all and singular judgments, statutes, recognizances, mortgages, conveyances, assurances, bonds, bills, specialities, promises, covenants, agreements, and other acts, deeds, and securities whatsoever, which shall be obtained, made, given, acknowledged, or entered into for security or satisfaction of or for the same, or any part thereof, shall be utterly void and of none effect: And the said person or persons, so winning the said monies, or other things, shall forfeit and lose treble the value of all such sum and sums of money, or other thing or things, which he shall so win, gain, obtain, or acquire, above the said sum of one hundred pounds; the one moiety thereof to our said sovereign lord the King, his heirs and successors; and the other moiety thereof to such person or persons as shall prosecute, or sue for the same within one year next after the time of such offence committed; and to be sued for by action of debt, bill, plaint, or information, in any of his Majesty's Courts of record at Westminster, wherein no essoin, protection, or wager of law, shall be allowed: And that every such plaintiff or plaintiffs, informer or informers, shall, in every such suit and prosecution, have and receive his treble costs against the person and persons offending and forfeiting as aforesaid; any law, custom, or usage to the contrary notwithstanding.

9 ANNE, CHAPTER 14

§1. Whereas the laws now in force for preventing the mischiefs which may happen by gaming, have not been found sufficient for that purpose; Therefore for the further preventing of all excessive and deceitful gaming, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by authority of the same, That from and after the first day of **May** one thousand seven hundred and eleven, all notes, bills, bonds, judgments, mortgages or other securities or conveyances whatsoever, given, granted, drawn or entered into, or executed by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities shall be for any money, or other valuable thing whatsoever, won by gaming or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides on hands of such as do game at any of the games aforesaid, or for the reimbursing, or repaying any money knowingly lent, or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play, to any person or persons so gaming or betting as aforesaid, or that shall, during such play, so play or bet, shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever; any statute law, or usage to the contrary thereof in anywise notwithstanding; and that where such mortgages, securities or other conveyances, shall be of lands, tenements or hereditaments, or shall be such as incumber or affect the same, such mortgages, securities or other conveyances, shall enure and be to and for the sole use and benefit of, and shall devolve upon such person or persons as should or might have, or be entitled to such lands, tenements or hereditaments in case the said grantor or grantors thereof, or the person or persons so incumbering the same, had been naturally dead, and as if such mortgages, securities or other conveyances, had been made to such person or persons so to be intitled after the decease of the person or persons so incumbering the same; and that all grants or conveyances to be made for the preventing of such lands, tenements, or hereditaments, from coming to or devolving upon such person or persons, hereby intended to enjoy the same as aforesaid, shall be deemed fraudulent and void, and of none effect, to all intents and purposes whatsoever.

§2. And be it further enacted by the authority aforesaid, That from and after the said first day of **May** one thousand seven hundred and eleven, any person or persons whatsoever, who shall at any time or sitting, by playing at cards, dice, tables or other game or games whatsoever, or by betting on the sides on hands of such as do play at any of the games aforesaid, lose to any one or more person or persons so playing or betting, in the whole the sum or value of ten pounds, and shall pay or deliver the same or any part thereof, the person or persons, so losing and paying or delivering the same, shall be at liberty, within three months then next, to sue for and recover the money or goods so lost, and paid or delivered or any part thereof, from the respective winner and winners thereof, with costs of suit, by action of debt founded on this act, to be prosecuted in any of her Majesty's Courts of record, in which actions or suits no essoin, protection, wager of law, privileges of Parliament, or more than one imparlance shall be allowed; in which action it shall be sufficient for the plaintiff to allege, that the defendant or defendants are indebted to the plaintiffs, or received to the plaintiffs use, the monies so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this statute, without setting forth the special matter; and in case the person or persons who shall lose such money or other things as aforesaid, shall not within the time aforesaid, really and **bona fide,** and without covin or collusion, sue, and with effect prosecute for the money or other thing, so by him or them lost, and paid or delivered as aforesaid, it shall and may be lawful to and for any person or persons, by any such action or suit as aforesaid to sue for and recover the same, and treble the value thereof with costs of suit, against such winner or winners as aforesaid; the one moiety thereof to the use of the person or persons that will sue for the same, and the other moiety to the use of the poor of the parish where the offence shall be committed.

§3. And for the better discovery of the monies or other things so won, and to be sued for and recovered as aforesaid it is hereby further enacted by the authority aforesaid, That all and every the person or persons, who by virtue of this present act, shall or may be liable to be sued for the same, shall be obliged and compellable to answer upon oath such bill or bills as shall be preferred against him or them, for discovering the sum and sums of money, or other thing so won at play as aforesaid.

§4. Provided always, and be it nevertheless enacted by the authority aforesaid, That upon the discovery and repayment of the money, or other thing so to be discovered and repaid as aforesaid, the person or persons who shall so discover and repay the same as aforesaid, shall be acquitted, indemnified and discharged from any further or other punishment, forfeiture or penalty, which he or they may have incurred by the playing for, or winning such money or other thing so discovered and repaid as aforesaid; any former or other statute, law or usage, or anything in this present act contained to the contrary thereof in anywise notwithstanding.

Section 5 of this statute prescribed the punishment for one convicted of gaming and is not in force.

Sections 6 and 7 of this statute defined and

punished as vagrants persons who had no visible means of support except gambling. Superseded by Sections 856.02 and 856.03, Florida Statutes, 1941.

Section 8 provided punishment for an assault on account of gambling losses. Since it relates to mode of punishment, it is not in force in Florida. See Section 775.01, Florida Statutes, 1941.

Section 9 of this statute contained a saving clause permitting gambling in the Queen's palaces and, of course, is not in effect here.

Chapter 849, Florida Statutes, 1941 undoubtedly supersedes much of the above statutes but it is believed that as a part of our common law they may still have some applicability which the acts of our Legislature do not have.

See Valdez et al. v. State ex rel. 142 Fla. 123, 194 So. 388, where 9 Anne, Ch. 14 recognized as still being of force in this State.

18 GEORGE II, CHAPTER 34

§3. And whereas in and by a certain statute, made in the ninth year of the reign of her late Majesty Queen **Anne,** intitled, An act for the better **preventing excessive and deceitful gaming,** it is (amongst other things) enacted, That from and after the first day of May one thousand seven hundred and eleven, any person or persons whatsoever, who should at any time or sitting, by playing at cards, dice, tables, or other game or games whatsoever, or by betting on the sides or hands of such who do play at any of the games aforesaid, lose to any one or more person or persons so playing or betting, in the whole, the sum of ten pounds, and should pay and deliver the same, or any part thereof, the person or persons so losing, or paying or delivering the same, should be at liberty, within three months then next, to sue for, and recover the money or goods so lost and paid, or delivered, or any part thereof, from the respective winner or winners thereof, with costs of suit; to be sued for, and recovered by action of debt, founded on the said act, to be prosecuted in any of her then said Majesty's Courts of record; in which actions or suits no essoin, protection, wager of law, privilege of Parliament, or more than one imparlance should be allowed, with further directions, as in the said act are particularly set forth: And whereas for the better discovery of the monies, or anything so won, and to be sued for as aforesaid, it is by the said statute enacted, That all and every person or persons, who by virtue of the said statute should or might be liable to be sued for any such sum or sums of money, or valuable thing, should be obliged and compelled to answer, upon oath, such bill or bills, as should be preferred against him or them, for the discovery of the sum or sums of money to be won at play as aforesaid; but no provision is made, or authority given to any Court of Equity to decree the same to be paid; Be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of **June** one thousand seven hundred and forty-five, in case any bill or bills shall be brought, exhibited and filed in any Court of Equity, against any person or persons, for any sum or sums of money won by any person or persons after the said twenty-fourth day of **June,** one thousand seven hundred and forty-five, contrary to the true intent and meaning of the said act, it shall and may be lawful for such Court, wherein such bill shall be brought, exhibited, and filed, to proceed and decree thereupon, and enforce such decree or decrees, as shall be made in pursuance thereof, in the same manner as is practiced and used in other causes, upon bills and answers depending in the Courts where such bill shall be so brought and exhibited.

Indictment under this statute required greater certainty in allegations than is deemed necessary under Florida Statutes. See Groner v. State, 6 Fla. 39.

GUARDIAN

52 HENRY III, CHAPTER 17

This statute defined the duties and powers of a guardian in socage. Since there is no socage tenure in Florida, the statute has no application. However, at the time Judge Thompson included it in his list, reference to it was necessary to determine the powers and duties of a guardian appointed by a father under the Statute 12, Charles II, Chapter 24, which, however, has now been superseded.

12 CHARLES II, CHAPTER 24

This statute conferred power on a father to appoint a guardian for his minor child, by deed or by will, and prescribed the powers and duties of guardians so appointed. The Florida Act of Nov. 20, 1828, §50, conferred similar rights on the father and superseded this statute. Chapter 8478, Laws of Florida, Acts of 1921, repealed the Florida statute and replaced it with an act making the power of appointment a joint one to be exercised by both parents or by the survivor of them. See Section 744.01, Florida Statutes, 1941.

The Statute 12 Chas. II, c. 24, §§8 and 9, whereby fathers are authorized to appoint guardians for their children, who should have power over the person of the child and the custody and management of the estate of the child is inconsistent with our statute of 1828 on the same subject. Thomas et al. v. Williams et al., 9 Fla. 289.

The power of appointing a guardian for his children, given to a father by the act of 1828, is similar to the power conferred on the father by the English Statute 4 and 5 P. and M. c. 8. Id.

Our statute, like its predecessor in England, 12 Chas. II, c. 24, §8, confers upon the father alone the power to appoint a testamentary guardian for his child by last will and testament or by deed. Hernandez et al. v. Thomas, 50 Fla. 522, 39 So. 641. But see Sec. 744.01, Florida Statutes, 1941.

HABEAS CORPUS

31 CHARLES II, CHAPTER 2

This statute regulated the writ of habeas corpus and was designed to make it speedier and more effective. The same subject matter is regulated by Sections 7, 8 and 9 of the Declaration of Rights, Florida Constitution and by Chapter 79, Florida Statutes, 1941. The British Statute is therefore considered superseded.

See State ex rel v. Fabisinski, 111 Fla. 454, 156 So. 261.

HUE AND CRY

3 EDWARD I, CHAPTER 9

13 EDWARD I, STATUTE 2, CHAPTER 1

These statutes regulated the practice of hue and cry which was the pursuit of an offender from town to town by the populace until arrested. The first statute required all persons to be at the command of the sheriff to assist in the arrest of felons. The second statute required all persons present at the commission of a felony or having knowledge of the same to make cry and organize pursuit of the guilty party. This method of apprehending criminals is not consistent with our police and law enforcement procedures. In addition, the sheriff of any county in Florida may have the services of civilians in taking a criminal into custody by "raising the power of the county" under Section 144.02, Florida Statutes, 1941. These British statutes are therefore considered not of force in Florida.

IDIOTS AND LUNATICS

17 EDWARD II, STATUTE I, CHAPTERS 9 AND 10—STATUTE DE PRAEROGATIVA REGIS

The King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden. And after the death of such idiots he shall render it to the right heirs, so that such idiots shall not aliene, nor their heirs shall be disinherited.

Also, the King shall provide, when any (that before time hath had his wit and memory) happen to fail of his wit, as there are many **per licida intervalla**, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently with the profits of the same, and the residue besides their sustenance, shall be kept to their use, to be delivered unto them when they come to right mind; so that such lands and tenements shall in no wise be aliened within the time aforesaid; and the King shall take nothing to his own use. And if the party die in such estate, then the residue shall be distributed for his soul by the advice of the ordinary.

An Idiot, or natural fool, is one that hath no understanding from his nativity; and therefore is by law presumed never likely to attain any. The custody of those who had lands was originally rested in certain persons called *Tutores*, whom it is supposed were the lords of the fees; the King, as *parena patria* for this purpose representing the state, having the custody of such idiots as had no other custos provided by law. 1 Black. Comm. 303. 2 Reeves Eng. Law 307, 308. 1 Spence Eq. Jur. 618. The trust rested in the lords of the fee having been much abused, the custody of all idiots was by Cap. 9 of the above statute given to the King. Mr. Reeves says; that an act of similar character had been passed in the previous reign of Edward I but which is now lost. 2 Reeves 308.

Assuming that the State under our form of government occupies a similar position to that of the Crown of England, in relation to the subject matter of these enactments, it is considered these statutes are of force here.

The appointment of guardians for the estate of insane persons and the administration of such estates is committed to the County Judge. See Chapter 744, Florida Statutes, 1941.

4 GEORGE II, CHAPTER 10

This statute was passed to enable idiots and lunatics to convey property of which they were seized as trustee or mortgagee. It followed the language of its predecessor, the Statute 7 Anne, Chapter 19, passed in relation to infant trustees and mortgagees, and therefore received the same interpretation. Omitted as not in force for the same reasons the Statute 7 Anne, Chapter 19 omitted. See that statute post, title "Infants."

17 GEORGE II, CHAPTER 5

Sections 20 and 21 of this statute provided for the commitment and care of certain insane persons. Superseded by Chapter 394, Florida Statutes, 1941.

INDICTMENT

1 HENRY V, CHAPTER 5

This statute required an indictment to identify the defendant by adding after his name his estate or degree, or mystery. This statute is omitted inasmuch as we do not recognize the different estates and degrees known to the common law, such as yoeman, laborer, etc., with such definiteness as to make this statute practicable.

37 HENRY VIII, CHAPTER 8

§1. Where before this time it was and yet is commonly used in all indictments and inquisitions of treason, murder, felony, trespass, and divers other, to have comprised and put in every the same indictments and inquisitions these words, **Vi et armis**, and in divers of the same indictments to declare the manner of the force and arms; that is to say, **vi et armis, videlicet, baculis, cultellis; arcubus & sagittas,** or such other like words in effect, where of truth the parties so indicted had no manner of such weapons at the time of the said offence committed and done; yet in default and lack of the same words, the said indictments were and yet be taken as void in the law, for to put any person to answer thereunto; And the party or parties so indicted, for lack of the same words not being comprized and put in the said indictments, had taken advantage thereof, and have avoided the same indictments by writ or writs of error, or by plea upon his or their appearance, as the same case did require: For reformation whereof, be it enacted by the King our sovereign lord, with the assent of the lords spiritual and temporal, and of the Commons, in this present Parliament assembled, and by the authority of the same, That from the Feast of the Nativity of our Lord God next coming, these words, **vi et armis, viz, cum bauculiz cultellit, arcubus & sagittis,** or such other like, shall not of necessity be put or comprised in any inquisition or indictment; nor that the party or parties being hereafter indicted of any offence, shall have or take any advantage by writ or writs of error, plea or otherwise, to annul or avoid any such inquisition or indictment, for that, that the said words **vi & armis, viz, baculis, cultellis, arcubus & sagittis**, or any of the same like words, shall not be put or comprised in the said inquisitions or indictments: But that the same inquisitions or indictments, and every of them, lacking the said words, **vi & armis viz. baculis, cultellis, arcubus, & sagittis,** or any of them shall from thenceforth by the authority aforesaid, be taken, deemed and adjudged, to all intents, constructions and purposes, as good and effectual in the law, as the same inquisitions and indictments, having the said words **vi & armis viz. baculis, cultellis, arcubus, & sagittis**, comprised and put in every of the same inquisitions and indictments, more or heretofore have been taken, deemed, or adjudged; any law, usage, or custom heretofore had and used to the contrary notwithstanding.

(§2. Denies the benefit of clergy to convict of horse stealing and is omitted as not of force.)

INFANT

3 EDWARD I, CHAPTER 47—WESTMINSTER THE FIRST

This statute removed infancy as a temporary bar to a writ of **novel disseisin.** Not in force because we have no such action in this state. Demurring to an action until the full age of the defendant was a dilatory practice peculiar to the feudal law, and would not pertain in Florida where an infant may be a party defendant to an action or suit. See Sections 47.23 and 62.04, Florida Statutes, 1941.

6 EDWARD I, CHAPTER 2—STATUTE OF GLOUCESTER

This statute provided that if a child be deprived of his inheritance after the death of his ancestor or kin, and should sue and the defendant allege a feoffment or other defense, the trial, or enquest as it was termed, should proceed and not be deferred until the majority of the plaintiff. Infants are enabled by statute in Florida to sue both at law and in chancery. See Sections 45.02 and 63.15, Florida Statutes, 1941. The instant British statute is, therefore, not in force.

13 EDWARD I, CHAPTER 40—STATUTE WESTMINSTER THE SECOND

This statute, founded on the feudal system of land ownership, provided that if a man alien the land of his wife, the suit of the wife or her heir after the death of the husband should not be delayed until the majority of the husband's heir who was bound by the warranty. Not considered in force here since tortious conveyances whereby the right of another may be conveyed and the heirs of the conveyor obligated to make the warranty good, are not recognized.

7 ANNE, CHAPTER 19

This statute provided a method for infants who held estates as trustees or by way of mortgage to convey the same. Such conveyances could be directed by the chancery court in this state upon petition of any person interested in the estate so held by the infant. Not considered in force in Florida. An infant would not, except in cases of fraud or mistake, be constituted a trustee in this state because of the inherent obstacles to the execution of any trust by such a person. If fraud or mistake caused such a designation, revocation under the general powers of the chancery court would seem the preferred action. If an infant is disqualified to act as a trustee in Florida, this procedure would be the only available remedy to rectify a mistake or revoke a fraud. An infant would not be seized of land under mortgage since title does not pass by mortgage in this state.

29 GEORGE II, CHAPTER 31

This statute is inserted post. See title, "Leases and Terms for Years."

INQUEST OF OFFICE

34 EDWARD III, CHAPTER 13

36 EDWARD III, CHAPTER 13

8 HENRY VI, CHAPTER 16

23 HENRY VI, CHAPTER 16, §§1 & 2

1 HENRY VIII, CHAPTER 8, §§1 & 3

1 HENRY VIII, CHAPTER 10, §§1, 2 & 3

2 & 3 EDWARD VI, CHAPTER 8, §6

These statutes embodied the substantive and procedural regulations of inquests of office which, Judge Thompson says, was an inquiry made by the King's officer, his sheriff, coroner, or escheater, virtute officei, or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that would entitle the King to possession of lands or tenements, goods or chattels. The inquiry was conducted before a jury of no determinate number, usually consisting of twelve or more. Since death without heirs is the only occurrence or condition of facts which entitles the State of Florida to the property of a citizen, the entire subject is adequately covered by our escheat statute, Section 731.33, Florida Statutes, 1941, and by our statute for the determination of heirs of decedents, Section 734.26, Florida Statutes, 1941. The British statutes on the same subject are, therefore, superseded. On the right to traverse a finding of death in such proceedings (a right preserved by 2 & 3 Edward VI, Ch. 8) see Section 734.36, Florida Statutes, 1941.

INSURANCE

19 GEORGE II, CHAPTER 37

§1. Whereas it hath been found by experience, that the making assurances, interest or no interest, or without further proof of interest than the policy, hath been productive of many pernicious practices, whereby great numbers of ships, with their cargoes, have either been fraudently lost and destroyed, or taken by the enemy in time of war; and such assurances have encouraged the exportation of wool, and the carrying on many other prohibited and clandestine trades, which by means of such assurances have been concealed, and the parties concerned secured from loss, as well to the diminutio of the public revenue, as to the great detriment of fair traders; and by introducing a mischievious kind of gaming or wagering, under the pretence of assuring the risque on shipping, and fair trade, the institution and laudable design of making assurances hath been perverted; and that which was intended for the encouragement of trade and navigation, has, in many instances, become hurtful of, and destructive to the same: For remedy whereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of August one thousand seven hundred and forty-six, no assurance or assurances shall be made by any person or persons, bodies corporate or politick, on any ship or ships belonging to his Majesty, or any of his subjects, or on any goods, merchandizes, or effects laden or to be laden on board of any such ship or ships, interest or no interest, or without further proof or interest than the policy or by way of gaming or wagering, or without benefit or salvage to the assurer; and that every such assurance shall be null and void to all intents and purposes.

§2. This section excepts from the foregoing section assurances on private ships of war and is not considered in force in Florida.

§3. This section excepts also assurances on merchandise and effects in Europe and America, in the possession of the Crowns of Spain and Portugal and is not considered in force in Florida.

§4. This section prohibited reinsurance except where original insurer should become bankrupt, be insolvent or die. Not consistent with Florida practice in the subject. For sole statutory limitations on right to reassure a risk, see Sections 626.10 and 631.11, Florida Statutes, 1941.

§5. This section prescribed the conditions under which money could be lent on bottomree, or at respondentia, upon any ship belonging to a British subject and bound to or from the East Indies. Not in force in Florida.

§6. This section is procedural and not in force.

§7. This section allowed the insurer to pay into court the amount of its admitted liability on a loss covered by the contract, and forbade the recovery of attorneys' fees unless the judgment obtained should be larger than the amount so deposited with the court. Superseded by Section 625.08, Florida Statutes, 1941.

§8. This section provided additional exceptions to the Act in point of time and is expired.

Insurance policies are contracts of indemnity only, and the insured may recover only to the extent of his interest in the property destroyed. St. Paul Fire & Marine Ins. Co. v. Scheuer, 298 Fed. 257.

Fundamental principles of insurance require that a person shall have an insurable interest in that which he insures, regardless of whether the insurance is taken in good faith and with full knowledge of the facts. Meerdink v. American Ins. Co., 137 Fla. 587, 188 So. 764.

See also Phenix Ins. Co. v. Hilliard, 59 Fla. 59, 52 So. 799, 138 Am. St. Rep. 171, where wager policy disapproved.

14 GEORGE III, CHAPTER 48

§1. Whereas it hath been found by experience, that the making insurance on lives or other events, wherein the assured shall have no interest, hath introduced a mischievious kind of gaming:— For remedy whereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this act, no insurance shall be made by any person or persons, bodies politick or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering; and that every assurance made, contrary to the true intent and meaning hereof, shall be null and void, to all intents and purposes whatsoever.

§2. And be it further enacted, That it shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the person or persons name or names interested therein, or for whose use, benefit, or on whose account, such policy is so made or underwrote.

§3. And be it further enacted, that in all cases where the insured hath interest such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events.

§4. Provided always, That nothing herein

contained shall extend or be construed to extend to insurances **bona fide** made by any person or persons, on ships, goods, or merchandises; but every such insurance shall be as valid and effectual in the law, as if this act had not been made.

This Statute was designed to prevent wagering or gaming policies in the case of insurance upon lives of individuals, and other events; the former act extending only to marine insurance.

As to the character and extent of interest in life of another which will authorize an insurance thereof the following points have been ruled:—

A creditor has an insurable interest on the life of his debtor; but a person holding the note of another for money won at play has not such an interest, the consideration being for a gaming transaction. *Dwyer v. Edie*, Park. Ins. 639. And where the person whose life was insured was debtor to the plaintiff and another jointly, and they had transferred a part of the debt to a third person; the residue being larger than the sum named in the policy was, on a settlement of accounts between the plaintiff and his partner, agreed by them to remain to the account of the partner only—Ld. Kenyon held that this debt was a sufficient interest. *Anderson v. Edie*, Park on Ins. (7th Ed.) 640. But though a creditor may insure the life of his debtor to the extent of his debt, yet such a contract is substantially a contract of indemnity against the loss of the debt; and therefore if after the death of the debtor, his executors pay the debt to the creditor, the latter cannot afterwards recover on the policy; although the debtor died insolvent, and the executors were furnished with means of payment by a third party. *Godsall v. Bolder*, 9 East R. 72. And so where a debtor and his wife assigned to a creditor, a contingent interest to which the wife would be entitled if she survived a particular event, and the creditor insured the wife's life, who died before the contingent interest fell in, and the creditor received the insurance money; the husband being a bankrupt the creditor was allowed to prove the amount of what was due him after deducting the net proceeds of the insurance money. *Ex parte Andrews*, 1 Mad. Ch. R. 308. (Am. Ed.)

An executor in trust has a sufficient interest to enable him to make assurance in his own name upon the life of a person who has granted an annuity to the testator. *Tidswell v. Ankerstein*, Peake N. P. Ca. 151.

Where the debtor had agreed to pay his debt by installments in five years:—Held that his creditor had an insurable interest in his life during that period. *Von Lindenau v. Desborough*, 3 Car. & Payne R. 353 (14 Eng. Com. Law R. 343.) Where A. having no interest in the life of B., induces him to cause a policy of insurance to be effected on his (B's) own name, A. finding the funds for the premiums, and intending, by assignment or otherwise, to get the benefit of the policy himself, so that it is substantially the policy of A., such policy is void, as a fraudulent evasion of this statute. Every man is presumed to have an interest in his own life, and in every part of it; therefore an executor suing on a policy effected by his testator on two years of his life is not bound to show that such testator has any special reason for making such limited assurance. *Wainwright v. Bland*, 1 Mov. & Rob. R. 481.

The word "interest" in this statute has been held to mean pecuniary interest; therefore a policy effected by a father in his own name, on the life of his son, he not having any pecuniary interest therein, is void. *Halford v. Kyner*, 10 Barn. & Cres. R. 724.

As to policies upon other events in which the assured is without interest:—a policy made to ascertain the sex of a person was held within the prohibition of the statute, and therefore void. *Roebuck v. Hammerton*, Comp. R. 736. So a policy made on the event of there being an open trade between Great Britain, and the province of Maryland, on or before the 6th of July 1778 was held to be void by Ld. Mansfield, for the want of an interest in the act. *Mollison v. Staples*, Mich. F. 1778. Bac. Abr. Merchant. I. And an engagement in consideration of forty guineas, to pay one hundred pounds, in case Brazilian mining shares should be done at a certain sum, or a certain day; subscribed by several persons each for themselves, was held a policy of insurance and void as within the prohibition of this act. *Paberson v. Powell*, 9 Bing. R. 320. 23 Eng. Com. Law. R. 290. (Thompson)

This statute recognized as being in effect in Knott v. State ex rel., 136 Fla. 184, 186 So. 786, where Commissioner's right to deny foreign insurance company privilege of selling wagering policy in Florida upheld.

As to what constitutes an insurable interest in the life of another, see McMullen v. St. Lucie County Bank, 128 Fla. 745, 175 So. 721, and Gerstel v. Arens, 143 Fla. 20, 196 So. 616.

JUDGMENT

17 CHARLES II, CHAPTER 8

§1. This section provided that the death of either party to an action between the verdict and the judgment should not be alleged as error. The same provision is incorporated in Section 45.16, Florida Statutes, 1941. See also Sections 45.17 and 63.19, for the practice where death of plaintiff occurs after interlocutory judgment, and after final decree in chancery, respectively.

§2. And be it further enacted by the authority aforesaid, where any judgment after a verdict shall be had, by or on the name of any executor or administrator; in such case an administrator **de bonis non** may sue forth a **scire facias**, and take execution upon such judgment.

§3. This section is a mere time extension of the whole act, which was made perpetual by I James II, Ch. 7, § 5, and is not in force.

29 CHARLES II, CHAPTER 3

This statute, Sections 13, 14 and 15, provided that judgments should be a lien against the real property of defendant only from the date signed, instead of from the first day of the term during which they were signed. Superseded by Section 55.10, Florida Statutes, 1941.

The Act of Feb. 12, 1834, §1, provided that judgments at law and decrees in equity shall create a lien upon the real estate of defendant, but failed to specify from what date such lien was effective. See Sec. 55.08, Florida Statutes, 1941. Chapter 19270, Acts of 1939, supplied the time and conditions upon which such judgments and decrees became effective. See Sec. 55.10, Florida Statutes, 1941. See Moseley v. Edwards, 2 Fla. 429.

JURISDICTION OF ADMIRALTY

13 RICHARD II, STATUTE 1, CHAPTER 5

15 RICHARD II, CHAPTER 3

These two statutes defined the jurisdiction of the admiralty courts, and were included in Judge Thompson's compilation of British statutes in force in Florida in the belief that they were necessary for the common law courts to ascertain the line of demarcation between the jurisdiction of the common law courts and that of admiralty. Decisions subsequent to that time have laid down the rule that Federal courts are not bound by the limitations on admiralty jurisdiction existing in England in 1776, but are limited by statutes, decisions and usages of this country. It therefore seems that these statutes, as a part of the common law of Florida, would be inconsistent with the Federal Constitution and statutes for any purpose.

JURY AND JUROR

33 EDWARD I, STATUTE 4, §§1 & 2

This statute abrogated the common law rule allowing any number of jurors, in civil and criminal cases, to be peremptorily challenged. Superseded by our own statutes on the subject. See Sections 54.11, 54.12, 54.15 and 913.08, Florida Statutes, 1941.

25 EDWARD III, STATUTE 5, CHAPTER 3

This statute prohibited a person who had served on a grand jury in finding an indictment to serve as a trial juror upon the trial of the party under the indictment. Superseded by Section 913.03 (4), Florida Statutes, 1941.

5 EDWARD III, CHAPTER 10

34 EDWARD III, CHAPTER 8

38 EDWARD III, STATUTE 1, CHAPTER 12

These statutes prescribed the penalty and punishment for persons offering bribes to jurors to influence their verdicts and for jurors who accepted bribes for such purposes. Superseded by Sections 838.03 and 838.04, Florida Statutes, 1941.

28 EDWARD III, CHAPTER 13, §2

8 HENRY VI, CHAPTER 29

These statutes provided that in a suit between an alien and a denizen, or naturalized citizen, the jury should be composed one-half of aliens and one-half of denizens. Since our qualifications of jurors are presumably exhaustive and do not include any such requirement, it is considered that these statutes are not in force. The conditions which prompted the statutes likewise do not exist in Florida.

LAND-MEASURE

31 EDWARD I, STATUTE 6

When an acre of land containeth x perches in length, then it shall be in breadth xvi perches; when it containeth xi perches in length, then it shall be in breadth xiv di and three quarter of one foot; when it is xii, then xiii, v. foot, and di; when it is xiii, then xiii, v. foot, and almost an inch; when xiv then xi.vii foot, and almost an inch; when xv, then x and di ii foot, and iii quarter of a foot; when xvi, then x; when xvii, then ic, vi foot, iii q. of a foot, and almost-half an inch; when xviii, then viii, xiv foot, and viii inches; when xix, then viii, vi foot, and xi inches, and di; when xx, then viii perches; when xxi, then vii perches, x foot, ii inches and iii q. of an inch; when xxii, then vii perches, x foot, ii inches, and iii q. of an inch; when xxii, then vi, iii, q. ii foot, and xi inches and di; when xxiv, then vi and di, ii foot, and vi inches; when xxv, then vi, vi foot and almost ii inches; when xxvi, then vi, ii foot, and almost di; when xxvii, then v, iii quarter, v inches, and di; when xxviii, then v, xi foot, x inches, and di; when xxix, then v, viii foot, v inches, and di; when xxx, then v, v foot, and di; when xxxi, then iv, xiv foot, and iv inches; when xxiv then ii and di. ii foot, and iv inches; when xxv, then iv and di. i foot, iii inches and di; when xxxvi, then iv, vii foot and iv inches; when xxxvii, then iv, v foot and iv inches; when xxxix, then iv, i foot, and almost ix inches; when xl, then iv; when xli, then iii, iix quarter, i foot, and x inches; when xlii, then iii, iii q. and vii inches; when xliii, then iii, and di, iii foot, and an inch and di.; when xliv, then iii and di ii foot, and iii inches; when xlv, then iii and di, di a foot, and iii inches.

The perch is the same unit of measure as a rod and is comprised of 5½ yards or 16½ feet.

LARCENY

21 HENRY VIII, CHAPTER 7, §§1, 2

This statute clarified the common law rule that the taking, with intent to steal, of a master's property by a servant constituted larceny and not merely embezzlement. Superseded by 811.01, Florida Statutes, 1941.

Where a servant directed to transport sacks of grain purchased by his employer unloaded all except two of the sacks when he reached his employer's barn and those he carried away with intent to deprive the owner, the servant is guilty of larceny and not embezzlement. Hatcher v. State, 74 Fla. 112, 76 So. 694.

21 HENRY VIII, CHAPTER 11

This statute provided for awarding of writs of restitution to restore stolen property to its owner. Not considered in force.

3 WILLIAM AND MARY, CHAPTER 9

Section 4 of this statute punished receivers of stolen goods and is superseded by Sections 811.16, 811.17 and 811.18, Florida Statutes, 1941. Section 5 of this statute provided for the punishment as larceny the taking of any goods and furniture from an hired lodging. Any such act would be comprehended by our larceny statutes, Sections 811.01 and 811.02, Florida Statutes, 1941.

1 ANNE, STATUTE 2, CHAPTER 9

This statute, Section 1, provided that accessories to felonies might be tried although the principal offendor is not attainted, or is given benefit of clergy. Our statute is superseding—Section 776.02, Florida Statutes, 1941, being declaratory of the common law but also providing that an accessory before the fact may be tried and convicted for a substantive offense whether or not the principal is amenable to justice, and 776.03, Florida Statutes, 1941, making an accessory after the fact punishable as a separate offense. Section 2 of the instant statute provided that receivers of stolen goods could be punished even though the principal be not apprehended. This is likewise comprehended by our statute which makes the receiving of stolen goods a separate offense rather than accessory to the larceny. See Anderson et al. v. State, below, and Section 906.19, Florida Statutes, 1941.

An accessory before or after the fact may be indicted before or after the principal conviction; if after, either the guilt or conviction of the principal must be averred. Daughtrey v. State, 46 Fla. 109, 35 So. 397. The conviction of the principal is an essential prerequisite to the punishment of the accessory. Id.

5 ANNE, CHAPTER 31

Section 5 of this act again made buyers or receivers of stolen goods accessories to the crime. Section 6 of this act provided that if principal felon is not taken, accessory who bought or received the stolen goods should be tried for a misdemeanor.

Under the statute of 5 Anne, c. 31, §5, the receiver of stolen goods was regarded as an accessory after the fact to the stealing. Upon this view it was necessary in the indictment to name the person who committed the theft. Our statute does not so regard the offense, and it is not necessary to allege the name of the person from whom the goods were obtained or the name of the thief. Anderson and Brown v. State, 38 Fla. 4, 20 So. 765.

4 GEORGE I, CHAPTER 11

§4. And whereas there are several persons who have secret acquaintance with felons, and who make it their business to help persons to their stolen goods, and by that means gain money from them, which is divided between them and the felons, whereby they greatly encourage such offenders; Be it enacted by the authority aforesaid, That wherever any person taketh money or reward, directly or indirectly, under pretense, or upon account of helping any person or persons to any stolen goods or chattels, every such person so taking money or reward, as aforesaid, (unless such person doth apprehend, or cause to be apprehended, such felon who stole the same, and cause such felon to be brought to his trial for the same, and give evidence against him) shall be guilty of felony, and suffer the pains and penalties of felony, according to the nature of the felony committed in stealing such goods, and in such and the same manner as if such offender had himself stolen such goods and chattels, in the manner, and with such circumstances as the same were stolen.

25 GEORGE II, CHAPTER 36

§1. Whereas the advertising a reward with no questions asked, for the return of things which have been lost or stolen, is one great cause and encouragement of thefts and robberies; Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of June one thousand seven hundred and fifty-two, any person publickly advertising a reward with no questions asked, for the return of things which have been stolen or lost, or making use of any words in such publick advertisement, purporting that such reward shall be given or paid without seizing or making enquiry after the person producing such thing so stolen or lost, or promising or offering, in any such publick advertisement, to return to any pawnbroker, or other person, who may have brought or advanced money by way of loan upon such thing so stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such thing; and any person printing or publishing such advertisement, shall respectively forfeit the sum of fifty pounds for every such offence, to any person who will sue for the same. (The residue of this Stat. superseded by provisions of the State law, and therefore omitted here.)

LEASES AND TERMS FOR YEARS

21 HENRY VIII, CHAPTER 15, §§1, 2, 3 AND 4.

Sections 1 and 2 provided that a lessee holding a term for years might falsify a recovery suffered by the lessor upon feigned title for the purpose of depriving the lessee of his term. Not in force since common recoveries prohibited in Florida. See Section 689.08, Florida Statutes, 1941. In addition, any action affecting a tenant's interest in real property would not be binding upon him unless he was made a party to such action. Due process requires such a rule. Section 3 required the lessee who should thus be granted the right of his term against any recoverer to perform the covenants of his lease unto the recoverer the same as he was obligated to do to the lessor. This section, therefore, confirmed the title of the recoverer. Not in force in Florida. Section 4 provided that no such feigned recovery should avoid any execution by Elegit, Statute of the Staple, or Statute Merchant. The same result, as applied to transfers of title not otherwise prohibited per se, would be effected by our statute on fraudulent conveyances which must be considered superseding. See Section 726.01, Florida Statutes, 1941.

32 HENRY VIII, CHAPTER 28

Section 1 of this statute allowed a person seized of an estate of inheritance in fee simple or fee tail in the right of his church, his wife, or jointly with his wife, to make a lease good as against himself, his wife, his heirs and successors, the same as if the lessor had been seized of his own right. Not in force in Florida. A husband cannot convey any interest in his wife's land in Florida without her consent and joinder since she has been by statute given the right to own and hold property separate from the interest of her husband. Any conveyance of her property, or interest therein, must be executed by wife and husband and is binding upon each.

Section 2 provided that the statute should not apply to leases of lands held by virtue of an old lease, unless such old lease expire or be surrendered within one year after the making of a new lease hereunder. Not in force.

Section 3 required husband and wife to join in execution of lease of wife's land. Superseded by Section 693.01, Florida Statutes, 1941.

Section 6 of this act provided that no fine, feoffment or other act of husband alone concerning property of which the wife held the interest of inheritance or freehold should prejudice the wife or her heirs' interest. Not in force in Florida since wife's property is not subject to sale or disposition by husband alone. See also Section 708.04, Florida Statutes, 1941.

4 ANNE, CHAPTER 16

§9. And be it further enacted by the authority aforesaid That from and after the said first day of Trinity A. D. 1706 Term all grants or conveyances thereafter to be made, by fine or otherwise, of any manors or rents, or of the reversion or remainder of any messuages or lands shall be good and effectual, to all intents and purposes without any attornment of the tenants of any such manors or of the land out of which such rent shall be issuing or of the particular tenants upon whose particular estates any such reversions or remainders shall

and may be expectant or depending, as if their attornment had been had and made.

§10. Provided nevertheless, That no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any conditions for nonpayment of rent, before notice shall be given to him of such grant by the conusee or grantee.

By the old feudal law, the obligation of the lord and the vassal or tenants was reciprocal; the tenant could not aliene the feud without the consent of the lord, nor could the lord aliene or transfer his seignory without the consent of the tenant. This consent of the tenant was expressed by what is called attorning, or professing to become the tenant of the new lord: which doctrine of attornment was afterwards extended to all leases for life or years. For if one bought an estate with any lease for life or years standing out thereon, and the lessee or tenant refused to attorn to the purchaser, and to become his tenants, the grant or contract was in most cases void, or at least incomplete. 2 Black. Comm. 288. This necessity of attornment was obviated by the 27 Hen. 8 c. 10 called the Statute of Uses, in all cases of fines, or deed to uses on which that statute operated. *Birch v. Wright*, 1 Term. R. 384 and also by the Statute of Wills (34 & 35 Hen. 8. c. 5) by which the legal estate was vested, immediately in the devisee.

Yet after this attornment continued to be necessary in many cases, until by the Statute 4 Anne c. 16 §§9 & 10 it was rendered unnecessary and by the subsequent Statute of 11 Geo. 2. c. 19 it was rendered inoperative and now it is held not to be necessary either to aver it in a declaration in covenant, or plead it in an avowry, or other pleading whatever. *Moss v. Gallimore*, 1 Doug. R. 283. 1 Saund. R. 234. b.w. 4. Under the statute of Anne, it has been held that any notice to the tenant of the change of title is sufficient: and if, after such notice, he pays the rent to the original landlord, it is in his own wrong. *Lumley v. Hodgson*, 16 East. R. 99.

It is however considered advisable for the purchaser of an estate to obtain an attornment from the tenants, because thereafter in any action against the tenants attorning he would not be compelled to adduce full evidence of his title. Peaks Ev. 266. If, however, an attornment is made to a person from whom the defendant did not originally obtain possession, through ignorance or misrepresentation, the tenant is not concluded by such attornment, but would still be at liberty to show that he had done so by mistake. *Rogers v. Pitcher*, 6 Faunt. R. 202. (Thompson).

Formal attornment of a tenant to the grantee of the reversion, which was required by the old common law, was made unnecessary by Statute 4 Anne, c. 16, §§9 and 10. Gray v. Callahan, 143 Fla. 673, 197 So. 396.

4 GEORGE II, CHAPTER 28

Section 1 hereof provided that persons holding over after expiration of leases and demand for surrender of the premises should pay double the yearly rental. Superseded by Sections 83.06 and 821.31, Florida Statutes, 1941.

Sections 2, 3, and 4 provided a statutory remedy by ejectment for the use of a landlord in regaining possession of leased premises upon which the rent was in default. It was a much simpler remedy than at common law, but pertained only where the arrearage amounted to six months' rental and no sufficient property for a distress could be found on the premises. Made obsolete, if not superseded, by our landlord and tenant statute. See Chapter 83, Florida Statutes, 1941.

Section 5 extended the remedy of distress available for the collection of rents reserved by lease to rents seck, rents of assize and chief rents. Not in force in Florida.

Section 6. And whereas many persons hold considerable estates by leases for lives or years, and lease out the same in parcels to several under tenants; And whereas many of those leases cannot by law be renewed without a surrender of all the under leases derived out of the same, so that it is in the power of any such under tenants to prevent or delay the receiving of the principal lease, by refusing to surrender their under leases, notwithstanding they have covenanted so to do, to the great prejudice of their immediate landlords, the first lessees: For preventing such inconveniences, and for making the renewal of leases more easy for the future, Be it enacted by the authority aforesaid, That in case any lease be duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall without a surrender of all or any the under leases be as good and valid to all intents and purposes as if all the under leases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person and persons in whom any estate for life or lives or for years, shall from time to time be vested by virtue of such new lease, and his, her, and their executors and administrators, shall be intitled to the rents, covenants, and duties and have like remedy for recovery thereof, and the under lessees shall hold and enjoy the messuages, lands, and tenements, in the respective under leases comprised, as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have and be intitled to such and the same remedy, by distress or entry in and upon the messuages, lands, tenements and hereditaments comprised in any such under lease, for the rents and duties reserved, by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such under lease was derived, as they would have had in case such former lease had been still continued, or as they would have had in case the respective under leases had been renewed under such new principal lease; any law, custom or usage to the contrary notwithstanding.

11 GEORGE II, CHAPTER 19

§11. And whereas the possession of estates in lands, tenements, and hereditaments, is rendered very precarious by the frequent and fraudulent practice of tenants, in attorning to

strangers, who claim title to the estates of their respective landlord or landlords, lessor or lessors, who by that means are turned out of possession of their respective estates and put to the difficulty and expense of recovering the possession thereof by actions or suits at law; For remedy thereof, be it enacted by the authority aforesaid, That from and after the said twenty fourth day of June, in the year of our Lord one thousand seven hundred and thirty eight, all and every such attornment and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments, within that part of Great Britain called England, dominion of Wales, or town of Berwick, upon Tweed, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be any wise changed, altered, or affected by any such attornment or attornments: Provided always, That nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law or decree or order of a Court of Equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited.

§12. And whereas great inconveniencies have frequently happened to landlords by their tenants secreting declarations in ejectments, which have been delivered to them, or by refusing to appear to such ejectments, or to suffer their landlords to take upon them the defense thereof; Be it further enacted by the authority aforesaid, That from and after the said twenty fourth day of June one thousand seven hundred and thirty eight, every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements, or hereditaments, in that part of Great Britain called England, dominion of Wales, or town of Berwick upon Tweed, shall forthwith give notice thereof to his or her landlord or landlords, or his, her, or their bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds; to be recovered by action of debt to be brought in any of his Majesty's Courts of record as Westminster, or in the Counties Palatine of Chester, Lancaster, and Durham respectively, or in the Courts of Grand-Sessions in Wales; wherein no essoin, protection, or wager of law shall be allowed, nor any more than one imparlance.

§13. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Court where such ejectment shall be brought, to suffer the landlord or landlords to make him, her, or themselves defendant or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he, or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord or landlords of any part of the lands, tenements, or hereditaments, for which such ejectment was brought, shall desire to appear by himself or themselves, and consent to enter into the like rule that by the course of the said Court the tenant in possession in case he or she had appeared ought to have done; then the Court where such ejectment shall be brought shall and may permit such landlord or landlords so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Section 14 allows the recovery of a reasonable rent by action on the case where the demise is not by deed. Superseded by exact provision of Florida law. See Section 83.07, Florida Statutes, 1941. This section was recognized as being in force in this state by the Supreme Court in Ward et al. v. Bull et al., 1 Fla. 271. However, since the Florida act is identical with this section there seems to be no need for continuing the text of the British Statute in our law. The Supreme Court undoubtedly meant that this section was in force by virtue of the similar Florida statute. See also Waln v. Howard, 142 Fla. 736, 196 So. 210.

§15. And whereas where any lessor or landlord, having only an estate for life in the lands, tenements, or hereditaments demised, happens to die before, or on the day, on which any rent is reserved, or made payable, such rent, or any part thereof, is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion intitled thereto, any other than for the use and occupation of such lands, tenements, or hereditaments, from the death of the tenant for life; of which advantage hath been often taken by the under-tenants, who thereby avoid paying anything for the same; For remedy whereof be it enacted by the authority aforesaid, That from and after the twenty-fourth day of June one thousand seven hundred and thirty-eight, where any tenant for life shall happen to die before or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of any such tenant for life, that the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such under-tenant or under tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable the whole, or if before such day then a proportion of such rent according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due

as aforesaid, making all just allowances or a proportionable part thereof respectively.

Sections 16 and 17 provided a summary remedy for the recovery of demised premises by the landlord where the tenant has deserted the premises and left it uncultivated and without property sufficient for rent distress. The procedure not consistent with our practice and is superseded by Sections 82.04 and 83.08 et seq., Florida Statutes, 1941.

Section 18 allowed the recovery of double rent from a tenant who, having a right to terminate his lease, gave notice of intention to quit and deliver the premises on a certain day but upon arrival of such date refused so to do. Superseded by Section 83.06, Florida Statutes, 1941.

Before the making of this Statute, landlords were permitted to defend ejectments, by joining with the tenants in possession, and even as it seems, without their being joined. *Underhill v. Durham*, 1 Salk. R. 256. *Lamb. v. Archer*, Comb. R. 208. *Fairclaim v. Earl Gower*, 1 Wm. Black. R. 357. It was also, says Ld. Mansfield in the case last cited affirmed by the Stat. Westminster 2 (13 Ed. I) c. 3 and the only wonder is how it could be a doubt whether in ejectment a landlord should be admitted to defend, when the tenant refused. It is said however that the Sections 12 and 13 of this act were produced by the decision of the case of *Goodright v. Hart*, in B. R. (2 Star. R. 530) where the landlord obtained or rule to be admitted defendant with the tenant in possession and entered his appearance; but the tenant having been practiced upon, refused to appear or make any defense, whereupon judgment was signed against the casual ejector. Upon a motion by the landlord, the Court refused to set aside the judgment, saying that the rule was only, that the landlord should be made a defendant *una cum* the tenant in possession and therefore if he would not stand the suit, the landlord could not be let in.—See 2 Tidd. Pr. 1227.

This Section of the Statute, however, has been construed to extend only to those cases, in which the ejectment is inconsistent with the landlord's title. *Buckley v. Buckley*, 1 Term. R. 647. If the tenant omit to give the notice to the landlord, and the judgment against the casual ejector be executed, the proceeding will be set aside, and the landlord omitted to defend. *Doe d. Ingram v. Roe*, 11 Price R. 507. See also Doe I. Thronghton v. Roe, 4 Burr. R. 1996.

The 13th Section has been construed to extend not only to landlords, properly so called, who are in receipt of the rents and profits of the premises, but also to all persons claiming title thereto, consistently with the possession of the occupier, though they have not previously exercised any act of ownership over the property; as to the heir; *Lovelock v. Dancaster*, 3 Term. R. 783; a devisee in trust; S. C. 4 Term. R. 122; or a mortgagee who has never been in possession; *Doe d. Filyard v. Cooper*, 8 Term. R. 645; or to remainder-men or reversioners; Comb. R. 339. 3 Burr. R. 1290. 3 Term. R. 783. 4 Term. R. 122. See further 2 Tidd. Pr. 1229. (Thompson).

A person applying to be admitted as a party defendant in an action of ejectment, under Sec. 13 of Statute 11 Geo. II. c. 19, must show by his application that his title is connected to and consistent with the possession of the occupier against whom such action is brought. State ex rel. v. Call, 39 Fla. 165, 22 So. 266.

29 GEORGE II, CHAPTER 31, §§1, 2, 3 & 4

11 GEORGE III, CHAPTER 20, §§1, 2 & 3

The first of the above statutes provided that guardians or other representatives of infants, lunatics and femes covert might, upon petition to the Chancery Court, be authorized to surrender old leases and accept new ones. The other statute conferred the same power as to the acceptance of a surrender of an old lease and the granting of a new one. Superseded as to infants and lunatics by Chapter 744, Florida Statutes, 1941, and as to married women by Article XI, Florida Constitution and Chapter 708, Florida Statutes, 1941.

LIMITATION OF ACTIONS

4 ANNE, CHAPTER 16

Section 16 provided that no claim or entry to avoid a fine should be allowed unless action be commenced within one year after entry of the fine. This section was an amendment of 21 James 1, Ch. 16, after which our Statute of Limitations Act of November 10, 1828 was patterned. It is superseded by an amendment to the Florida act which covers all real actions. See Section 95.12 et seq., Florida Statutes, 1941.

Section 19 provided that the statute should not run as against persons beyond the sea. This likewise was an amendment of 21 James 1, Ch. 16, and is superseded by Section 95.07, Florida Statutes, 1941.

The Florida act of limitations of November 10, 1828, is identical with 21 Jas. I, c. 16. Brockenbrough Admix. v. Campbell, 5 Fla. 83.

Our statute was framed after the English statute 21 Jas. I, c. 16. (Brief of counsel) Browne v. Browne et al., 17 Fla. 607.

The English act 21 Jas. I, c. 16, which is made the basis of statutes of limitations in this country, makes no exception in those cases where an acknowledgment or a new promise or part payment has been made by the debtor. The Welles-Kahn Co. v. Klein, 81 Fla. 527, 88 So. 315.

Lord Tenterden's Act, 9 Geo. IV, c. 14, enacted that no new promise should be sufficient to take a case out of the operation of the statute of limitations unless made in writing. The Florida act confined this limitation to promises made after the debt is barred, and has no application to promises to pay made before the debt is barred. Id.

MAINTENANCE AND BUYING AND SELLING PRETENDED TITLES

3 EDWARD 1, CHAPTER 28

STATUTE WESTMINSTER, THE FIRST

And that none of the King's Clerks, nor of any Justicer, from henceforth shall receive the presentment of any church, for the which any plea or debate is in the King's court, without special license of the King; and that the King forbiddeth upon pain to lose the church, and his service: And that no clerk of any Justicer, or Sheriff, take part in any quarrels of matters depending in the King's Court, nor shall work any fraud, whereby common right may be delayed or disturbed; and if any such do, he shall be punished by the pain aforesaid, or more grieviously, if the trespass do so require.

This statute is in affirmance of the common law. (Thompson)

Stirring up litigation as ground for disbarment of attorney, see Section 39.24, Florida Statutes, 1941.

1 EDWARD III, STATUTE 2, CHAPTER 14

Item, Because the King desireth that common right be administered to all persons, as well poor as rich; he commandeth and defendeth, That none of his counsellors, nor of his house, nor none other of his ministers, nor no great man of the realm by himself, nor by other, by sending of letters, nor otherwise, nor none other in this land, great nor small, shall take upon them to maintain quarrels nor parties in the country, to the let and disturbance of the Common law.

20 EDWARD III, CHAPTER 4

Item, We have commanded and utterly defended, That none of our house, nor of them that be about us, nor other, which be towards our dear beloved companion the Queen, or our son Prince of Wales, or towards our Courts, nor prelates, earls, barons, nor other great nor small of the land, of what estate or condition they be, shall not take in hand quarrels other than their own, nor the same maintain by them nor by other, privily nor apertly, for gift, promise, amity, favour, doubt, nor fear, nor for none other cause, in disturbance of law and hindrance of fight, upon the pains aforesaid; but that every man may be free to sue for and defend his right in our Courts and elsewhere, according to the law. And we have straitly commanded our said son, and divers earls, and other great men, being before us, that they on their behalf shall do to be kept this ordinance without default, and that they suffer none which be towards them to attempt against this ordinance by any way.

1 RICHARD II, CHAPTER 4

Item, It is ordained and established, and the King our lord straitly commandeth, That none of his Counsellors, officers, or servants, nor any other person within the realm of England, of whatsoever estate or condition they be, shall from henceforth take not sustain any quarrel by maintenance in the country, nor elsewhere, upon a grievious pain; that is to say, the said counsellors and the King's great officers, upon a pain which shall be ordained by the King himself, by the advice of the lords of his realm; and other less officers, and servants of the King, as well in the Exchequer, and all his other Courts and places, as of his own meiny, upon pain to lose their offices and services, and to be imprisoned, and then to be ransomed at the King's will, every of them according to their degree, estate, and desert; and all other persons through the realm, upon pain of imprisonment, and to be ransomed as the other aforesaid.

1 RICHARD II, CHAPTER 9

Item, Because it is complained to the King, that many people of the said realm, as well great as small, having right and true title as well to lands, tenements, and rents as in other personal actions, to wrongfully delayed of their right and actions, by means that the occupiers or defendants to be maintained and sustained in their wrong do commonly make gifts and feoffments, of their lands, and tenements which be in debate, and of their other goods and chattels to lords and other great men of the realm, against whom the said pursuants, for great menace that is made to them, cannot nor dare not make their pursuits; And also on the other part complaint is made to the King, that oftentimes many people do disguise other of their tenements, and anon after the dissession done, they make divers aliena-

tions and feoffments, sometime to lords and great men of the realm to have maintenance, and sometime to many persons of whose names the disseisees can have no knowledge to the intent to defer and delay by such frauds the said disseisees, and the other demandants, and their heirs, of their recovery, to the great hindrance and oppression of the people: It is ordained and established That from henceforth no gift or feoffment of lands, tenements, or goods be made by such fraud or maintenance; and if any be in such wise made, they shall be holden for none and of no value; and the said disseisees shall from henceforth have their recovery against the first disseisors, as well of the lands and tenements as of their double damages, without having regard to such alienations, so that the disseisees commence their suits within the year next after the disseison done. And it is ordained and established, That the same statute shall hold place in every other action or plea of land where such feoffments be made by fraud or collusion, to have their recovery against the first such feoffor. And it is towit, that this statute ought to be understood where such feoffors thereof take the profits.

32 HENRY VIII, CHAPTER 9

§1. The King our Sovereign lord, calling to his most blessed remembrance, that there is nothing within the realm that conserveth his loving subjects in more quietness, rest, peace and good concord, than the due and just ministration of his laws, and the true and indifferent trials of such titles and issues, as been to be tried according to the laws of this realm, which his most royal majesty perceiveth to be greatly hindred and letted by maintenance, embracery, champerty, subornation of witnesses, sinister labour, buying of titles and pretended rights of persons not being in possession, whereupon great perjury hath ensued, and much inquietness, appression, vexation, troubles, wrongs and disinheritance hath followed among his most loving subjects, to the great displeasure of Almighty God, the discontentation of his majesty, and to the great hindrance and let of justice within this his realm. For the avoiding of all which misdemeanors, and buying of titles and pretended rights, and to the intent that justice may be more fully and indifferently ministred, and the truth in causes of contention plainly tried between his subjects of this realm: Be it enacted by our said Sovereign lord, with the assent of the lords spiritual and temporal and the Commons in this present Parliament assembled, and by authority of the same, That from henceforth all statutes heretofore made concerning maintenance, champerty and embracery, or any of them, now standing and being in their full strength and force, shall be put in due execution, according to the tenures and effects of the same statutes.

§2. And over that, be it further enacted by the authority aforesaid, That no person nor persons, of what estate, degree or condition soever he or they be, shall from henceforth bargain, buy, or sell, or by any ways or means obtain, get or have any pretenced right, or titles, or take promise, grant or covenant to have any right or title of any person or persons, in or to any manors, lands, tenements, or hereditaments (except such person or persons, which shall so bargain, sell, give, grant, covenant or promise the same, their antecessors, or they by whom he or they claim the same, have been in possession of the same, or of the reversion or remainder thereof, or taken the rents or profits thereof, by the space of one whole year next before the said bargain, covenant, grant or promise made) upon pain that he that shall make any such bargain, sale, promise, covenant or grant, to forfeit the whole value of the lands, tenements or hereditaments, so bargained, sold, promised, covenanted or granted, contrary to the form of this act; And the buyer and taker thereof, knowing the same, to forfeit also the value of the said lands, tenements or hereditaments so by him bought or taken as is aforesaid; the one half of the said forfeitures to be to the King, our sovereign lord, and the other half to the party that will sue for the same in any of the King's Courts of record, by action of debt, bill, plaint, or information; in which action, bill, plaint or information, no essoin, protection, wager of law, nor injunction shall be allowed.

§3. And furthermore, That no manner of person or persons, of what estate, degree or condition soever he or they be, do hereafter unlawfully maintain or cause, or procure any unlawful maintenance, in any action, demand, suit or complaint in any of the King's Courts of the Chancery, the Star-Chamber, Whitehall, or elsewhere within any of the King's dominions of England and Wales, or the Marches of the same, where any person or persons have or hereafter shall have authority, by virtue of the King's commission, patent or writ, to hold plea of lands, or to examine, hear or determine any title of lands, or any matter or witnesses concerning the title, right or interest of any lands, tenements or hereditaments; and that no person nor persons, of what estate, degree or condition soever he or they be, do hereafter unlawfully retain, for maintenance of any suit or plea, any person or persons, or embrace any freeholders or jurors, or suborn any witness, by letters, rewards, promises, or any other sinister labour or means, for to obtain any matter or cause, or to the disturbance or hindrance of justice, or to the procurement or occasion of any manner of perjury by false verdict or otherwise, in any manner of Courts aforesaid, upon pain to forfeit for every such offence x li. the one moiety thereof unto the King our Sovereign Lord, and the other moiety to him

that will sue for the same by action of debt, bill, plaint, or information in any of the King's Courts; in which action, no essoin, protection, wager or law, nor injunction, shall be allowed.

§4. Provided alway, and be it enacted by the authority aforesaid, That it shall be lawful to any person or persons, being in lawful possession by taking of the yearly farm rents, or profits, of or for any manor lands, tenements, or hereditaments, to buy, obtain, get or have, by any reasonable ways or means, the pretenced right or title of any other person or persons, hereafter to be made to, of, or in such manors, lands, tenements, or hereditaments, whereof he or they shall be so in lawful possession; anything in this act contained to the contrary notwithstanding.

§5. And for the due execution of this present act, be it further enacted by authority aforesaid, That the Justices of Assise of every Circuit within this realm, and elsewhere within the King's dominions shall in every County within their Circuits two time in the year, that is to say, in the time of their sittings for the taking of Assises or delivery of the gaols, cause open proclamation to be made, as well of this present act, and of everything therein contained, as also of all other statutes heretofore made against unlawful maintenance, champtery, embracery or unlawful retainers, to the intent that no manner of person or persons having the same, should be ignorant or miscognisant of the dangers and penalties therein contained and specified.

§6. Provided alway, and be it enacted by the authority aforesaid, That this act shall not extend to charge any person or persons with any of the penalties mentioned in the said act, for any offence by him or them committed contrary to the said act, except the same person or persons so offending be sued thereof by action of debt, bill, plaint or information in any of the King's Courts within one year next after the same offence by him or them committed, as is aforesaid.

The doctrine which prevails in this State as announced in Coogler v. Rogers, 25 Fla. 853, 7 So. 391, that a deed conveying lands which are at the time of its execution held adversely by a person not a party to the deed is void as to such person, but not as between the parties to the deed, is based upon the Statute of 32 Hen. VIII, c. 9. In England, this statute has been repealed by 8 and 9 Vict. c. 106. Milton v. Danford, 100 Fla. 761, 130 So. 435.

"It is proper to observe that we have no statutory provision like that of the revised statutes of New York as to champerty, upon which is founded the decisions of Crary vs. Goodman, 22 N. Y., 170, and Higinbotham vs. Stoddard, 72 N. Y., 94. Our doctrine (Doe ex dem. Magruder v. Roe, 13 Fla., 602; Nelson vs. Brush, 22 Fla., 374), is to be regarded as based originally upon the common law and statute of 32 Hen. VIII, c. 9; Pechell vs. Watson, 8 M. & W., 691; Tyler on Ejectment, 935 et seq.; Thompson's British Statutes, 475 et seq.; and now affected by the provisions of our statute of limitations as to adverse possession, supra." Watrous v. Morrison, 33 Fla. 261, 14 So. 805.

MARRIAGE

I. OF DISABILITIES TO CONTRACT MARRIAGE ARISING FROM CONSANGUINITY AND AFFINITY

25 HENRY VIII, CHAPTER 22, §§3, 4, 14

28 HENRY VIII, CHAPTER 7, §§9, 10, 11

32 HENRY VIII, CHAPTER 38, §§1, 2, 3

2 AND 3 EDWARD VI, CHAPTER 23, §§1, 2, 3, 4

In the order listed, the above statutes declared what marriages should be considered lawful. They were designed primarily to remove impediments to marriage prescribed by the Church of Rome and in doing so defined in detail what relationships, either of affinity or consanguinity, existing between the parties should prevent lawful marriages. All are superseded by Sections 741.21 and 741.22, Florida Statutes, 1941.

II. OF DISABILITIES FROM MENTAL INCAPACITY

15 GEORGE II, CHAPTER 30

Whereas persons who have the misfortune to become lunaticks may, by reason of such their disorder, be liable to be surprized into unsuitable marriages, which may be of pernicious consequence, and a great misfortune to their families: Wherefore, for preventing the same, and the ill consequence thereof, Be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June in the year of our Lord one thousand seven hundred and forty two, in case any person who now is, or at any time hereafter shall be found a lunatick, by any inquisition taken or to be taken by virtue of a commission under the Great Seal of Great Britain; or any lunatick or person under a phrenzy, whose person and estate, by virtue of

any act of Parliament, now are, or hereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the Lord High Chancellor of Great Britain, the Lord Keeper, or Lords Commissioners of the Great Seal of Great Britain for the time being, or such trustees as aforesaid, or the major part of them respectively; every such marriage shall be, and is hereby declared to be null and void to all intents and purposes whatsoever.

Judge Thompson says this statute was passed to change the common law rule that held valid a marriage contracted by a lunatic during a lucid interval.

See generally on the subject of mental capacity required to contract a marriage, Kuehmsted v. Turnwall, 103 Fla. 1180, 138 So. 775.

III. OFFENSES AGAINST THE RIGHTS OF MARRIAGE

3 HENRY VII, CHAPTER 2

This statute declared felony the act of carrying a woman away from her home against her will and marrying or defiling her. It was necessary that the woman have goods and chattels or be an heir apparent. The mischief intended to be remedied was the procuring of the woman's property by the wrongdoer. Since a husband has no interest in a wife's property in this state, the situation sought to be remedied by the statute does not exist here. Section 805.01, Florida Statutes, 1941, which defines and punishes false imprisonment and kidnaping, furnishes additional reasons for omitting this statute as not in force in Florida.

4 AND 5 PHILIP AND MARY, CHAPTER 8

This statute punished any who should take from her home any maiden under the age of 16 years and marry her without the consent of her parent or guardian. Superseded by Section 795.01, Florida Statutes, 1941.

MORTGAGE

4 & 5 WILLIAM AND MARY, CHAPTER 16

This statute provided that a mortgagor who gave a mortgage while there existed a prior mortgage, judgment or recovery against the land, without informing the mortgagee of such prior mortgage, judgment or recovery, should forfeit his right of redemption. Not in force in Florida because a mortgage in Florida is simply a lien on property (see Section 697.02, Florida Statutes, 1941) instead of a conveyance of legal title, and because our recording statute affords the mortgagee the protection against fraud for which this statute was designed. Section 695.01, Florida Statutes, 1941. If this English statute had any application to personal property it is, as to such, superseded by Sections 698.01, 698.02, and 818.02, which require the recording of chattel mortgages and prohibit the encumbrance of previously mortgaged property without advising the second mortgagee of such prior lien.

7 GEORGE II, CHAPTER 20

Section 1 of this statute provided that where a mortgagee brought a suit in ejectment for recovery of mortgaged lands and, pending such action, the person entitled to redeem paid to the mortgagee or into court the full amount due, the debt should stand discharged and all evidences of title should be delivered by the mortgagee to the person making such payment. Not in force in Florida since ejectment would not lie at the suit of the mortgagee since he is not entitled to possession. See Section 697.02, Florida Statutes, 1941. A person receiving payment of a mortgage in Florida is under a statutory duty to satisfy the same. Sections 701.04 and 701.05, Florida Statutes, 1941.

Sections 2 and 3 provided, with certain exceptions, that a court of equity wherein any suit to foreclose a mortgage was pending, could make decrees affecting the matter prior to hearing, upon application of the defendant and his admitting the right and title of the plaintiff. This is inherent in equity courts of this state since they are always open, in term time and in vacation, and each party, being sui juris, may waive any of his procedural rights.

MORTMAIN

MAGNA CHARTA (9 HENRY III) CHAPTER 36

7 EDWARD I, STATUTE 2

13 EDWARD I, CHAPTER 32

13 EDWARD I, CHAPTER 41

18 EDWARD I, STATUTE 1, CHAPTER 3

15 RICHARD II, CHAPTER 5

23 HENRY VIII, CHAPTER 10

9 GEORGE II, CHAPTER 36[1]

Alienations to, and acquisitions by, corporate bodies were prohibited by the above statutes as an evil and a fraud upon the lord of the fee. Such policy was an outgrowth of the feudal system and was designed to protect the lord of the manor under whom all land was held, against a conveyance in perpetuity, especially to religious corporations. Not in force in Florida since there is no public policy against the church. In addition, all corporations organized under certain statutes have unlimited power to own and hold real estate (See Section 612.07, Florida Statutes, 1941), while others have such power to the extent necessary for their corporate purposes. (See Section 610.03, Florida Statutes, 1941). The right of churches in Florida to hold property is expressly recognized by Section 617.01, Florida Statutes, 1941, which requires an application for nonprofit charter to state amount in value of real property which corporation may hold, and by Section 617.12, Florida Statutes, 1941, which provides for the devolution of property, both real and personal, belonging to or held in trust for any church or religious society which has become extinct.

[1]The Statute 9 George II, Chapter 36, is commonly though uncorrectly, termed the statute of mortmain. Since it does not prevent the alienation of land in mortmain, but prevents the disposition of lands for any charitble use, it is inserted, post, under title "Charitable Uses."

OFFICES AND OFFICERS

1. BUYING AND SELLING OFFICES

4 HENRY IV, CHAPTER 5

23 HENRY VI, CHAPTER 9

Each of the above statutes provided that each sheriff should in person continue in his own baliwick and not sell or let the same to farm as it was termed at that time. Not in force in Florida since the same principle is inherent in our constitutional theory of public office. While a public officer has an enforceable right in his office, he has no estate therein. Flood v. State, 100 Fla. 70, 129 So. 861; Dubose v. Kelly et al., 132 Fla. 548, 181 So. 11.

5 AND 6 EDWARD VI, CHAPTER 16

This statute punished the act of buying and selling a public office. In addition to what is said above, see the bribery statutes of this State which define and punish the giving or acceptance of a bribe in connection with the duties of a public official. Chapter 838, Florida Statutes, 1941.

II. PROTECTION OF OFFICERS IN PERFORMANCE OF DUTIES

7 JAMES I, CHAPTER 5

This statute made it permissible for a Justice of the Peace in any suit upon the case, trespass, battery or false imprisonment to plead the general issue and to prove thereunder special matter in defense before the jury. Not considered in force. For operation of plea of general issue in tort cases, see Section 52.19, Florida Statutes, 1941.

21 JAMES I, CHAPTER 12

This statute enlarged and made perpetual the foregoing Statute 7 Jas. I, c. 5. It also required any action or suit listed above to be brought within the county where the Justice resided. This additional venue matter superseded by Section 46.01, Florida Statutes, 1941.

24 GEORGE II, CHAPTER 44

Section 1 of this statute provided that no writ should be sued out, or any process served on a Justice for anything done by him in the execution of his office until notice of intention to sue out such writ or serve such process should be given such officer at least one month prior to the issuance of the writ or service contemplated.

Section 2 allowed the officer, during such month, to tender amends and if the amends be refused, to plead such tender in bar when the action should be instituted.

Section 3 made proof of the notice required by Section 1 a prerequisite to filing suit.

Section 4 allowed defendant to pay into court any money neglected to be tendered to plaintiff as amends and to proceed as other actions where defendant allowed to pay money into court.

Section 5 limited the evidence which a plaintiff could produce to such as was contained in the notice required by Section 1.

Section 6 prohibited the bringing of any action against a constable for anything done in obedience to any warrant without demanding a copy of such warrant, or without making the Justice who issued the warrant a party to such suit.

Section 7 allowed double costs of suit against any Justice of the Peace where the court should find that the injury complained of was willfully and maliciously committed.

Section 8 prescribed a six months statute of limitations for any action against a Justice of the Peace or Constable. Not considered consistent with our practice in the same matters and for that reason omitted.

PARENT AND CHILD

43 ELIZABETH, CHAPTER 2

§7. And be it further enacted, That the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the Justices of the Peace of that County where such sufficient persons dwell, or the greater number of them, at their general quarter sessions shall be assessed; upon pain that every one of them shall forfeit twenty shillings for every month, which they shall fail therein.

It is the view, I think, of most Florida jurists and lawyers that the legal duty to support another person exists only as between parents and their children. However, I have been unable to find anything expressed in our law which would warrant omitting this statute. The Florida statutes touching parts of this subject are, for the most part, procedural. They do make it the duty of a husband to support his wife, a duty which did not exist at common law. Stedman v. State, 80 Fla. 547, 86 So. 428.

So far as the above statute imposes a duty on the child to support his parents it is considered superseded by Ch. 1476, Act of January 11, 1866. (Secs. 5873, 5874 and 5875, Compiled General Laws, 1927 which make the same requirement.) The Florida Act was repealed by Chapter 19315, Laws of Florida, Acts of 1939, but the superseded British Act was not thereby revived.

Wife may have support and maintenance where husband, having ability to do so, fails to contribute to her support or to support of minor child, in form of allmony unconnected with cause for divorce. Section 65.10, Florida Statutes, 1941.

Desertion of wife and child, or either, or withholding support from wife and child, or either, by a husband and desertion of a child or withholding support by any mother required by law to care for and support her child or children is a felony in Florida. Section 856.04, Florida Statutes, 1941.

Section 856.04 may not be used as a substitute for a civil proceeding by wife to compel husband to contribute a reasonable part of his earnings toward his family's support. McBrayer v. State, 112 Fla. 415, 150 So. 736; Floyd v. State, 115 Fla. 625, 155 So. 794.

For power of public authorities to care for poor and indigent persons see Section 125.01, Florida Statutes 1941. As to dependent children see Chapter 415, Florida Statutes, 1941.

13 AND 14 CHARLES II, CHAPTER 12

§19. And whereas the putative fathers and lewd mothers of bastard children run away out of the parish, and sometimes out of the County, and leave the said bastard children upon the charge of the parish where they are born, although such putative father and mother have estates sufficient to discharge such parish; Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the churchwardens, and overseers of the poor of such parish where any bastard child shall be born, to take and seize so much of the goods and chattels, and to receive so much of the annual rents and profits of the lands of such putative father or lewd mother, as shall be ordered by any two justices of the peace, as

aforesaid, for or towards the discharge of the parish, to be confirmed at the sessions, for the bringing up and providing for such bastard child: And thereupon it shall be lawful for the sessions to make an order for the churchwardens, or overseers for the poor of such parish, to dispose of the goods, by sale or otherwise, or so much of them for the purposes aforesaid as the Court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions as aforesaid, of his or her lands.

(The residue of this statute inapplicable, and therefore omitted.)

11 AND 12 WILLIAM III, CHAPTER 4

This statute was one of several designed to curtail the power of the Roman Catholic Church in England. It prohibited a parent from withholding support from a Protestant child until the child should embrace the Popish religion. Not considered in force since it is a form of religious discrimination in favor of Protestants, and further because child's parents are under a duty in Florida to support their children if able so to do without regard to any collateral matter such as is contained in this statute.

1 ANNE, STATUTE 1, CHAPTER 30

This statute required Jewish parents to support their Protestant children. Omitted for the reasons enumerated under 11 & 12 Wm. III, Ch. 4, supra.

5 GEORGE I, CHAPTER 8

§1. Whereas divers persons run or go away from their places of abode, into other Counties or places, and sometimes out of the Kingdom, some men leaving their wives, a child or children, and some mothers run or go away, leaving a child or children, upon the charge of the parish or place where such child or children was or were born, or at last legally settled, although such persons have some estates, which should ease the parish of their charge, the whole or in part: May it please your Majesty therefore that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the Churchwardens or overseers of the poor of such parish or place where any such wife or child or children shall be so left, upon application to, by warrant or order from any two Justices of the Peace, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two Justices of the Peace, as aforesaid, shall order or direct, for or towards the discharge of the parish or place where such wife, child or children are left, for the bringing up and providing for such wife, child or children; which warrant or order being confirmed at the next Quarter-sessions, it shall be lawful for the Justices of such Quarter-sessions to make an order for the churchwardens or overseers for the poor of such parish or place, to dispose of such good and chattels by sale, or otherwise, or so much of them, for the purposes aforesaid, as the Court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the Sessions, as aforesaid, of his or her lands and tenements, for the purpose aforesaid.

§2. And be it enacted by authority aforesaid, That the churchwardens and overseers aforesaid shall be accountable to the Justices at the Quarter-sessions for all such money as they, or any of them, shall receive by virtue of this act.

PAUPER

11 HENRY VII, CHAPTER 12

Pray on the Commons in this present Parliament assembled, That where the King our sovereign lord, of his most gracious disposition, willeth and intendeth indifferent justice to be had and ministered according to his Common laws, to all his true subjects, as well to the poor as rich, which poor subjects be not of ability ne power to sue according to the laws of this land for the redress of injuries and wrongs to them daily done, as well concerning their persons and their inheritance, as other causes; For remedy whereof, in the behalf of the poor persons of this land, not able to sue for their remedy, after the course of the common law; be it ordained and enacted your highness and by the lords spiritual and temporal, and the Commons, in this present Parliament assembled, and by authority of the same,

That every poor person or persons, which have, or hereafter shall have cause of action or actions against any person or persons within this realm, shall have by the discretion of the Chancellor of this realm for the time being, writ or writs original and writs of **subpoena**, according to the nature of their causes, therefore nothing paying to your highness for the seals of the same, nor to any person for the writing of the same writ and writs to be hereafter sued; and that the said chancellor for the time being shall assign such of the clerks which shall do and use the making and writing of the same writs, to write the same ready to be sealed, and also learned Counsel and Attornies for the same, without any reward taken therefore: And after the said writ or writs be returned, if it be afore the King in his Bench, the Justices there shall assign to the same poor person or persons, counsel learned, by their discretions, which shall give their Counsels, nothing taking for the same: And likewise the Justices shall appoint Attorney and Attornies for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help, and business in the same: And the same law and order shall be observed and kept of all such suits to be made afore the King's Justices of his Common place, and barons of his exchequer, and all other Justices in the Courts of record where any such suit shall be.

See Section 58.09, Florida Statutes, 1941, which allows a person to proceed in *forma pauperis* in certain counties, and Section 909.21, Florida Statutes, 1941, which requires a judge, in the trial of an indigent person charged with a capital offense to appoint counsel for such party.

PAWNS

30 GEORGE II, CHAPTER 24

§4. And be it further enacted by the authority aforesaid, That all and every person and persons who, from and after the twenty-ninth day of **September** one thousand seven hundred and fifty-seven, shall take by way of pawn, pledge or exchange, of or from any person or persons whomsoever, any goods or chattels, of what kind soever the same shall be, shall forthwith enter or cause to be entered, in a fair or regular manner, in a book or books to be kept for that purpose, a description of the goods or chattels which he, she or they shall receive in pawn, pledge, or exchange and also the sum of money advanced or paid thereon, with the day of the month or year on which, and the name and place of abode of the person or persons by whom such goods or chattels were so pawned, pledged or exchanged, and also the name and place of abode of the owner or owners thereof, according to the information of the person pawning or pledging, or exchanging the same; and shall at the same time give a duplicate or copy thereof to the person or persons so pawning, pledging or exchanging the said goods or chattels, if required; for which the person or persons giving such duplicate or copy, shall be paid by the person or persons who shall so pawn, pledge or exchange such goods or chattels, the sum of one halfpenny, on goods and chattels pawned for less than twenty shillings; and one penny on goods or chattels pawned for twenty shillings and not exceeding five pounds; and for every such duplicate upon goods or chattels pawned for any larger sum, the sum of two pence and no more; and in default of making such entry, and giving such duplicate or copy, if required as aforesaid, he, she, or they shall respectively for every offence forfeit the sum of five pounds, to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal, or hands and seals of any Justice or Justices of the Peace of the County, tiding, division, city, liberty or place where the offence shall be committed; which respective forfeitures when levied, shall be paid and applied to the use of the poor of the parish or place wherein the offence shall be committed.

§5. And whereas it sometimes happens that the goods or chattels pledged and pawned as aforesaid, are spoiled and damaged, or rendered of less value than when the same were pledged or pawned, through the neglect, default or misbehavior of the person or persons to whom the same were so pledged or pawned, his, her, or their agents or servants, either by wearing or using thereof, or by letting the same out to hire; Be it therefore enacted by the authority aforesaid, That if in the course of any of the aforesaid proceedings, before any Justice or Justices of the Peace, in pursuance of, or under this act, it shall appear or be proved to the satisfaction of the Justice or Justices upon oath or solemn affirmation as aforesaid, that any of the goods or chattels so pawned as aforesaid, are become or have been rendered of less value than the same were at the time of pawning or pledging thereof, by or through the default, neglect or wilful misbehavior of the person or persons to whom the same were so pledged or pawned, his, her, or their executors, administrators or assigns, agents or servants; then, and in any such case, it shall be lawful, and every such Justice or Justices is and are hereby required to allow and award a reasonable satisfaction to the owner or owners of such goods, or chattels, in respect of such damage; and the sum or sums of money so allowed or awarded shall be deducted out of the principal and interest, and allowance for warehouse-room, which shall appear to be due to any person or persons, to whom the same were so pledged or pawned, his,

her, or their executors, administrators or assigns; and in all cases where the goods and chattels pawned as aforesaid, shall have been damaged as aforesaid, it shall be sufficient for the pawner or pawners, his, her or their executors, administrators or assigns, to pay or tender the money upon the balance, after deducting out of the principal and interest, and money payable for warehouse-room as aforesaid, for the goods or chattels pawned, such reasonable satisfaction in respect to such damage, as any such Justice or Justices shall order or award; and upon so doing, the Justice or Justices shall proceed as if the pawner or pawners, his, her, or their executors, administrators or assigns, had paid or tendered the whole money due for the principal, interest and warehouse-room as aforesaid.

§6. And be it enacted by the authority aforesaid, That from and after the said twenty-ninth day of **September** one thousand seven hundred and fifty-seven, if any person or persons shall knowingly buy or take as a pledge, any linen or apparel, intrusted to any other person or persons to wash, scour, iron, mend or make up, and shall be convicted of the same, on the oath of one credible witness, or on confession of the party, before one or more Justice or Justices; every such person or persons shall forfeit double the sum given for or lent on the same, to be paid to the poor of the parish where the offence is committed, to be recovered in the manner other forfeitures are by this act directed to be recovered; and shall likewise be obliged to restore the said goods to the owner in the presence of the said Justice or Justices.

§7. And be it further enacted by the authority aforesaid, That in case any person or persons, who shall offer by way of pawn, pledge, exchange or sale any goods or chattels, shall not be able, or shall refuse to give a satisfactory account of himself, herself, or themselves or of the means by which he, she, or they became possessed of such goods or chattels; or if there shall be any other reason to suspect that such goods or chattels are stolen, or otherwise illegally or clandestinely obtained; it shall and may be lawful for any person or persons, his, her or their servants or agents to whom such goods or chattels shall be so offered, to seize and detain such person or persons, and the said goods or chattels, and to deliver such person or persons, as soon as conveniently may be, into the custody of the Constable, or other peace officer, who shall and is hereby required, immediately to convey such person or persons, and the said goods or chattels, before some Justice or Justices of the peace of the county, riding, division, city, liberty or place wherein the offence shall be committed; and if such Justice or Justices shall, upon examination and enquiry, have cause to suspect that the said goods, or chattels were stolen, or illegally or clandestinely obtained, it shall and may be lawful for such Justice or Justices to commit such person or persons into safe custody, for any time not exceeding the space of six days, in order to be further examined; and if upon either of the said examinations, it shall appear to the satisfaction of such Justice or Justices, that the said goods or chattels, were stolen, or illegally or clandestinely obtained, the said Justice or Justices is and are hereby authorized and required to commit the party or parties offending to the common gaol or house of correction of the county, riding, division, city, liberty, or place wherein the offence shall be committed, there to be dealt with according to law.

§8. Provided nevertheless, and be it further enacted, That in case such goods or chattels so seized and detained as aforesaid, shall afterwards appear to be the property of the person or persons who offered the same to be pawned, pledged, exchanged, or sold, or that he, she, or they, was or were authorized by the owner or owners thereof to pawn, pledge, exchange, or sell the same, then and in such case, the person or persons who shall so seize or detain the party or parties who offered the said goods or chattels, shall be, and he, she, and they is and are by this act indemnified for having so done.

§9. And for the better enabling all persons to recover their goods, or chattels, which after the said twenty-ninth day of **September** one thousand seven hundred and fifty-seven, shall be unlawfully pawned or pledged to, or exchanged with, any person or persons whatsoever; Be it further enacted by the authority aforesaid, That if the owner or owners of any goods or chattels, unlawfully pawned, pledged or exchanged, shall make out, either on his, her, or their oath, or by the oath of any credible witness, or (being one of the people called **Quakers**) by solemn affirmation before any Justice or Justices of the Peace, within his or their jurisdiction, that such owner or owners, has or have had, his, her, or their goods and chattels unlawfully obtained or taken from him, her, or them, and that there is just cause to suspect that any person or persons, within the jurisdiction of any such Justice or Justices hath or have knowingly and unlawfully taken to pawn, or by way of pledge, or in exchange, any goods or chattels of such owner or owners, and without the privity of, or authority from such owner or owners thereof, and shall make appear to the satisfaction of any such Justice or Justices, probable grounds for such the suspicion of the owner or owners thereof; then and in any such case, any Justice or Justices of the Peace, within his or their jurisdiction, may issue his or their warrant for searching in the day-time, the house, warehouse or other place, of any such person or persons, who shall be charged on oath or affirmation as aforesaid, as suspected to have knowingly and unlawfully received or taken to pawn, or by way of pledge, or in exchange any such goods or chattels, without the privity of, or authority from the owner or owners, thereof and if the occupier or occupiers of any house, warehouse or other place,

wherein any such goods or chattels shall, on oath or affirmation as aforesaid, be charged or suspected to be, shall after the said twenty-ninth day of **September** one thousand seven hundred and fifty-seven, on request made to him, her, or them, to open the same, by any peace officer authorized to search there, by warrant from a Justice or Justices of the Peace for the county, riding, division, city, liberty, town or place, in which such house, warehouse or other place shall be situate, refuse to open the same, and permit the same to be searched, it shall be lawful for any such peace officer to break open any such house, warehouse, or other place, in the day-time, and to search as he shall think fit therein, for the goods or chattels suspected to be there, doing no wilful damage; and if any person or persons shall oppose or hinder any such search, and shall be thereof convicted before any such Justice or Justices, by the oath of one or more credible witness or witnesses, every person so offending in the premises shall forfeit for every such offence the sum of five pounds; and in case such forfeiture be not immediately paid down, or within the space of twenty-four hours, the Justice or Justices before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or some other publick prison of such county, riding, division, city, liberty town or place, there to be kept to hard labor for any time not exceeding one month, nor less than five days, unless in the meantime such forfeiture shall be paid; and such forfeiture, when recovered, shall forthwith go and be applied to and for the use of the poor of the parish wherein such offence shall have been committed; and if upon the search of the house, warehouse, or other place, of any such suspected person or persons as aforesaid, any of the goods or chattels which shall have been so knowingly and unlawfully pawned, pledged, or exchanged as aforesaid, shall be found, and the property of the owner or owners from whom the same shall have been unlawfully obtained or taken, shall be made out to the satisfaction of any such Justice or Justices, by the oath of one or more credible witness or witnesses, or (if any such witness or witnesses be of the people called **Quakers**) by solemn affirmation, or by the confession of the person or persons charged with any such offence, any such Justice or Justices shall thereupon cause the goods and chattels found on any such search, and unlawfully pawned, pledged, or exchanged as aforesaid, to be forthwith restored to the owner or owners thereof.

§10. And where goods and chattels are often pawned or pledged for securing the payment of money lent thereon, and the interest thereof; and although when the money becomes due, the borrowers, or their representatives, are desirious to repay the same, and the interest due thereon, and make tender thereof to the person or persons with whom the same are so pawned or pledged, they are frequently under great difficulties to get back the goods and chattels so pawned, and are often under necessity to commence suits at law for the recovery thereof, to their great expense; For remedy whereof, Be it enacted by the authority aforesaid, That from and after the said twenty-ninth day of **September** one thousand seven hundred and fifty-seven, if any goods or chattels shall be pawned or pledged for securing any money lent thereon, not exceeding in the whole the principal sum of ten pounds, and the interest thereof; and if within two years after the pawning or pledging thereof, proof having been made on oath, by one or more credible witness or witnesses, or by producing a duplicate of the entry directed to be given by this act as aforesaid, before any such Justice or Justices or by solemn affirmation (if the person be of the people called **Quakers**) to the satisfaction of any such Justice or Justices of the pawning or pledging of any such goods or chattels within the said space of two years, any such pawner or pawners who was or were the real owner or owners of such goods or chattels at the time of the pawning or pledging thereof, his, her, or their executors, administrators or assigns, shall tender unto the person or persons who lent on the security of the goods or chattels pawned, his executors, administrators or assigns, the principal money borrowed thereon, and all interest due for the same, together with such charges for the warehouse-room of the goods or chattels pawned, as shall be agreed on at the time of the pawning of such goods or chattels in pawn, his executors, administrators or assigns, shall thereupon neglect or refuse to deliver back the goods or chattels so pawned, for any sum or sums of money not exceeding the said principal sum of ten pounds, to the person or persons who borrowed the money thereon, his, her, or their executors, administrators or assigns; then and in any such case, on oath, or (if the person or persons be of the people called **Quakers**) on solemn affirmation thereof made by the pawner or pawners thereof, his, her, or their executors, administrators or assigns, or some other credible person, any Justice or Justices of the Peace of the county, riding, division, city, liberty, or place where the person or persons who took such pawn as aforesaid, his executors, administrators or assigns shall dwell, on the application of the borrower or borrowers his, her, or their executors, administrators or assigns, is and are hereby required to cause such person or persons who took such pawn his, her, or their executors, administrators or assigns, within the jurisdiction of the Justice or Justices, to come before such Justice or Justices; and such Justice or Justices is and are hereby authorized and required to examine on oath, or solemn affirmation, as the case may require, the parties themselves, and such other credible persons as shall appear before him or them, touching the premises; and if tender of the principal money due, and all interest thereof, together with charges for warehouse-room as aforesaid, shall be proved by oath or affirma-

tion as aforesaid, to have been made, such principal money not exceeding the said sum of ten pounds, to the lender or lenders thereof, his, her, or their executors, administrators or assigns, by the borrower or borrowers of such principal money, his, her, or their executors, administrators or assigns, within the said space of two years after the said pawning or pledging of the goods or chattels; then on payment by the borrower or borrowers, his, her, or their, executors, administrators or assigns, of such principal money, and the interest due thereon, together with such charges for warehouse-room of the goods or chattels so pawned or pledged as aforesaid, to the lender or lenders, his, her, or their executors, administrators or assigns; and in case the lender or lenders, his, her, or their executors, administrators or assigns, shall refuse to accept thereof on tender thereof to him, her, or them made, by the borrower or borrowers, thereof, his, her, or their executors, administrators or assigns, before any such Justice or Justices, such Justice or Justices shall thereupon, by order under his hand, or their hands, direct the goods or chattels so pawned, forthwith to be delivered up to the pawner or pawners thereof, his, her, or their executors, administrators or assigns; and if the person or persons who shall have lent any principal sum or sums of money, not exceeding in the whole the said sum of ten pounds, on any goods or chattels pawned, his, her, or their executors, administrators or assigns, shall neglect or refuse to deliver up or make satisfaction for the goods or chattels, which shall be proved to the satisfaction of such Justice or Justices as aforesaid, to have been so pawned, as any such Justice or Justices of the Peace as aforesaid shall order and direct; then any such Justice or Justices shall, and is and are hereby authorized and required to commit the party or parties so refusing to deliver up or make satisfaction for the same, to the house of correction, or some other publick prison of the county, riding, division, city or place wherein the offender or offenders shall reside, or be convicted; there to remain without bail or mainprize, until he, she, or they shall deliver up the goods or chattels so pawned and continuing redeemable as aforesaid, according to the order of such said Justice or Justices, or make satisfaction or compensation for the value thereof, to the party or parties intitled to the redemption of such goods or chattels so pawned, and continuing redeemable as aforesaid.

§11. And be it further enacted by the authority aforesaid, That if any pawn or pledge of goods or chattels, of what kind soever, made by or for the proprietor or proprietors thereof, shall remain unredeemable for the space of two years, then every such pawn or pledge shall be forfeited; and it shall and may be lawful to and for every such person or persons, to whom such goods or chattels have been pawned or pledged, to sell the same; any law, statute, custom or usage to the contrary thereof notwithstanding; subject nevertheless to account for the over-plus if any shall be, of the produce of all such goods or chattels which have been pledged for two pounds and upwards, as by this act is directed.

§12. Provided always, and be it further enacted by the authority aforesaid, That every person or persons to whom any goods or chattels shall have been pawned or pledged, shall from time to time enter in a book or books, to be kept for that purpose a true and just account of the sale of all goods and chattels pawned to him, her, or them, for two pounds, or upwards, which shall be sold by any such person or persons, expressing the day when, the money for which, and the name and place of abode of the person to whom such goods or effects shall be sold for more than the principal money, with interest, and the charge of warehouse-room as aforesaid, due thereon at the time of such sale, the over plus shall by every such person or persons be paid on demand to the person by or on whose account such goods or chattels were pawned, his, her, or their executors, administrators or assigns; and such person or persons who pawned or pledged such goods or chattels, his, her, or their executors, administrators or assigns, shall for his, her, or their satisfaction in this matter, be permitted to inspect the entry to be made as aforesaid of every such sale, paying for such inspection the sum of one penny and no more; and in case any person or persons shall refuse to permit any such person or persons who pawned or pledged such goods or chattels, to inspect such entry as aforesaid in any such book or books, such person or persons, if an executor or executors, administrator or administrators, or assignee or assignees, at such time producing his, her, or their letters testamentary, letters of administration or assignment; or in case the goods or effects were sold for more than the sum entered in any such book or books; or if any such person or persons shall not make such entry, or shall not have **bona fide** sold the goods or chattels pawned for the best price that he, she, or they might have reasonably had or got for the same, without his, her, or their wilful default; or shall refuse to pay such overplus, upon demand to the pawner or pawners, his, her, or their executors, administrators or assigns; he or they producing such their letters testamentary, letters of administration or assignment; every such person or persons so offending shall for every such offence forfeit treble the value of such goods and chattels to the person or persons by whom, or on whose account such goods or chattels were pawned, his, her, or their executors, administrators or assigns, to be recovered by action of debt, bill, plaint or information, in any of his Majesty's Courts of records at **Westminster**.

§13. Provided always, and be it further enacted by the authority aforesaid, That no fee or gratuity whatsoever shall be had, taken or received, for any summons or summonses, warrant or warrants, granted by any Justice or

Justices of the Peace, in pursuance of this act, so far as the same relates to goods and chattels pawned, pledged, taken in exchange, or unlawfully disposed of.

§23. And be it further enacted by the authority aforesaid, That the statute made in the twenty-fourth year of his present Majesty's reign, intitled, **"An act for the rendering the Justices of the Peace more safe in the execution of their office, and for indemnifying Constable and others acting in obedience to their warrants,** so far as the said act relates to the rendering the Justices more safe in the execution of their office, shall extend and be construed to extend to the Justice or Justices of the Peace acting under the authority; or in execution of this act; and no action or suit shall be had or commenced against, or writ issued out, or copy or writ served upon any peace officer or officers, for anything done in the execution of this act, until notice in writing shall have been given to him or them, or left at his or their usual place of abode, by the attorney for the party commencing such action, or suing out or serving the copy of the said writ, which said notice in writing shall contain the name and place of abode of the person who is to bring such action, together with the cause of action or complaint; and the name and place of abode of the said attorney shall be underwrote or indorsed thereon; and any peace officer or officers shall be at liberty, and may, by virtue of this act, at any time within fourteen days after such notice, tender or cause to be tendered any sum or sums of money, as amends for the injury complained of, to the party complaining, or to the said attorney; and if the same is not accepted of, the defendant or defendants, in such action or actions, may plead such tender in bar of such action or actions, together with the general issue, or any other plea, with leave of the Court; and if upon issue joined upon such tender, the jury shall find the amends tendered to have been sufficient, the said jury shall find a verdict for the defendant or defendants; and in such case, or if the plaintiff shall become nonsuit or discontinue his action, or if judgment shall be given for the defendant or defendants upon demurrer, the defendant or defendants shall be intitled to his and their costs; and if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, and also shall find against the defendant or defendants on such other plea or pleas by them pleaded, the said jury shall give a verdict for the plaintiff, and such damages as they shall think proper, for which the plaintiff shall have judgment, together with his, her, or their full costs.

PERJURY

23 GEORGE II, CHAPTER 11

Section 1 of this act provided that an indictment for perjury should be sufficient without setting forth the bill, answer, declaration or other pleading in connection with which the perjury was alleged to have been committed, or the commission or authority of the court. Section 2 made the same provision on indictments for subornation of perjury. Both are superseded by Section 906.16, Florida Statutes, 1941.

Section 3 authorized a judge during the session of his court, or within 24 hours afterwards, to direct a prosecution for perjury against any witness examined before him and to assign counsel to defend such witness. Superseded by Section 932.41, Florida Statutes, 1941.

PLEAS AND PLEADING

1 HENRY V, CHAPTER 5

For this statute, see title "Indictment," supra.

27 ELIZABETH, CHAPTER 5

This statute provided that after demurrer was joined, the court should proceed to give judgment according to the substance of the parties' claims, disregarding all defects of forms not brought in issue by special demurrer. It also allowed the court to amend defects of form other than those specially attacked by demurrer. Superseded by Sections 50.16, 50.20, 50.24 and 63.26, Florida Statutes, 1941.

Under this statute, as well as under 4 & 5 Anne, c. 16, a special demurrer was necessary to reach any defect or fault in form. Special demurrers have been abolished in this state. A. C. L. R. R. Co. v. Benedict Pineapple Co., 52 Fla. 165, 42 So. 529.

8 AND 9 WILLIAM III, CHAPTER 11

Section 7 of this act is reenacted almost verbatim by Section 45.14, Florida Statutes, 1941, and is omitted for that reason.

§8. And be it further enacted, That in all actions, which from and after the said five and twentieth day of March, one thousand six hundred ninety and seven, shall be commenced or prosecuted in any of his Majesty's Courts of record, upon any bond or bonds, or on any penal sum, for nonperformance of any covenants, or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury upon trial of such action or actions, shall and may assess, not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned, as the plaintiff upon the trial of the issue shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by confession, or **nihil dicit,** the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, upon which shall issue a writ to the sheriff of that county where the action shall be brought, to summon a jury to appear before the Justice or Justices of Assize, or **nisi prius,** of that county, to enquire of the truth of every one of those breaches, and to assess the damages that the plaintiff shall have sustained thereby; in which writ it shall be commanded to the said Justice or Justices of Assize, or **nisi prius,** that he or they shall make return thereof to the Court from whence the same shall issue, at the time in such writ mentioned; and in case the defendant or defendants, after such judgment entred, and before any execution executed, shall pay unto the Court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entered upon record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their executors or administrators shall be fully paid or satisfied of all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expences for executing the said execution, the body, lands, or goods of the defendant, shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record; but notwithstanding in each case such judgment shall remain, continue, and be, as a further security to answer to the plaintiff or plaintiffs, and his or their executors or administrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing contained, upon which the plaintiff or plaintiffs may have a **scire facias** upon the said judgment against the defendant, or against his heir, terre-tenants, or his executors or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively to show cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation, for assessing of damages upon trial of issues joined upon such breaches, or inquiry thereof upon a writ to be awarded in manner as aforesaid; and that upon payment or satisfaction in manner as aforesaid; of such future damages, costs, and charges as aforesaid, all further proceedings on the said judgment are again to be stayed, and so **toties quoties,** and the defendant, his body, lands, or goods, shall be discharged out of execution, as aforesaid.

The eighth section of this statute is a highly remedial provision. Before the statute, in an action on a bond secured by a penalty, the plaintiff recovered judgment for the penalty and might sue out execution therefore, although the damages actually sustained by breach of the obligation were small. The defendant could only be relieved by an appeal to a Court of Equity. This statute was intended to give the plaintiff relief up to the full damages he had sustained, and to protect the defendant from the payment of more than was in conscience due; and to render unnecessary the proceeding in equity to obtain relief from an unconscientious demand of the whole penalty when a less sum only was due. 5 Term R. 542. 1 Saund. R. 58. 2 Sand. R. 187. a. (Thompson)

Professor Crandall in his Florida Common Law Practice, §168. says that in declaring on bonds with special conditions the plaintiff should set out the condition and assign the breaches in his declaration. He also states that the old method of framing the count for the penalty only, without mentioning the condition or assigning any breaches, is perhaps available but not advantageous.

4 GEORGE II, CHAPTER 26

§1. Whereas many and great mischiefs do frequently happen to the subjects of this Kingdom, from the proceedings in Courts of Justice being in an unknown language, those who are summoned and impleaded having no knowledge of what is alleged for or against them in the pleadings of their lawyers and attornies, who use a character not legible to any but persons practicing the bar: To remedy these great mischiefs, and to protect the lives and fortunes of the subjects of that part of Great Britain called England, more effectually than heretofore, from the peril of being ensnared or brought in danger by forms and proceedings in Courts of Justice, in an unknown language, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons of Great Britain in Parliament assembled, and by the authority of the same, That from and after the

twenty-fifth day of March one thousand seven hundred and thirty three, all writs, process and returns thereof, and proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, and all patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all proceedings of Courts leet, Courts Baron and Customary Courts, and in all copies thereof, and all proceedings whatsoever in any Courts of justice within that part of Great Britain called England, and in the Court of Exchequer in Scotland, and which concern the law and administration of justice shall be in the English tongue and language only, and not in Latin or French, or any other tongue or language whatsoever, and shall be written in such a common legible hand and character, as the acts of Parliament are usually ingrossed, in, and the lines and words of the same to be written at least as close as the said acts usually are, and not in any hand commonly called Court hand, and in words at length and not abbreviated; any law, custom or usage heretofore to the contrary thereof notwithstanding. (The balance of the statute prescribing the penalty for violation is omitted.)

6 GEORGE II, CHAPTER 14

§5. And be it further enacted by the authority aforesaid, That all writs, process and returns thereof, and proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all proceedings of Courts Leet, Courts Baron, and Customary Courts, and all copies thereof, and all proceedings whatsoever in any Court of justice within England, Wales, and the town of Berwick upon Tweed, and in the Court of Exchequer in Scotland, and which concern the law and administration of justice, may from and after the twenty-fifth day of March one thousand seven hundred and thirty three, be written or printed in a common legible hand and character, and with the like way or writing or printing, and with the like manner of expressing numbers by figures, as have been heretofore or are now commonly used in the said Courts respectively, and with such abbreviations as are now commonly used in the English language, and that no penalty or punishment shall be incurred, by virtue of the said recited act, for any other offence than for writing or printing any of the proceedings, or other the matters and things above mentioned, in any hand commonly called Court hand, or in any language except the English language; nor shall any such penalty or punishment be extended to the expressing the proper or known names of writs or other process or technical words in the same language as hath been commonly used, so as the same be written or printed in a common legible hand and character, and not in any hand commonly called Court hand; and that all prosecutions for offences against the said act shall be commenced within three months after the same shall be committed; and that the several officers in the several offices of the King's and the Lord Treasurer's Remembrancer, and in the offices of the clerk of the Pipe, and the clerk of Estreats in his Majesty's court of Exchequer, shall and may write and send out, in process for his Majesty's service, rolls, or schedules of all such debts as have been forfeited and become due and owing to his said majesty, before the said twenty-fifth day of March one thousand seven hundred and thirty three, in the same manner they used to do, provided the writ or process to be annexed to the said rolls or schedules shall be in the English tongue, and in a common legible hand, and according to the direction of the said recited act; anything in the said act made in the fourth year of his present Majesty's reign, or any other law or statute to the contrary thereof in any wise notwithstanding.

The statute was necessary to permit the use of foreign terms having a technical meaning in law and which were not susceptible to easy English translation, such as names of writs and actions.

POPULAR AND QUI TAM ACTIONS

4 HENRY VII, CHAPTER 20

Item, That where actions popular in divers cases have beēn ordained by many good acts and statutes afore this time made, for the reformation of extortions, maintenances, oppressions, injuries, exactions, and wrongs used and committed within this realm, which actions been very penal to all misdoers and offenders, in such actions condemned, and much profitable as well to the King, as to every of his subjects, that them will sue and maintain, if the same actions so sued and commenced might be truly pursued without covin or collusion. But now it is so commonly used within this realm, that if any such offenders offending in cases where any of the said actions lie, then the said misdoers or offenders, ineschewing to lease the said penalties, will cause an action popular to be commenced against them be covin of the

plaintiff, upon that case wherein they have so offended; or else if any such action, popular be commenced against any such offender by good faith, then the same offender will delay the said action, either by non-appearance or by traverse, and, hanging, the same action, the same offender will cause like action popular to be brought against him by covin, for the same cause and offence that the first action was sued, and then by covin of the plaintiff in that second action he will be condemned, either by confession, feigned trial, or release; which condemnation or release, so had by collusion and covin pleaded by the card offender, shall bar the plaintiff in the action sued in good faith: and by these subtil means of collusion and covin the said good acts and statutes seldom been executed against such offenders which causeth them to be bolder to offend the King, as well in breaking of the said statutes, laws, and peace, as in robbing, murdering, exactions, taking, quarrels, maintaining, and the King's poor subjects by extortion and many other unlawful means oppressing: Therefore the King our sovereign lord, reforming of the premises, by the advice and assent of the lord spiritual and temporal, and at the request of the said Commons, in this said present Parliament assembled, and by authority of the same, hath ordained, established, and enacted, that if any person or persons hereafter sue with good faith any actions popular, and the defendant or defendants in the same action plead any matter of recovery of action popular in bar of the said action, or else that the same defendant or defendants plead, that he or they before that time barred any such plaintiff or plaintiffs in any such action popular, that then the plaintiff or plaintiffs in the action taken with good faith may aver, that the said recovery in the said action popular was had by covin, or else to aver that the said plaintiff or plaintiffs was or were barred in the said action popular by covin, that then, if afterward the said collusion or covin so averred be lawfully found, the plaintiff or plaintiffs in that action sued with good faith, shall have recovery according to the nature of the action, and execution upon the same in likewise and effect, as though no such action afore had been had, and moreover, that it is enacted, and ordained by the authority aforesaid, That in every such action popular, wherein the defendant or defendants shall be lawfully condemned or attainted of covin or collusion, as is aforesaid, that every of the same defendants have imprisonment of two years by process of **capias** and **outlagary**, to be sued within the year after such judgment had, or at any time after, till the said defendant or defendants, shall be had and imprisoned, as is aforesaid, and that as well at the King's suit, as of every other that will sue in that behalf; and that no release of any common person hereafter to be made to any such party, whether before or after any action popular, or indictment of the same had or commenced, or made hanging the same action be in any wise available or effectual to let or surcease the said action, indictment, process, or execution. Provided alway, That no plaintiff or plaintiffs be in any wise received to aver any covin in any action popular, where the print of the same action, or else the covin or collusion have been once tried, or lawfully found with the plaintiff or plaintiffs, or against them, by trial of twelve men, and not otherwise.

There is considerable doubt as to whether any of these statutes should be carried forward as still in force. The theory of law enforcement and the collection of the King's revenues which is reflected in these statutes certainly is outmoded. However, an informer under a penal statute is still rewarded with a portion of the fine collected in at least three instances in this State. See Sections 30.20, 372.43 and 374.25, Florida Statutes, 1941.

There may be some question as to the constitutionality of the mentioned statutes, or any statute which awarded a part of the penalty collected in a criminal proceeding to the private person, responsible for the prosecution. Article XVI, Section 9 of the Florida Constitution provides that "All fines and forfeitures collected under the penal laws of the state shall be paid into the County Treasuries of the respective counties as a general county fund" etc. Of course, the courts might construe this mandate to require the payment to counties of only the net fines and penalties and to allow the deduction as costs of any parts paid to informers. See 25 C. J. §41, pg. 1168. It is a question though for judicial resolution.

It should be noted that there is a Federal statute which covers the same subject matter as these statutes. 28 U. S. C. §§825, 824. It is thought that this fact should have no influence in the determination of whether the instant British statutes are in force in Florida, since the Federal statute has no application to penalties assessed in state courts under state law. This should be true despite the fact that the act which adopted the British statutes as a part of our common law provided that there should be omitted such as were in conflict with the laws and constitution of the United States. Doubtless the Legislature intended to exclude only such British statutes as contravened some right guaranteed to residents of Florida by some Federal act or constitutional provision, and not all as should be covered by similar Federal legislation having no application in Florida. (GWB)

Penal actions are such as are given by act of Parliament, which impose a penalty, and create a forfeiture for the neglect of some duty, or commission of some crime, to be recovered by action or information:—When one part of the penalty is given to the King, or the poor, or to some public use, and the other part to the informer or prosecutor, the suit is called a *qui tam* action, because it is brought by a person, *"qui tam pro domino rege." &c. quam pro se ipso in hac parte sequntur,"* and when it is given to any common informer, or in other words, to any such person or persons who will sue for the same, such action is called a popular action, because given to the people in general 3 Black. Comm. 160.

Of the statute 4 Hen. 7. c. 20. Mr. Reeves remarks that as it had a view to the emoluments of the exchequer, it bore in it a striking mark of the genius of this reign. It had become the practice of government to enforce with rigor such penal laws as contributed to the increase of forfeitures and penalties; and every thing which prevented the full effect of such laws was to be removed. 4 Reeves Hist. Eng. Law, 141. The particular mischief which this statute was intended to provide against is fully set forth in the preamble thereto. (Thompson)

18 ELIZABETH, CHAPTER 5

§1. For redressing of divers disorders in common informers, and for better execution of penal laws, Be it enacted that every informer upon any penal statute shall exhibit his suit

in proper person, and pursue the same only by himself or by his attorney in Court, and that none shall be admitted or received to pursue against any person or persons upon any penal statute, but by way of information or original action and not otherwise; nor shall have ne use any deputy or deputies, at all; and that upon every such information which shall be exhibited, a special note be made of the very day, month and year of the exhibiting thereof into any office or to any officer which lawfully may receive the same, without any manner of antedate thereof to be made, and that the same information be accounted and taken to be of record from that time forward and not before. And be it likewise enacted for the consideration aforesaid, That no process be sued out upon any such information, until the information be exhibited in form aforesaid; and that upon every such process shall be indorsed, as well the party's name that pursueth the same process, as also the statute upon which the information in that behalf made is grounded. And every clerk making out process contrary to the tenor and provision of this act, shall forfeit and lose forty shillings for every such offence; the one half to be the Queen's majesty, her heirs and successors, and the other half to the party against whom such defective process shall be awarded, to be recovered in any Court of record, by action of debt or information, in which no essoin, protection, injunction or wager of law shall be permitted or allowed.

(§2. Relates to the place of trial, and to trials at bar, and not of force in Florida.)

§3. And be it further enacted, That no such informer or plaintiff shall or may compound or agree with any person or persons that shall offend, or shall be surmised to offend, against any penal statute, for such offence committed, or pretended to be committed, but after answer made in Court unto the information or suit in that behalf exhibited or prosecuted: nor after answer, but by the order and consent of the Court in which the same information or suit shall be depending; upon the pains and penalties hereafter in this present act set down and declared: And that if any such informer or plaintiff as aforesaid, shall willingly delay his suit, or shall discontinue or be nonsuit in the same, or shall have the trial or matter past against him therein by verdict or judgment of law; That then in every such case the same informer or plaintiff shall yield, satisfy and pay unto the party defendant, his costs, charges and damages, to be assigned by the Court in which the same suit shall be attempted: For the recovery and execution whereof every such defendant shall immediately upon the same costs, charges and damages assigned, have his **capias ad satisfa. fieri facias,** or **elegit,** to be awarded unto him, out of the same Court in which the same shall be so assigned as is aforesaid, as in other cases of execution.

§4. This statute prescribed an additional penalty for breach of §3, supra, by fine and pillory, and is not applicable in Florida.

§5. Provided always, and nevertheless be it enacted, That it shall and may be lawful to and for any person or persons grieved by means of any manner of maintenance, champerty, buying of titles or imbracery, to pursue upon any the statutes provided and set forth against maintenance, champerty, buying of titles or imbracery as he or they might have done before the making of this act; any thing in this act contained to the contrary notwithstanding.

§6. Provided also, That this act shall not extend to any suit already depending nor shall restrain any certain person, body politick or corporate, to whom or to whose use any forfeiture, penalty or suit is or shall be specially limited or granted by virtue of any statute, and not generally to any person that will sue, but that every such certain person, body politick or corporate, which might use or inform, as if this act were not made, may in such case sue, inform and pursue, as he or they might have done if this act were never had nor made.

§7. And provided also, That neither this act, nor any thing therein contained, shall in any wise extend to any such officers of record, as have in respect of their offices heretofore lawfully used to exhibit informations or sue upon penal laws, nor to any officers informing or pursuing for matters only concerning his or their offices, but that they and every of them may inform and pursue in that behalf, as they might have done before the making of this act; any thing in this act contained to the contrary in any wise notwithstanding.

§8. This act to take force and effect from the Feast of Easter next coming, and from thenceforth to endure unto the end of the first session of the next Parliament. (Made perpetual by 27 Eliz. c. 10. 31 Eliz. c. 5.)

By sec. 1 of this statute none shall pursue against any person on a penal statute but by way of information, or original action, except where the penalty is limited to a certain person, & c. yet popular actions in K. B. or the Exchequer seem not within the meaning of the statute; for it doth not restrain the suit to original writs, but only to original actions, and such actions by bill are properly original ones in the Courts in which they are commenced; and therefore it seems a reasonable construction, that the meaning of the statute was only to restrain suits commenced in inferior Courts, and afterwards removed into Superior. Bac. Abr. *titl. Actions qui tum.* 2 Hawk. P. C. 371, 372.

It has likewise been held under this section that an infant cannot be an informer, for he must sue by guardian. *Megge v. Ellis,* 2 Hawk. P. C. 279.n. (1)

The §3, it has been held, extends only to suits by common informers, and not to those by a party grieved; but it extends to *qui tam informers,* as well as to those who sue for the whole penalty; and that it extends to subsequent penal statutes as well as those which were in being when it was made; and that it also extends to the compounding of suits commenced in courts which have no jurisdiction, as much as if they had a jurisdiction, 2 Hawk. P. C. 390, citing *Wilkinson v. Alluat,* Cowp. R. 366. Hutton 35. 1 Keb. R. 106. 1 Liderfin R. 311.

As to costs, although this statute does not extend to party grieved, yet if such party bring his action, and such action be for any offence, or wrong, personal, immediately supposed to be done to the plaintiff, or plaintiffs: or whatsoever the nature of the action may be, if the plaintiff might have costs in case judgment should be given for him, he shall pay them on a nonsuit, or verdict against him, by virtue of 23 Hen. 8 c. 15. and 4 Jac. 1 c. 3. 2 Hawk. P. C. 381. *Mayor of Plymouth v. Werring,* Willes R. 440. *Coll. of Physicians v. Harrison,* 9 Barn. & Cress. R. 526. See also 3 Burr R. 1723. Cowp. 366. 2 Keble R. 106.

31 ELIZABETH, CHAPTER 5

§1. For what divers of the Queen's Majesty's subjects, be daily unjustly and disquited by divers common Informers upon penal statutes, notwithstanding any former statute that hath been heretofore made against their disorders; For remedy whereof Be it enacted by the authority of this present Parliament, That all former statutes made for reformation of disorders of such common Informers, not repealed or altered by this act, shall be put in due execution: And that no person, other than the party grieved, after twenty days after the end of this session of Parliament, shall be received to inform or sue upon any penal statute, that before that time hath been for any misdemeanor, by any order of any the Queen's Majesty's courts, ordered not to follow or pursue any suit upon any penal statute.

§2. This section required all actions for the collection of penalties to be brought in the county where the act complained of was committed. Superseded by venue statutes of Florida. See Chapter 910, Florida Statutes, 1941.

§3. Provided always, That this act, nor anything herein contained, shall in any wise extend to any such officers of record, as have in respect of their offices heretofore lawfully used to exhibit informations, or sue upon penal laws; but that they and every of them may inform and pursue in that behalf, as they might have done before the making of this act; anything in this act to the contrary in any wise notwithstanding.

§4. This section provided for certain exceptions to the venue requirement of Section 2 hereof and is likewise not considered in force.

§§5, 6. These sections provided a one-year period of limitation for bringing any popular or qui tam action. Superseded by Section 95.11(6), Florida Statutes, 1941, which enlarges the period to two years.

§7. This section repealed the Statute 7 Hen. VIII, Ch. 3, and conferred jurisdiction of certain penal actions upon certain inferior courts. So far as regulating the jurisdiction of court, it would be inapplicable and for that reason is omitted.

21 JAMES I, CHAPTER 4

This statute, Sections 1, 2, 3, 4 and 5, confirmed and enforced 31 Eliz. c. 5 as to bringing of penal actions in the county where the act complained of was committed. It also allowed the defendant to plead the general issue and show in bar any matter which he might have pleaded specially. Not in force. In addition to Ch. 910, Florida Statutes, 1941, as to venue, see Section 52.18(1), Florida Statutes, 1941, as to plea of not guilty.

QUAKERS

7 & 8 WILLIAM III, CHAPTER 34

8 GEORGE I, CHAPTER 13

22 GEORGE II, CHAPTER 46

These statutes provided that persons who were Quakers, being required by law to make an oath might be sworn upon their solemn affirmation instead. The statutes also provided that falsely affirming should constitute perjury. Superseded by Florida Statutes, 1941, which provide that the word "oath" shall include "affirmation" (Section 1.01); that an affirmation is equivalent to an oath (Section 90.02); that perjury shall include willfully swearing or affirming falsely. (Sections 837.01 and 837.02).

QUO WARRANTO & MANDAMUS

9 ANNE, CHAPTER 20

§§1, 2. Not in force. Section 1 provided that a person required to make a return to a writ of mandamus should file such return to the first writ of mandamus. This was designed to eliminate the necessity of alias and pluries writs to require a return to be made. Section 2 allowed the relator to traverse the truth of any fact alleged in the return. Prior to this enactment, a relator could not join issue as to facts if the return was legally sufficient, his sole remedy being an action on the case for a false return. Superseded by our statutes and court rules governing procedure. See Section 47.10, Florida Statutes, 1941, Rules 30 and 31 of the Supreme Court, and Common Law Rules 86 and 87.

§3. Not in force. This section exempted from further suits any party who had damages assessed against him for a false return under Section 2, supra.

§4. And be it further enacted by the authority aforesaid, That from and after the said first day of Trinity Term, in case any person or persons shall resurp, intrude into, or unlaw-

fully hold and execute any of the said offices or franchises, it shall and may be lawful to and for the proper officer in each of the said respective Courts, with the leave of the said Courts respectively, to exhibit one or more information or informations in the nature of a Quo Warranto, at the relation of any person or persons desiring to sue or prosecute the same, and who shall be mentioned in such information and informations to be the relator or relators against such person or persons, so usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises, and to proceed therein in such manner as is usual in cases of information in the nature of a quo warranto; and if it shall appear to the said respective Courts, that the several rights of divers persons to the said offices or franchises may properly be determined on one information, it shall and may be lawful for the said respective Courts to give lease to exhibit one such information against several persons, in order to try their respective rights to such offices or franchises, and such person or persons, against whom such information or informations in the nature of a Quo warranto shall be sued or prosecuted, shall appear and plead as of the same term or sessions in which the said information or informations shall be filed, unless the Court where such information shall be filed, shall give further time to such person or persons, against whom such information shall be exhibited to plead; and such person or persons, who shall sue or prosecute such information or informations in the nature of a Quo warranto, shall proceed thereupon with the most convenient speed that may be; any law or usage to the contrary thereof in any wise notwithstanding.

§5. And be it further enacted by the authority aforesaid, That from and after the said first day of Trinity Term, in case any person or persons, against whom any information or informations in the nature of a Quo warranto shall in any of the said cases be exhibited in any of the said Courts, shall be found or adjudged guilty of an usurpation, or intrusion into, or unlawfully holding and executing any of the said offices, or franchises, it shall and may be lawful to and for the said Courts respectively, as well to give judgment of ouster against such person or persons, of and from any of the said offices, or franchises, as to fine such person or persons respectively, for his or their usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises; and also it shall and may be lawful to and for the said Courts respectively, to give judgment, That the relator or relators, in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they for whom such judgment shall be given, shall recover his or their costs therein expended against such relator or relators; such costs to be levied in manner aforesaid.

§6. Not in force. This section provided that the Court should allow the parties to a mandamus or quo warranto proceeding such time to make returns, replies and otherwise plead as should be reasonable. Omitted for reasons stated under §§1, 2, supra.

§7. And be it further enacted by the authority aforesaid, That after the said first day of **Trinity** Term, an act made in the fourth year of her Majesty's reign, intitled, **An act for the amendment of the law, and the better advancement of justice**, and all the statutes of **Jeofayles**, shall be extended to all writs, of **mandamus**, and informations in the nature, of a **Quo warranto**, and proceedings thereon, for any the matters in this act mentioned.

It is not entirely clear that Chapter 80, Florida Statutes, 1941, does not provide every remedy contemplated by §§4 & 5 of this statute. However, Judge Whitfield, in a concurring opinion, in State ex rel. v. Noel, infra, stated that the statute is in force and for that reason the sections mentioned are included.

By the Statute of 9 Anne, Ch. 20, it was required that in informations in the nature of quo warranto relating to corporate offices or franchises the name of the relator should be mentioned. State v. Gleason, 12 Fla. 190.

It provided a remedy for the ouster of persons who usurped certain public offices by information in the nature of quo warranto. State ex rel. Smith v. Anderson, 26 Fla. 240, 8 So. 1.

In England, under 9 Anne, c. 20, an information in the nature of quo warranto was regarded, though criminal in form, as a civil proceeding to test the right of a party to exercise a franchise and to oust a wrongful possessor. It is so regarded in this State. Buckman v. State ex rel. Spencer, 34 Fla. 48, 15 So. 697.

In a proceeding by information in the nature of quo warranto, a jury trial may be had in proper instances. Id.

Under the Statute 9 Anne, c. 20 §4, any officer of the Court, including in Florida any attorney at law, might file an information in the nature of a quo warranto to test the right of a person to a public office. (Justice Whitfield's concurring opinion. But see dissent by Justice Buford where it is suggested that Sec. 80.01, Florida Statutes, 1941, is superseding.) State ex rel. City of St. Petersburg v. Noel, 114 Fla. 175, 154 So. 214.

On the right of attorney general to test right of certain corporations to exist, see Sec. 619.09, Florida Statutes, 1941.

4 & 5 WILLIAM AND MARY, CHAPTER 18

This statute prohibited the clerk of the Court of King's Bench from receiving or filing any information without express order of the Court, unless the clerk should first secure from the relator or informer a recognizance in the amount of twenty pounds to assure full prosecution of the information and the payment of costs if they should be assessed against such relator. It was in reality a costs statute, although it was apparently disapproved by the Florida Supreme Court on the ground that our theory of separate departments of government prevented the judiciary from controlling the executive law enforcing agencies. See State v. Gleason, 12 Fla. 190. It is also believed that our general costs statute, Section 58.04, Florida Statutes, 1941, and the provision requiring certain intervening parties in a proceeding under Chapter 80, Florida Statutes, 1941, to secure costs, make this British statute inoperative in Florida.

RAPE

3 EDWARD I, CHAPTER 13—STATUTE WESTMINSTER, THE FIRST

18 ELIZABETH, CHAPTER 7, SECTION 4

The first of these statutes reduced the crime of rape to a misdemeanor punishable by fine and imprisonment for 2 years. The crime was defined as ravishing of any woman against her consent, or any maiden within age with or without her consent. The other statute made carnal knowledge with a female under the age of ten years a felony. Both statutes are superseded by Chapter 794, Florida Statutes, 1941.

For discussion of 18 Eliz. c. 7, §4, see McKinney v. State of Florida, 29 Fla. 565, 10 So. 732.

REAL ACTIONS

52 HENRY III, CHAPTER 29

3 EDWARD I, STATUTE 1—STATUTE WESTMINSTER, THE FIRST

6 EDWARD I, CHAPTERS 1, 6—STATUTE OF GLOUCESTER

13 EDWARD I, STATUTE 1, CHAPTERS 3, 6, 20, 24, 25 AND 26—STATUTE WESTMINSTER, THE SECOND

20 EDWARD I, STATUTE 1

20 EDWARD I, STATUTE 3—STATUTE DE DEFENSIONE JURIS

34 EDWARD I, STATUTE 1—STATUTE DE CONJUNCTION FEOFFATIS

2 EDWARD III, CHAPTER 17—STATUTE OF NORTHAMPTON

14 EDWARD III, STATUTE 1, CHAPTER 18

25 EDWARD III, STATUTE 5, CHAPTER 16

13 RICHARD II, STATUTE 1, CHAPTER 17

4 HENRY IV, CHAPTER 7

8 HENRY VI, CHAPTER 9

11 HENRY VI, CHAPTERS 2, 3

21 HENRY VIII, CHAPTER 3

32 HENRY VIII, CHAPTER 33

These statutes embodied substantive and procedural rights and rules pertaining to actions for the recovery of possession and title to real property. They originated under the feudal system (the last having been enacted in A. D. 1540) and were as cumbersome as that system was complicated. In England, all real actions with a few exceptions were abolished in 1834. They have generally been supplanted in the United States by common law or statutory ejectment, or by a statutory writ of entry. 52 C. J., page 1162. In Florida they are superseded by the actions of ejectment (Chapter 70, Florida Statutes, 1941) and of forcible entry and unlawful detainer (Chapter 82, Florida Statutes, 1941).

The statute 6 Edw. I, Ch. 1, §2 is the foundation of all costs statutes in the English law. Robinson v. Roberts, 16 Fla. 156.

RIOTS

2 EDWARD III, CHAPTER 3

STATUTE OF NORTHAMPTON

This statute affirmed the common law prohibition against the carrying of arms before the justices, in assemblies, at night, etc. Superseded by Chapter 790, Florida Statutes, 1941, which regulates the same subject.

34 EDWARD III, CHAPTER 1

This statute prescribed the qualifications and authority of justices of the peace. Superseded by Article V, Sections 21 and 22, Florida Constitution, and Chapter 932, Florida Statutes, 1941. See also Section 932.01, Florida Statutes, 1941.

17 RICHARD II, CHAPTER 8

This statute required sheriffs and other officers, as well as all subjects of the King, to join in the suppression of riots. Superseded by Sections 870.04, 144.01 and 144.02, Florida Statutes, 1941.

13 HENRY IV, CHAPTER 7

Section 1 of this statute required justices and sheriffs to arrest rioters and those engaged in unlawful assembly and to record their offense. Superseded by Section 870.04, Florida Statutes, 1941. Section 4 of this statute required the justice of peace nearest the peace disturbance to quell the same. Not considered in force since the jurisdiction of a justice of peace in Florida is ordinarily limited in criminal matters to acts occurring in his district. It is noted, however, that Section 870.04, Florida Statutes, 1941, requires "any constable or justice of the peace of the county" to put down riots and unlawful assemblies. If this section enlarges the justices' jurisdiction, then it is the controlling statute and not the English act mentioned.

2 HENRY V, STATUTE 1, CHAPTER 8, §2

This statute required certain persons to assist in putting down a riot. Superseded by Sections 144.02 and 870.04, Florida Statutes, 1941.

1 GEORGE I, STATUTE 2, CHAPTER 5

Sections 1, 2, 3, 6 and 8, of this statute were deemed in force in Florida by Judge Thompson. They defined and punished tumults and riotous assemblies, and must be considered superseded by Chapter 870, Florida Statutes, 1941, most of which was enacted after Judge Thompson's compilation.

SHERIFFS AND GAOLERS

13 EDWARD I, STATUTE 1, CHAPTER 39

This statute provided how writs should be delivered to sheriffs and prescribed punishment of sheriffs for false returns, refusal to execute and refusal to make any return. Superseded by Sections 30.15, 30.19 and 30.20, Florida Statutes, 1941. See also Section 839.19, Florida Statutes, 1941.

28 EDWARD I, STATUTE 3, CHAPTER 16

This statute confirmed the foregoing statute as to the making of false returns. Superseded by Section 30.20, Florida Statutes, 1941.

4 EDWARD III, CHAPTER 10

The statute required sheriffs and jailors to receive prisoners without requiring large indemnities for their keep. Not in force. See Sections 839.21 and 30.25, Florida Statutes, 1941.

14 EDWARD III, STATUTE 1, CHAPTER 10

Item, in the right of the gaols, which were wont to be in ward of the Sheriffs, and annexed to their bailiwicks; It is assented and accorded, that they shall be rejoined to the sheriffs, and that the sheriffs shall have the custody of the same gaols, as before this time they were wont

to have; and they shall put in such keepers for whom they will answer.

(The residue of this statute relating to the offense of compelling prisoners by duress to accuse others, superseded by the act of Feby 10, 1832, Section 950.09, Florida Statutes, 1941.)

The sheriff has no exclusively inherent or constitutional right to the custody, care and keeping of county convicts or to the emolument to be derived therefrom. Our constitution leaves to the Legislature the matter of prescribing the sheriff's duties. Lang v. Walker, 46 Fla. 248, 35 So. 78.

Several Florida statutes are based on assumption that the sheriff is the keeper of the jail and prisoners, and that the county commissioners have the duty of caring for the building. See Sections 950.08, 142.14 and 30.28, Florida Statutes, 1941. His duty to execute all process might, where it directs him to arrest and hold a person, be construed to make him custodian of the jail. Otherwise, there is no specific statute giving the county jail into his care, and since our custom is in accord with the English statute above, it is deemed in force.

23 HENRY VI, CHAPTER 9

This statute inserted supra under title, **Offices and Officers.**

3 HENRY VII, CHAPTER 3

This statute required the sheriff to certify the names of all his prisoners at the general Gaol-delivery. Not in force.

43 ELIZABETH, CHAPTER 6

This statute penalized any sheriff who should summon a person to court, or attach his goods or body, without a warrant. Not in force. See Section 144.01, Florida Statutes, 1941.

11 & 12 WILLIAM III, CHAPTER 19

Section 3 of this statute required all felons to be lodged in the common gaol, and made the sheriff the keeper thereof. Superseded by Section 775.06, Florida Statutes, 1941.

STOCK—JOBBING

7 GEORGE II, CHAPTER 8

This statute prohibited contracts upon which any premium or consideration in the nature of a premium should be paid for the liberty to put upon, or to deliver, receive, accept or refuse any public or joint stock or other public securities. It also prohibited all wagers and all contracts of "putts and refusals," or the giving or receiving of money to compound differences relating to stock not actually delivered, or the sale of stock of which the seller was not possessed at time of sale. The Federal Congress and the Legislature of the State of Florida have so far regulated the sale of stocks, bonds and other securities, and the practices of securities brokers that this statute must be considered superseded. See Chapter 517, Florida Statutes, 1941, where sale of certain securities regulated; Chapter 609, Florida Statutes, 1941, where sale of securities by common law trust regulated; Chapter 850, Florida Statutes, 1941, where certain sales on margins and dealing generally in futures prohibited; Chapter 851, Florida Statutes, 1941, where bucket shops prohibited; 15 U. S. C. Ch. 2A, 2B, 2C and 2D regulating the sale of securities in interstate or foreign commerce.

TRIAL

13 EDWARD I, STATUTE 1, CHAPTER 48—STATUTE WESTMINSTER, THE SECOND

4 ANNE, CHAPTER 16, SECTION 8

These statutes initiated the practice of jury views. 13 Edw. I, St. 1, c. 48 confined the view to certain real actions, where land was involved. 4 Anne, c. 16 extended the practice to include all civil actions in which the judge should determine a view proper and necessary. Superseded by Sections 914.01 (6) and 918.05, (as to criminal cases), Section 73.08 (as to condemnation cases), and Section 54.16 (as to civil actions), Florida Statutes, 1941.

3 GEORGE II, CHAPTER 25

§11. And be it further enacted by the authority aforesaid, that the name of each and every person who shall be summoned and impannelled as aforesaid, with his addition, and the place of his abode, shall be written in several and distinct pieces of parchment or paper, being all, as near as may be, of equal size and bigness, and shall be delivered unto the marshal of such Judge of Assize or **Nisi Prius**, or of the said Great Sessions, or of the session for the said Counties Palatine, who is to try the causes in the said county, by the under sheriff of the said County, or some agent, of his; and shall by direction and care of such marshal be rolled up all as near as may be, in the same manner, and put together in a box or glass to be provided for that purpose; and when any cause shall be brought on to be tried some indifferent person, by direction of the Court, may and shall in open Court, draw out twelve of the said parchments or papers one after another; and if any of the persons whose names shall be so drawn, shall not appear, or be challenged and set aside, then such further number, until twelve persons be drawn who shall appear, and after all causes of challenge shall be allowed as fair and indifferent; and the said twelve persons so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try the said cause; and the names of the persons so drawn and sworn shall be kept apart by themselves in some other box or glass to be kept for that purpose, till such jury shall have given in their verdict, and the same is recorded, or until the jury shall, by consent of the parties, or leave of the Court, be discharged; and then the same names shall be rolled up again and returned to the former box or glass, there to be kept with the other names remaining at that time undrawn, and so **toties quoties**, as long as any cause remains then to be tried.

§12. Provided always, that if any cause shall be brought on to be tried in any of the said Courts respectively, before the jury in any other cause shall have brought in their verdict, or be discharged, it shall and may be lawful for the Court to order twelve of the residue of the said parchments or papers, not containing the names of any of the jurors who shall not have so brought in their verdict, or be discharged, to be drawn in such manner as is aforesaid, for the trial of the cause which shall be so brought on to be tried.

Section 14 of this statute prescribed the manner of selecting the viewers in case a jury view was granted. Omitted for the reasons given under 13 Edw. 1, Stat. 1, c. 48 and 4 Anne, c. 16, supra.

28 EDWARD III, CHAPTER 3

This statute provided that no man should be "put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law." Superseded by Constitution of the State of Florida and Constitution of the United States where due process of law is confirmed to every man.

2 HENRY IV, CHAPTER 7

This statute prohibited the taking of a nonsuit after verdict. Superseded by Section 54.09, Florida Statutes, 1941.

Sec. 54.09, Florida Statutes, 1941, is in effect a reenactment of the English statute of 2 Henry IV, c. 7 providing that after verdict a plaintiff shall not be nonsuited. J. Schnarr & Co. v. Virginia-Carolina Chemical Co., 118 Fla. 258, 159 So. 39.

The right of a plaintiff to be nonsuited in this State is based on the common law of England and Statute of 2 Henry IV, c. 7, as modified by Sec. 54.09, Florida Statutes, 1941, which limits the taking of nonsuit to any time before jury retires from the bar. The directing of a verdict by the trial judge is not equivalent to a retirement of the jury from the bar, and the right to take a nonsuit is not, therefore, barred by the trial court directing a jury to return a verdict for defendant. Gulf Coast Title Co. v. Walters, 126 Fla. 739, 171 So. 763.

See also on the directing of verdict as affecting right to nonsuit, Nat. Broadway Bank v. Lesley, 31 Fla. 56, 12 So. 525; Pitt v. Abrams, 103 Fla. 1022, 139 So. 152; Haile v. Mason Hotel & Inv. Co., 71 Fla. 469, 71 So. 540; West Coast Fruit Co. v. Hackney, 98 Fla. 382, 123 So. 758.

2 & 3 EDWARD VI, CHAPTER 24

2 GEORGE II, CHAPTER 21

These statutes prescribed the venue in criminal cases. 2 & 3 Edw. VI allowed an accessory to be tried in the county where he became accessory even if principal offense was committed elsewhere. 2 Geo. II, c. 21 made possible the prosecution of a murderer in England in cases where the blow or act causing the death was struck or done elsewhere, as well as where

the blow or act was struck in England and the death occurred elsewhere. Each of these statutes is superseded by venue statutes in Florida. See Sections 910.01-910.11, inclusive, Sections 932.06-932.14, inclusive, Florida Statutes, 1941. For venue in special cases, see statutory provisions.

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2 & 3 Edw. VI, c. 24 which provided that murder by striking or poisoning a person in one county which causes his death in another county might be tried in county where death occurred is similar to Florida Statutes except our statute extended the rule to all offenses. Elliot et al. v. State, 77 Fla. 611, 82 So. 139.

14 GEORGE II, CHAPTER 17

This statute, Sections 1, 2 and 3, provided that defendant should be entitled to a judgment as of nonsuit in case of plaintiff's neglect or refusal to bring to trial a cause at issue. Not considered in force since plaintiff or defendant has privilege of causing an action which has arrived at an issue to be set for trial. See Common Law Rule 56.

25 GEORGE II, CHAPTER 37

This statute, as an added punishment for murder, provided that the murderer should be executed within two days of conviction, be confined in a separate cell and fed only bread and water. Superseded by Section 782.04, Florida Statutes, 1941, which prescribes the punishment for murder. As to mitigation of sentence upon recommendation of jury, see Section 919.23, Florida Statutes, 1941.

12 GEORGE III, CHAPTER 20

Under this statute any person who stood mute or answered evasively on arraignment for felony or piracy would have a conviction entered against him the same as if he had confessed. In conflict with and hence superseded by Section 908.03, Florida Statutes, 1941.

USES

1 RICHARD III, CHAPTER 1

This statute provided that the **cestui que use** could alien the land without the joinder of the feoffee. It created further confusion in the law of uses and contributed directly to the passage of 27 Henry VIII, Ch. 10, known generally as the Statute of Uses. This latter statute executed uses in the cestui and existing law furnished him ample power to alien the whole resulting estate. For this reason this statute is omitted.

27 HENRY VIII, CHAPTER 10

§1. Where by the common laws of this realm, Lands, Tenements, and Hereditaments be not devisable by testament, nor ought to be transferred from one to another, but by solemn Livery and Leisin, matter of record, writing sufficient made bona fide, without covin of fraud; yet never the less divers and sundry imaginations, subtle inventions and practices have been used whereby the hereditaments of this realm have been conveyed from one to another by fraudulent Feoffments, Fines, Recoveries and other assurances craftily made to secret uses intents and trusts; and also by Wills and Testaments, sometime made by **nude parolx** and words, sometime by signs and tokens, and sometime by writing, and for the most part made by such persons as be visited with sickness in their extreme agonies and pains, or at such time as they have scantly had any good memory or remembrance; at which times they being prevoked by greedy and covetius persons lying in wait about them, do many times dispose indiscreetly and unadvisedly their lands and inheritances, by reason whereof, and by occasion of which fraudulent Feoffments, Fines, Recoveries and other like assurances, to Uses, Confidences, and Trusts, divers and many heirs have been unjustly at sundry times disherited, the Lords have lost their Wards, Marriages, Reliefs, Harriots, Escheats, Aids **pur fair fitz chivalier, & pur file marier**, and scantly any person can be certainly assured of any lands by them purchased, nor know surely against whom they shall use their actions or executions for their rights, titles and duties; also men married have lost their tenances by the custesy, women their Dowers, manifest perjuries by trial of such secret Wills and Uses have been committed; the King's Highness has lost the profits and advantages of the lands of persons, attainted, and of the lands craftily put in Feoffments to the uses of aliens born, and also the profits of waste for a year and a day of lands of felons at-

tainted and the Lords their Escheats thereof, and many other inconveniences have happened, and daily do increase among the King's subjects, to their great trouble and inquietness, and to the utter subersion of the ancient common laws of this realm; for the extirping and extinguishment of all such subtle practised Feoffments, Fines, Recoveries, abuses and errors heretofore used and accustomed in this realm, to the subersion of the good and ancient laws of the same, and to the intent that the King's Highness or any other his subjects of this realm, shall not in any wise hereafter by any means or inventions be deceived, damaged or hurt, by reason of such Trusts, Uses or Confidences; It may please the King's most Royal Majesty, that it may be enacted by his Highness, by the assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled and by the authority of the same in manner and form following; that is to say, that where any person or persons stand or be seized, or at any time hereafter shall happen to be seized, of and in Honours, any Castles, Manors, Lands, Tenements, Rents, Services, Reversion, Remainders or other Hereditaments, to the Use, Confidence or Trust of any other person or persons, or of any body politick, by reason of any Bargain, Sale, Feoffment, Fine, Recovery, Covenant, Contract, Agreement, Will or otherwise by any manner means whatsoever it be; that in every such case all and every such person and persons, and bodies politick, that have or hereafter shall have any such Use, Confidence or Trust in Fee-simple, Fee-bail, for term of life or for years, or otherwise, or any Use, Confidence, or Trust, in remainder or reverter, shall from henceforth stand and be seized, deemed and adjudged in lawful seizin, estate and possession of and in the same Honours, Castles, Manors, Tenements, Rents, Services, Reversion, Remainders and Hereditaments, with their appurtenances, to all intent, constructing and purposes in the law, of and in such like estates as they had or shall have in Use, Trust or Confidence of or in the same; and that the estate, title, right and possession that was in such person or persons that were, or hereafter shall be seized of any Lands, Tenements, or Hereditaments, to the Use, Confidence or Trust of any such person or persons, or of any body politick, be from thenceforth clearly deemed and adjudged to be in him or them that have or hereafter shall have such Use, Confidence or Trust, after such quality, manner form and condition as they had before in or to the Use, Confidence or Trust that was in them.

§2. And be it further enacted by the authority aforesaid, that where divers and many persons be, or hereafter shall happen to be jointly seized of and in any Lands, Tenements, Rents, Reversions, Remainders, or other Hereditaments, to the Use, Confidence or Trust of any of them that be so jointly seized that in every such case that these person or persons which have or hereafter shall have any such Use, Confidence or Trusts, in any such Lands, Tenements, Rents, Reversions, Remainders or Hereditaments, shall from henceforth have, and be deemed and adjudged to have only to him or them that have, or hereafter shall have any such Use, Confidence or Trust, such estate, possession and seisin, of and in the same Lands, Tenements, Rents, Reversions, Remainders and other Hereditaments in like nature, manner, form, condition and course, as he or they had before in the Use, Confidence or Trust of the same Lands, Tenements or Hereditaments; saving and reserving to all and singular persons, and bodies politick, their heirs and successors, other than those person or persons which be seized or hereafter shall be seized, of any Lands, Tenements or Hereditaments, to any Use, Confidence or Trust, all such Right, Title, entry, interest, possession, rents and actions, as they or any of them had, or might have had before the making of this Act.

§3. And also saving to all and singular those persons and to their heirs, which be, or hereafter shall be seized to any Use, all such former rights, title, entry, interest, possession, rents, customs, services and action, as they or any of them might have had to his or their own proper use, in or to any Manors, Lands, Tenements, Rents, or Hereditaments, whereof they be or hereafter shall be seized to any other Use, as if this present Act had never been had nor made; anything contained in this Act to the contrary notwithstanding.

§4. And where also divers persons stand and be seized of and in any Lands, Tenements or Hereditaments, in Fee-simple or otherwise, to the use and intent that some other person or persons shall have and perceive yearly to them, and to his or their heirs, one annual rent of X.li. or more or less, out of the same Lands and Tenements, and some other person one other annual rent, to him and his assigns for term of life or years, or for some other special time, according to such intent and use, as hath been heretofore declared, limited and made thereof:

§5. Be it therefore enacted by the authority aforesaid, that in every such case the same person, their heirs and assigns, that have such use and interest, to have and perceive any such annual rent out of any Lands, Tenements or Hereditaments, that they and every of them, their heirs and assigns, be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest or use of the said rent or profit, and as if a sufficient grant, or other lawful conveyance had been made and executed to them, by such as were or shall be seized to the use or intent of any such rent to be had, made or paid, according to the very trust and intent thereof; and that all and every such person and persons as have, or hereafter shall have any title, use and interest in or to any such rent or profit, shall lawfully distrain for the unpayment of the said rent, and in their own names make avowries, or by their bailiffs or servants make conisances and jus-

tification, and have all other suits, entries and remedies for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress re-entry or otherwise according to such conditions, pains, or other things limited and appointed, upon the trust and intent for payment or surety of such rent.

At Common law a use was where the legal estate of land was in a certain person, and a trust was reposed in him, that some other person should take the profits. The use did not, like a rent, issue out of the land, but it was a thing collateral annexed in privity to the estate, and to the person, touching the land, and was simply a confidence that the person to whom the land was given should permit the *cestui que use* to take the profits of the land, and that he would execute estates according to his direction. The *cestui que use* therefore, at common law, had neither a right in the land, or to the land, but only a confidence or trust, for which he had no remedy at law, his remedy being only by Subpoena in Chancery. If the feoffees would not perform the order of Chancery, then they were to be imprisoned until they did perform it. Gilb. Uses 1; Chudleigh's case, 1 Co. Rep. 122; Plowd, 352; Co. Lit. 272, b. Crabb Real Prop. §1605. The origin of uses is said to have been derived from the Civil law, which allows of an usufructrary possession, distinct from the substance of the thing itself, and was introduced by the Clergy who were masters of that system for the purpose of evading the Statutes of Mortmain; and the use being proper matter of equity, met with a very favorable construction from the Judge of the Chancery Court, who was in those days commonly a Clergyman; the Clergy believing the Statutes of Mortmain contrary to natural justice, and so could easily tolerate any means of evading it. The mode of settlement thus introduced was often used for other fraudulent purposes, as to defeat just debts, & c., but was in more extensive use in consequence of the civil wars between the house of Lancaster and York, to secret estates and preserve them to the issue of the owner notwithstanding attainders. Gilbert Uses, 3. Hence it has been said there were two inventors of uses, fear and fraud; fear, in times of troubles and civil wars, to save their inheritances from being forfeited; and fraud, to defeat due debts, lawful actions, escheats, Mortmain, & c. 1 Co. Rep. 121.b.

To every use at common law, there were two inseparable incidents, a privity in estate, and a confidence in the person. By privity in estate is to be understood that the equitable right extended to all persons who came into the same estate which the feoffee had in the use, and by contract with him; for a *dissisor* came into the same estate, but not by contract or agreement, and therefore claiming not by or from the feoffee, he consequently did not hold the estate as it was subject to the use, but claimed an estate paramount to that which was liable to the use, and of course free and discharged therefrom. Confidence in the person signified the trust which was reposed in the feoffee to uses; which at first was confined to the original feoffee, but afterwards extended to all who had notice of the former uses although they had purchased for a valuable consideration; which was termed an express confidence—and to all cases where the feoffment was made without consideration, though the feoffee had no notice of the use, which was an implied confidence. Plowd. 352; *Chudeleigh's case,* 1 Co. Rep. 122; *Dollen v. Fraine,* Poph R. 7172, Cragg Real Prop. §1606.

The properties of an estate in a use at common law were principally as follows:—

1. That it was alienable by *cestui que use,*
2. It was descendible,
3. It was devisable,
4. It was not extendible as assets,
5. It was not liable to forfeiture,
6. A woman was not dowable of a use.

As it has been before observed, at common law, the *cestui que use* had neither jus in al nor ad rem, for the feoffee to the use possessed not only the whole estate but also the sole power to dispose of it, except so far as he was under the control of a Court of Equity. But although *cestui que use* had no power over the land, yet he might alien the use because every one may dispose of the rights that were in him; or he might prefer a bill in chancery to make the terre-tenant execute the use in himself. Gilb. on Uses, 26. The change wrought by the St. 1 Rich. 3. c. 1. was the annexation of a power to the use, that the *cestui que use* should alien the lands. The reason of that Statute was, says Gilbert, because *cestui que use* in possession often aliened the lands, and then the feoffees entered, which caused a great deal of vexation, and chancery suits; and therefore the Statute gave *cestui que use* an immediate power of alienation, without the concurrence of the feoffee. Gilb. on Uses, 27. The Statute did not take away the power of the feoffees, for they might still make feoffments, but enlarged the power of *cestui que use,* who may now make feoffments likewise. *Lord Sheffield v. Ratcliff,* Godb. 303; Gilb. Uses 52. But there was a difference between a feoffment according to the St. I Rich. 3. c. 1, and a feoffment at common law. In the latter case, the feoffor ought to be seized of the lands at the time of the feoffment; but, if a feoffment be according to the Statute, in such case, the feoffor did not need to be in possession. Feoffments at the common law give away both estates and rights; but foffments by the Statute of Rich. 3 give the estates, but not the rights. In case of feoffments at common law, the feoffee is in the *per. viz.,* by the feoffer; but in case of feoffments by the Statute, the feoffees are in the *post viz.,* by the first feoffees; *Lord Sheffield's* case, Godb., 318; S. C. 2 Roll. Rep. 334. See also Gilb. Uses, 180 & Plowd. 350.

A use was not extendible, except in case of the crown, because there was no process at law but upon estates at law, and uses being mere creatures of Equity, the common law could award no execution thereon, but under the Stat. of Rich. 3, it was held extendible on a statute merchant, or of the staple. Uses were first made subject to execution upon a judgment, in express words by the 19 Hen. 7, c. 15, a statute considered now obsolete; and when trusts took the place of uses, execution was given against trust estates by the 29 Car. 2, c. 3, §10, for which see this Digest, title "Execution," Crabb. Real Prop. §1618.

The mischief of the system still increasing, and, as it is said, the Stat. of Rich. 3, adding to the evils, occasioning quite as many as it remedied by the facility it gave to the *cestui que use,* and his feoffees, who now had each power of passing the legal estate, to defraud by collusion the *bona fide* purchaser, the Legislature again interposed its authority by the St. 27 Hen. 8, c. 10. It is asserted in *Chudleigh's case* that the Legislature by this Statute did not intend to provide a remedy and reformation by the continuance or preservation, but by the extriction and extripation of uses; 1 Co. Rep. 124, a. Bacon, however, supports at length the contrary opinion; Read. of Uses, p. 39, and see Dyer R. 362, b. pl. 31. If the intention of the Legislature had been as no doubt it was utterly to abolish the conveyance to uses, the Statute certainly failed in effecting that object. The mode devised was to execute the use, as it has been termed, that is to convey the possession to the use, and transfer the use into possession, thereby making *cestui que use* complete owner of the lands and tenements at law as he was before of the use in Equity; Hopkins, v. Hopkins, 1 Atk. R. 591. The Statute has so far answered the intention of the makers of it, that no use upon which it operates can exist in its former state for more than an instant, as the legal seisin and possession of the land must become united to it immediately upon its creation; so that where this Statute operated, lands conveyed to uses could never, in future become liable to the chayes or incumbrances of the feoffees: but, on the other hand, would be always to the chayes and incumbrances of the cestui que use, and to all the rules of the Common law. 1 Cruise Dig. 349.

This Statute does not extend to all kinds of uses, neither are all uses executed and united to the possession by force of its provisions; for to every execution of a use within the Statute there are four things requisite: 1. A person seised to the use. 2. A *cestui que use in esse.* 3. A use *in esse,* i.e. in possession, remainder or reversion. 4. The estate out of which the uses rise ought to be vested in *cestui que use.* If these four things concur, then there is an execution of the use within the Statute; but if any fail, then the use is not executed: And therefore it is agreed that the Statute executes only uses *in esse;* so that the right of a present use, and a future or contingent use are excluded until they come *in esse.* Chudleigh's Case, 1 Co. Rep. 126. a; Plow. 391; Shep. Tench. 505; Bac. Abr. Uses (G).

As to those uses which are not within the purview of the Statute, they are, 1. *Uses or trusts of chattels* the words of the Statute referring to such only as "stand seized to the use of another," where a man seized in fee raises a term for years, and limits it in trust for A., this

Statute cannot execute the term or being said to be possessed, not seized, of the property; *Symson* v. *Turner,* 1 Eq. Ca. Abr. 220.383. 2. Special uses or trusts; as where the trustees were to perform a trust themselves, subject to which trust others were to have the benefit of the estate; *Wright* v. *Pearson,* 1 Eden R. 125, as by a limitation to A. and his heirs, upon trust to pay the rents to another; *Robinson* v. *Grey,* 9 East R. 1; *Garth* v. *Baldwin,* 2 Vesey Len. R. 646; to convey the estate; *Garth* v. *Baldwin, ubi sup*: on a trust to receive the rent and profits during the life of A, and to apply the same to his subsistence and maintenance; *Sylvester* v. *Wilson,* 2 Term R. 444; to pay taxes and make repairs; *Shapland* v. *Smith,* 1 Bro. Cha. Ca. 75: or to preserve the contingent remainders; *Biscoe* v. *Perkins,* 1 Vesey & Bea. R. 485, 489; or to raise money on the estate conveyed by mortgage or lease; *Stanley* v. *Lennard,* 1 Eden. R. 87, 94; or to sell the whole or a sufficient part of the property to pay debts or legacies; *Bagshaw* v. *Spencer,* 1 Vesey Len. R. 142, 144. In all these cases, as the trust is of a special character, the operation of the Statute of uses is effectually excluded. And so where there is a devise to trustees for the wife's separate use in terms which would execute the use in the wife, the court will hold the legal estate to be vested in the Trustees, in order to effectuate the testators intention by excluding the control of the husband; Bright, Hus. & Wife, 219, citing *Neville* v. *Landers,* 1 Vem. R. 415; *Harton* v. *Harton,* 7 Term R. 652; *Jones* v. *Lord Say,* 8 Vin. Ab. 262 pl. 19; *Hawkins* v. *Luscombe,* 2 Snaust, R. 391. But a deed will not be so construed:— as where by a deed of lease and release the estate was limited to the wife for "her sole and separate use independent of the debts, control or engagements of the Husband," there being no active trust, the control of the husband not being excluded by giving the estate to the Trustees in order to pay over the rents and profits to the wife, the limitation to the separate use of the wife was held void at law, and the use executed in the wife; *Williams* v. *Waters,* 14 Mees. & Wels. R. 166—But it seems the husband is a trustee for the wife in Equity, ibid—where a trust was "to pay unto or permit and suffer" the *cestui que use* to receive, the rents issues and profits, as the former words, "to pay unto," would have created a special trust, and the latter words, "to permit and suffer the party to receive the profits," would have been construed to be a use executed by the Statute; the Court for want of a better reason held, that the words should prevail as the instrument in which they were contained happened to be a deed or a will; adopting the general rule, that if there be a repugnancy, the first words in a deed, and the last words in a will, shall prevail, *Doe dem. Leicester* v. Biggs, 2 Taunt. R. 109. §3. A use cannot be limited upon a use. Before the Statute, on a feoffment to A and his heirs, to the use of B and his heirs, to the use of C and his heirs, the possession or legal estate was in A, the use in B, and his heirs, and the limitation over to C was disregarded as surplusage: And since the Statute it was held that the use to C and his heirs, was a use upon a use, and was not affected thereby, which could only act upon or execute the first use. So that by the Statute, in such a case, the estate was executed in B by annexing the possession to his use, and making him the legal owner in fee; and there the Statute becoming *junctus officio,* did not affect the use over to C—Even if the first use be to the feoffee himself that use only will be executed, and he will take the fee-simple; thus under a feoffment unto and to the use of A and his heirs, to the use of C and his heirs, C takes no estate in law, for the use to him is a use upon a use; but the fee-simple vests in A, to whom the use is first declared. This doctrine, it is remarked by Mr. Williams, has much of the subtlety of the scholastic logic which was then prevalent, and Mr. Watkins says of it in the introduction to his treaties on conveyances, that it must have surprised every one who was not sufficiently learned to have lost his common sense. See Wms. on Real Prop., 124. So, if a man bargains and sells his land to A, to the use of B, the Statute cannot execute the use in B: for by the bargain and sale, which implies a consideration, there is a use in A; and before the Statute it was impossible that two distinct persons should have the use of the same land. Gilb. on Uses, 162. Cha. Ca. 114.

It was manifestly inequitable that the party to whom the use was last declared, should be deprived of the estate, which was intended solely for his benefit; the Court of Chancery therefore interposed on his behalf, and decreeing him to have a title in Equity constrained the party to whom the law had given the estate, to hold it in trust for him to whom the use was last declared. Thus arose the modern doctrine of uses and trusts. Hence if it is now desired to vest a freehold estate in one person as trustee for another, the conveyance is made to the trustee, or some other person, (it is immaterial which) and his heirs, to the use of the trustee and his heirs, in trust for the party intended to be benefitted, who is called the *cestui que trust,* and his heirs. An estate in fee-simple is thus vested in the trustee by force of the Statute of Uses, and the entire beneficial interest is given over to the *cestui que trust* by the Court of Chancery. The estate in fee-simple which is thus vested in the trustee is called the legal estate, being an estate to which the trustee is entitled, only in the contemplation of a Court of Law, as distinguished from Equity. The interest of the *cestui que use,* is called an equitable estate, being an estate to which he is entitled only in the contemplation of a Court of Equity. In the present instance the equitable estate being limited to the *cestui que trust* and his heirs, he has an equitable estate in fee-simple. He is the beneficial owner of the property. The trustee by virture of his legal estate, has the right and power to receive the rents and profits; but the *cestui que trust* is able, by virtue of his estate in equity, at any time to oblige his trustee to come to an account, and hand over the whole of the proceeds; Wms. on Real Prop. 124; Bac. Abr. title Uses & Trust; 2 Black Comm. 335-6.

All such uses as are not within, nor executed by, the Stat. of Hen. 8 but remain at the Common law, may be destroyed, discontinued or suspended, as uses before the Statute might have been, *Chudleigh's case,* 1 Co. Rep. 124.

There are but three sorts of conveyances to uses; the two first of which only will feed a contingent use, viz. 1, Feoffment, fine or common recovery to uses—2. Covenants to stand seized to uses. 3. Bargain and sale to uses. By this last conveyance only, no contingent use can be supported. It is to be observed, concerning the operation of these conveyances that by those under the first division, such as a feoffment, fine or common recovery, uses are raised by the transmutation of possession; but by the second and third, that is, by a covenant to stand seized, and by a bargain and sale, uses arise without transmutation of possession, for the possession is retained by the covenantor, or bargainor, but for the use of another; *Heyn* v. *Villars,* 2 Lid. R. 158; *Sharrington* v. *Stotton,* Plowd. R. 301; Bac. Abr. Uses.

In relation to the last mentioned conveyance, that of bargain and sale, prior to the Statute, if a bargain was made for the sale of lands, and the purchase money paid, but no feoffment was executed by the vendor to the purchaser, it was, in Equity, considered that the property ought in conscience, immediately to belong to the purchaser; and therefore the court of Chancery held the bargainor, or vendor to be immediately seised of the same to the use of the purchaser. When the Statute came into operation, the effect was, that as by means of a contract of this kind, the purchaser became entitled to the use of the property, so after the passing of the Statute, he became at once entitled, on payment of his purchase money to the lawful seisin and possession; or rather he was deemed, by force of the Statute, really to have such seisin and possession, so far at least as it was possible to consider one in possession, who in point of fact was not. Wms. on Real Prop. 134. In short, the bargain and payment of the money vests the use in the purchaser, and the Statute executed the use, that is, transfers to and vests in him, the possession.

Judge Blackstone observes, that the only use to which the Statute is now consigned, is in giving efficacy to certain new and secret species of conveyances; introduced in order to render transaction of this kind as private as possible, and to save the trouble of making livery of seisin, the only ancient conveyance of corporeal freeholds. 2 Comm. 337. Although the Statute has been deprived of much of intended usefulness by the strict construction it has received, yet it evidently exerts a considerable influence over the conveyances of real property at the present day. For full and perfect information upon this Statute, the reader is referred to Sanders on Uses: Gilbert on Uses by Lugden—Bac. Abr. Uses & Trusts, and to 1 Cruise Dig. 330-461.

The Stat. of Henry 8 seems to be partially covered by the Florida Act of Nov. 15, 1828; (see Thomp. Dig. 178) which Act appears from a comparison with the Virginia Statute of Feby. 24, 1819, (Rev. Code of Va., Vol. 1, p. 370) to have been copied therefrom. A comment upon this latter Statute will be found in 1 Lomax Dig. Real Prop. 188, 189.

See Florida decisions on statute of uses as a mode of conveyance. Skinner Mfg. Co. v. Wright, 56 Fla. 561, 47 So. 931: Parker v. Safford, 48 Fla. 290, 37 So. 567: Vincent v. Hines, 79 Fla. 564, 84 So. 614; Scott v. Fairlie, 81 Fla. 438, 89 So. 128; Reid et al v. Barry, 93 Fla. 849, 112 So. 846; Elvins v. Seestedt, 141 Fla. 266, 193 So. 54.

4 ANNE, CHAPTER 16

Section 15 of this statute provided that a use might be created by a declaration of use of any fine or common recovery, made by deed after the levying or suffering the fine or recovery.

Not considered in force since conveyances by fines and common recoveries have been expressly abolished in Florida. See Section 689.08, Florida Statutes, 1941.

WASTE

52 HENRY III, CHAPTER 23—STATUTE OF MARLBOROUGH

§2. Also Fermors, during their terms, shall not make Waste, Sale, nor exile of House, Woods, and Men, nor of any thing belonging to the tenements that they have to ferm, without special license had by writing of covenant, making mention that they may do it; which thing if they do, and thereof be convict, they shall yield full damages, and shall be punished by amerciament grievously.

While there seems to have been some doubt at one time about the matter, it is generally conceded that this statute was in affirmance of the common law. See 2 Cooley's Blackstone, 3rd Ed., pg. 224 and Alexander's British Statutes, Coe's Edition, pg. 68. Although it is deemed that the writ of waste is an obsolete remedy in Florida, British Statutes which define waste can be enforced by our action of trespass on the case in the nature of waste and, where not inconsistent with other law on the subject, should be included in a compilation of British Statutes in force in Florida.

Professor Crandall, in his Florida Common Law Practice, §114, points out that the act of 1829 (5490 C. G. L.) of the Florida Legislature extending the right of an "action of waste" to parceners was a recognition that the action by writ of waste was available in Florida. This act was repealed by Chapter 16103, Acts of 1933. The framers of the probate act probably did not have in mind the common law or British Statutes governing actions of waste when this statute was eliminated. However, there was no right to an action of waste at common law, or even under the Statute 13 Edw. 1, Stat. 1, ch. 22, infra, as between parceners. Whether one parcener could bring trespass on the case in the nature of waste against a co-parcener under our practice would, in view of the repeal of this statute, have to be determined if the substantive law governing the ancient remedy be applied to our comparable action.

6 EDWARD I, CHAPTER 5—STATUTE OF GLOUCESTER

It is provided also, that a man from henceforth shall have a writ of waste in the Chancery against him that holdeth by Law of England, or otherwise for term of life, or for term of years, or a woman in Dower, And he which shall be attainted of Waste, shall leese the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at. * * *

This statute is included as a record for what was considered waste at common law, the statute being in affirmance of the common law and creating a new remedy now obsolete. The omitted part of the statute prohibited waste in wardships under penalty of losing the same. It is not in force in Florida since no feudal wardships exist here and a guardian is responsible to the court of proper jurisdiction for the proper administration of his ward's property. See Ch. 744, Fla. Stat. '41. On this statute, see also Crandall, Florida Common Law Practice, §114; 2 Cooley's Blackstone, 3rd Ed., pg. 222; 1 Alexander's British Statutes, Coe's Ed., pg. 112.

6 EDWARD I, CHAPTER 13—STATUTE OF GLOUCESTER

This statute prohibited waste during the pendency of an action for waste (hanging the plea). Since it defines the effect of an action not considered extant in Florida, this statute is likewise considered not in force.

13 EDWARD I, STATUTE 1, CHAPTER 14
STATUTE WESTMINSTER, THE SECOND

This statute provided process in an action of waste to force the tenant to answer for all waste committed. It was in effect a writ to inquire as to what waste had been committed. Omitted because obsolete.

13 EDWARD I, STATUTE 1, CHAPTER 22
STATUTE WESTMINSTER, THE SECOND

Whereas two or more do hold wood, turfland, or fishing, or other such things in common wherein none knoweth his several, and some of them do waste against the minds of the other, an action may lie by a writ of waste; and when it is come unto Judgment the defendant shall choose either to take his part in a place certain, by the Sheriff, and by the view, oath, and assignment of his neighbours sworn and tried for the same intent, or else he shall grant to take nothing from henceforth in the same wood, turfland, and such other, but as his partners will take. And if he do choose to take his part in a place certain, the part wasted shall be assigned for his part, as it was before he committed the waste. And there is such a writ in this case, that is to say, Eum A. & B. tenant boscum pro indiviso B. fecit.

By this act, an action of waste is given to one tenant in common against another; and it has been held to extend to joint-tenants, but not to coparceners. Bac. Abr. Waste, G. One tenant in common cannot maintain an action on the case in the nature of waste against another tenant in common in possession of the whole, having a demise from the first of his moiety, for cutting down trees of a proper age and growth for being cut; but in another form of action the plaintiff might be entitled to recover a moiety of the value of the trees. *Martin* v. *Knowlys*, 8 Term. R. 145. (Thomson)

It is my belief that the above statute can be given effect in this State upon invoking the appropriate remedy, and that the parts referring to the obsolete remedy can be disregarded.

20 EDWARD I, STATUTE 2

This statute provided that an heir might bring an action for waste committed against his ancestor. Superseded by Section 45.11, Florida Statutes, 1941. See also Section 733.02, Florida Statutes, 1941, which empowers personal representative to bring action for waste committed on any part of estate.

11 HENRY VI, CHAPTER 5

Item, Because that divers people in time past have let their lands and tenements to divers person, that is to say, some for term of life or another Man's life, and some for term of years, the said tenants have often times let and granted their estate which they had in the same lands and tenements, to many persons to the intent that they in the reversion that is to say, their lessors, their heirs, or their assigns, might not have knowledge of their names, and after the said first tenants continually occupy the said lands and tenements, and thereof take the profits to their proper use, and in the said lands and tenements commit waste and destruction, to the disinheritance of them in the reversion: It is ordained and established, that they in the reversion in such case may have and maintain a writ of waste against the said tenants for term of life, of another's life, or for years and so recover against them the place wasted, and their treble damages, for the waste by them done, as they ought to have done for the waste committed by them before the said grant and lease of their estate. Provided always, that this ordinance hold not place, but where the first tenants before the lease and grant of their said estate in the manner and form above said, were punishable of waste; and also where after the said grant and lease the said first tenant of the said lands and tenements take the profits at the time of the waste done, to their own proper use. And this Ordinance shall extend as well to waste by such tenants done before this Ordinance, as after.

The mischief which this Statute was intended to remedy was a practice of tenants for life and for years conveying their estate to persons unknown to their lessors, but still continuing to occupy and take the profits to their own use, and to commit waste. This was one of the inconveniences which resulted from the (then) newly invented device of separating the *legal* from the *equitable* estate. The object of the Statute is to make the pernor of the profits, as he was called, liable as if he was legally seized. See 3 Reeves Hist. 275. Therefore where tenants for life or for another's life, or for years, grant over their estates, and take the profits to their own use and commit waste they in reversion may have an action of waste against them. And so it is of mesne assignees; the action lies against him who takes the profits, by this Statute. 2 Inst. 302.

The power of equity to restrain waste has been exercised in Florida against persons having various relations to the land, including one holding a lien. See Stephenson v. National Bank of Winter Haven et al., 92 Fla. 347, 109 So. 424; Knobb v. Hill, 111 Fla. 272, 149 So. 335; Harbeson Lumber Co. v. Geneva Mill Co., 116 Fla. 342, 156 So. 710; Halifax Drainage Dist. v. Gleaton, 137 Fla. 397, 188 So. 375.

6 ANNE, CHAPTER 31

§6. And be it further enacted by the authority aforesaid, that no action suit or process what so ever, shall be had, maintained, or prosecuted against any person in whose house or chamber any fire shall from and after the said first day of May, accidentally begin, or any recompence be made by such person for any damage suffered or occasioned thereby; any law, usage or custom to the contrary not with standing: And if any action shall be brought for any thing done in pursuance of this act, the defendant may plead the general issue, and give this Act in evidence; and in case the plaintiff become non suit, or discontinue his action or suit, or if a verdict pass against him, the Defendant shall recover treble costs.

§7. Provided that nothing in this Act contained, shall extend to defeat or make void any contract or agreement made between Landlord and Tenant.

§8. Provided always nevertheless, that so much of this Act as relates to the indemnity of any person in whose house or chamber any fire shall accidentally begin, shall continue for the space of three years, and from thence to the end of the next Session of Parliament, and no longer.

Before this Statute burning the house either by negligence or mischance was waste. 1 Inst. 53.b. So, also, it was formerly holden, that if a fire broke out accidentally in a man's house, and raged to that degree as to burn his neighbor's that he in whose house the fire first happened, was liable to an action on the case on the general custom of the realm, *quod quilibet ignem suam salvo*, &c. Bac. Abr. *Action on the Case*, F. 1 Salk R. pl. 4 19.pl.9. Carth. R. 425. Cro. Eliz. 777, 784. But now by this Statute, no action whatsoever lies against any one for an accidental fire; saving, however, all contracts between landlord and tenant, which are not affected by the Act.

14 GEORGE III, CHAPTER 78

§86. And be it further enacted by the authority aforesaid, that no action, suit or process whatever shall be had, maintained, or prosecuted against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire shall, after the said twenty-fourth day of June, (Ann:1774) accidentally begin, nor shall any recompense be made by such person for any damage suffered thereby, any law usage or custom to the contrary notwithstanding: and in such case, if any action be brought, the defendant may plead the general issue, and give this act and the special matter in evidence, at any trial thereupon to be had; and in case the plaintiff become non-suited, or discontinue his action or suit, or if a verdict pass against him, the defendant shall recover treble costs; provided, that no contract or agreement made between landlord and tenant shall be hereby defeated or made void.

This statute is a re-enactment of and makes perpetual 6 Anne, c. 31. It adds the words "stable, barn or other building." Under both these statutes, says Judge Thompson, it has been held that the protection of the statutes does not extend to fires caused by negligence

WILLS

34 & 35 HENRY VIII, CHAPTER 5, SECTION 14

This statute declared what persons should be incapacitated from making a will. Superseded by Section 731.04, Florida Statutes, 1941.

Our Will Statute of Nov. 20, 1828, except in phraseology, was of the same legal effect as 34 & 35 Hen. VIII. Frazier et al. v. Boggs, 37 Fla. 307, 20 So. 245. Judge Thompson apparently found that only Sec. 14 of the English Act defining who should not make a will, was not covered by the Florida Act since he omitted the balance of the English Act.

Under our Statute of Wills of 1828, in force until the Rev. Stat. of 1892 took effect, no one could devise land in Florida of which he died seized but of which he was not seized at date of execution of will. Frazier v. Boggs, 37 Fla. 307, 20 So. 245.

But see Perkins v. O'Donald, 77 Fla. 710, 727, 82 So. 401, where court held that where a person owned Lot 1, Block 22 and devised Lot 1, Block 21, nothing passed, because had testator owned both at date of will and later sold the one devised, an ademption would have occurred "whether the English Statute of 34 & 35 Henry VIII. or Sec. 2271, Gen. Stat. of 1906, (§731.05. Fla. Stat. 1941) applied." See also in this connection Hurt et vir v. Davidson, 130 Fla. 822, 178 So. 556.

Present Florida provisions (Sec. 731.05, Fla. Stat. 1941) governing what property will pass by general and residuary grants patterned after the English Wills Act of 1837. Under this section a general bequest of realty will not execute power over realty where testatrix owned no realty in her own right. DePass v. Kansas Masonic Home, 132 Fla. 455, 181 So. 410.

See also Nalle & Co. v. Lively, 15 Fla. 130 (142).

29 CHARLES II, CHAPTER 3, SECTION 12

This statute made estates **pur auter vie** devisable and declared the same to be assets in the hands of the executor or administrator in the absence of a special occupant. The broad, inclusive language used to describe what property may pass by will in Section 731.05, Florida Statutes, 1941, is comprehensive enough to cover such estate and must be considered superseding. Judge Thompson apparently held the same view as regards the earlier Florida Act of November 20, 1828, but retained the instant statute out of caution.

3 WILLIAM & MARY, CHAPTER 14

Sections 2 through 7 were included by Judge Thompson in his compilation although he expressed doubt as to whether the Florida Act was not superseding. The statute made all wills void which were in fraud of creditors. Under the English law, a devisee took to the exclusion of all creditors and without the intervention of an executor for even purposes of making distribution. It is clear that Section 733.01, Florida Statutes, 1941, which makes all property assets in the hands of the personal representative for the purpose of paying debts, supersedes the English Act. See also the non-claim statutes, Sections 733.15 to 733.20, inclusive, Florida Statutes, 1941.

4 ANNE, CHAPTER 16

This statute defined who should be competent witnesses to prove a nuncupative will by reference to the competency of witnesses in law actions. Section 731.06, Florida Statutes, 1941, requires a nuncupative will to be proved by the "oaths of three witnesses." It is a reasonable construction that the word "witnesses," when used in connection with the word "oaths," was intended to and does imply witnesses which are qualified and competent to act as witnesses. Certainly a nuncupative will could not be proved by three insane persons present at the time the testator declared the will. The English statute is for this reason now omitted.

25 GEORGE II, CHAPTER 6

This statute, sections 1 through 9, defined who should be competent to witness devises of real property. Omitted for reasons listed under 4 Anne, c. 16 and because Section 731.07 (5), Florida Statutes, 1941, expressly defines what effect the attestation of a will by certain persons will have on its validity.

A devise or bequest to an attesting witness of a will is void and of no effect, yet such person shall be admitted as a witness to prove the will or codicil under 25 Geo. II, c. 6. Meyer and Meyer v. Meyer's Executor, 7 Fla. 292.

YEAR

21 HENRY III—STATUTE DE ANNO ET DIE, BISSEXTILI

The King, unto his Justices of the Bench greeting, Know ye, that where within our realm of England it was doubted of the Year and day that were wont to be assigned unto sick persons be impleaded, when and from what day of the year going before and unto another day of the year following, the year and day in a Leap-Year ought to be taken and reckoned how long it was.

§2. We, therefore, willing that a conformity be observed in this behalf, every where within our realm, and to avoid all danger from such as be in plea, have provided, and by the council of our faithful subjects have ordained, That to take away from henceforth all doubt and ambiguity, that might arise hereupon, the day increasing in the Leap-Year shall be accounted for one year, so that because of that day none shall be prejudiced that is impleaded, but it shall be taken and reckoned of the same month wherein it groweth; and that day, and the day next going before shall be accounted for one day; and therefore we do command you, that from henceforth you do cause this to be published afore you, and be observed. Witness myself at Westminster, & c.

Mr. Reeves says this is not a Statute, but is nothing more than a sort of writ, or direction, to the Justices of the Bench, instructing them how the extraordinary day in the leap-year was to be reckoned, in cases where persons had a day to appear at the distance of a year, as on the *essoin de malvo lecti, and the like.* Vol 1. p. 266. It is however called a Statute by legal writers, and is found in the printed publications of the Statute at large, as well as in the digests and abridgements. 1 Ruff. Stat. 20; *Rex* v. Worminghall, 6 Maule & Sel R. 350.

The year consists of three hundred and sixty five days; and though there be six hours and several minutes over each year, which every fourth year make another day, and therefore there are 366 days in such year, yet by the Stat. *de annuo bissextili,* 21 Hen. 3. that day shall be reckoned of the same month in which it happens, and that with the preceding shall be accounted as one day—Half a year consists of 182 days; and a quarter of a year of ninety one days; for there shall be no regard to a part or fraction of a day. *Comyn. Dig. tit. Ann.* citing Co. Lit, 135. 2 Roll. Abr. 521.

But though the law does not, in general allow of the fraction of a day, yet it admits it in cases where it is necessary to distinguish. And there is no reason why the very hour may not be so too, where it is necessary and can be done; for, it is not like a mathematical point which cannot be divided. Per *Ld. Mansfield, Combe v. Pitt,* 3 Bur. R. 1434; *Pugh v. Robinson,* 1 Term. R. 116.

A month is solar, or computed according to the calendar or lunar which consists of twenty-eight days, Co. Lit. 135.b. In all cases, where a Statute speaks of a month, it shall be intended of a lunar month, which consists of twenty-eight days, and not of any other. Cro. Jac. 167. 4 Mod. R. 185. *Lacon v. Hooper,* 6 Term. R. 224. And so in legal proceedings. 3 Burr. R. 1455-Doug. R. 463.

The mode of computing the month in contracts depends on the intention; *Land v. Gale,* 1 Maule. & Selw. R. 111. Hence, in covenant to pay money at the end of six months, calendar, not lunar, months will be intended. *Dyke v. Sweeting,* Willes R. 585. So, where a ship is chartered at so much per month, the month is a calendar month; *Jolly v. Young,* 1 Esp. N. P. C. 186. But in a contract to deliver stock, it is said the computation must be by lunar months; *Jeelyn v. Hawkins,* Stra. R. 446. Yet if money is lent for nine months, it shall be understood calendar months. *Titus v. Preston,* Stra. R. 652.

STATUTE 24, GEORGE II, CHAPTER 23

§1. Whereas the legal supputation of the year of our Lord in that part of Great Britain called England, according to which the year beginneth on the twenty-fifth day of March, hath been found by experience to be attended with divers inconveniencies, not only as it differs from the usage of neighboring nations, but also from the legal method of computation in that part of Great Britain called Scotland, and from the common usage throughout the whole Kingdom, and thereby frequent mistakes are occasioned in the dates of the deeds and other writings, and disputes arise therefrom: And whereas the Calendar now in use throughout all his Majesty's British dominions, commonly called the Julian Calendar, hath been discovered to be erroneous, by means whereof the Vernal or Spring Equinox, which at the time of the general Council of Nice in the year of our Lord three hundred and twenty-five, happened on or about the twenty first day of March, now happens on the ninth or tenth day of the same month; and the said error is still increasing and, if not remedied, would, in process of time occasion the several Equinoxes, and Solstices to fall at very different times in the civil year, from what they formerly did, which might tend to mislead persons ignorant of the said alteration: And whereas a method of correcting the calendar in such manner, as that the Equinoxes and Solstices, may for the future fall nearly on the same nominal days, on which the same happened at the time of the said General Council, hath been received and established, and is now generally practiced by almost all other nations of Europe: And whereas it will be of general convenience to merchants, and other persons corresponding

with other nations and countries, and tend to prevent mistakes, and disputes in or concerning the dates of letters and accounts, if the like correction be received and established in his Majesty's dominions: May it therefore please your Majesty, that it may be enacted, and be it enacted by the King's most excellent majesty by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in and throughout all his Majesty's dominions and countries in Europe, Asia, Africa and America, belonging or subject to the crown of Great Britain, the said supputation, according to which the year of our Lord beginneth on the twenty-fifth day of March, shall not be made use of from and after the last day of December one thousand seven hundred and fifty-one; and that the first day of January next following the said last day of December shall be reckoned, taken, deemed and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-two; and the first day of January which shall happen next after the said first day of January one thousand seven hundred and fifty-two, shall be reckoned, taken, deemed, and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-three; and so on, from time to time, the first day of January in every year, which shall happen in time to come, shall be reckoned, taken, and deemed, and accounted to be the first day of the year; and that each new year shall accordingly commence, and begin to be reckoned, from the first day of every such month of January next preceding the twenty-fifth day of March, on which such year would, according to the present supputation, have begun or commenced: And that from and after the said first day of January one thousand seven hundred and fifty-two, the several days of each month shall go on, and be reckoned and numbered in the same order; and the Feast of Easter and other moveable Feasts thereon depending, shall be ascertained according to the same method, as they now are, until the second day of September in the said year one thousand seven hundred and fifty-two inclusive; and that the natural day next immediately following the said second day of September, shall be called, reckoned, and accounted to be the fourteenth day of September, omitting for that time only the eleven intermediate nominal days of the common Calendar; and that the several natural days, which shall follow and succeed next after the said fourteenth day of September, shall be respectively called according to the order and succession of days now used in the present Calendar; and that all acts, deeds, writings, notes, and other instruments of what nature or kind soever, whether Ecclesiastical or civil, public or private, which shall be made, executed, or signed, upon or after the said first day of January one thousand seven hundred and fifty-two, shall bear date according to the said new method of supputation, and that the two fixed Terms of St. Hilary and St. Michael, in that part of Great Britain called England, and the Courts of Great Sessions in the Counties Palatine, and in Wales, and also the Courts of General Quarter-Sessions and General Sessions of the Peace, and all other Courts of what nature or kind soever, whether civil, criminal, or ecclesiastical, and all meetings and assemblies of any bodies politic or corporate, either for the election of any officers or members thereof, or for any such officers entering upon the execution of their respective offices, or for any other purpose whatsoever, which by any law, statute, charter, custom, or usage within this Kingdom, or within any other the dominions or countries subject or belonging to the crown of Great Britain, are to be holden and kept on any fixed or certain day of any month, or on any day depending upon the beginning, or any certain day of any month (except such Courts as are usually holden or kept with any fairs or marts) shall, from time to time, from and after the said second day of September, be holden and kept upon or according to the same respective nominal days and times, whereon or according to which the same are now to be holden, but which shall be computed according to the said new method of numbering and reckoning the days of the Calendars as aforesaid, that is to say, eleven days sooner than the respective days whereon the same are now holden and kept; any law, statute, charter, custom, or usage, to the contrary thereof in any wise notwithstanding.

§2. And for the continuing and preserving the calendar or method of reckoning and computing the days of the year in the same regular course, as near as may be, in all times coming; be it further enacted by the authority aforesaid That the several years of our Lord, one thousand eight hundred, one thousand nine hundred, two thousand and one hundred, two thousand two hundred, two thousand three hundred, or any other hundreth years of our Lord, which shall happen in time to come, except only every fourth hundreth year of our Lord, whereof the year of our Lord two thousand shall be the first, shall not be esteemed or taken to be Bissextili or Leap Years, but shall be taken to be common years, consisting of three hundred and sixty-five days, and no more; and that the years of our Lord two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundred year of our Lord, from the said year of our Lord two thousand inclusive, and also all other years of our Lord, which by the present supputation are esteemed to be Bissextili or Leap

Years, shall for the future, and in all times to come, be esteemed and taken to be Bissextili or Leap Years, consisting of three hundred and sixty-six days in the same sort and manner as is now used with respect to every fourth year of our Lord.

(The residue of this Statute local and temporary and therefore omitted)

The Solar, or Julian, year, which was established by Julius Caesar in the year B. C. 47, was of the length of three hundred and sixty-five days and six hours, and exceeded the true length by about eleven minutes, which amounted to a day in about one hundred and thirty years. Hence in the sixteenth century the vernal equinox, on which was based the calculation for ascertaining Easter, really took place on the 10th instead of the 21st of March according to the Calendar. Pope Gregory XIII, in order to remedy the error, acting upon the advise of a Council of prelates, and learned men, in the year 1582 issued his brief or bill abolishing the Julian Calendar and introducing the one now in use, which has since been called by the name of Gregorian, or reformed Calendar. The amendment consisted in this: ten days were dropped after the 4th of October 1582, and the 15th was reckoned immediately after the 4th. Every 100th year which by the Julian Calendar was to have been a leap year, was now to be a common year, the fourth excepted; i.e. 1600 was to remain a leap year, but 1700, 1800, 1900, to be of the common length and 2000 a leap year again. In this Calendar the length of the Solar year was taken to be 365 days, 5 hours, 49 minutes and twelve seconds.

The Catholic States, adopted the new calendar at once, but the Protestants, and the residue of Europe adhered to the Julian, and hence the distinction between the old and new style, which has prevailed since 1582. The difference until 1699 was ten days, and from 1700, eleven days; during 1800 twelve days must be reckoned, so that the 1st of January of the old style correspond to the 13th of the new style.

Although an effort was made as it is said, in the reign of Elizabeth the new style was not adopted in England till by the enactment of this statute. It has since been adopted generally by all the Protestant states of Europe. Russia it is believed is the only state now adhering to the Julian or old calendar. *Enc. Ann.* Vol. 2, p. 401-403.

The legal year in England commenced on the 25th of March; by this statute it is made to commence as at present on the first day of Jan.

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PART II

WHITFIELD'S NOTES

BY

JAMES B. WHITFIELD

(First published with Compiled General Laws, 1927.
Revised and supplemented to date, 1945.)

AUTHOR'S FOREWORD

During my service to the State it has been found helpful, in construing and applying its laws, to have at hand pertinent historical data. Obviously, the material in these Notes is limited in its scope and arrangement; but I hope it will prove useful and assist in preserving Florida historical matter.

J. B. WHITFIELD.

WHITFIELD'S NOTES

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LEGAL HISTORICAL BACKGROUND OF THE STATE OF FLORIDA

WHITFIELD'S NOTES

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When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. He has refused his Assent to Laws, the most wholesome and necessary for the public good. He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operations till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures. He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people. He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within. He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands. He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers. He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and to eat out their substance. He has kept among us, in times of peace, Standing Armies, without the Consent of our legislatures. He has affected to render the Military independent of and superior to the Civil power. He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation: For quartering large bodies of armed troops among us: For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States: For cutting off our Trade with all parts of the world: For imposing Taxes on us without our Consent: For depriving us in many cases, of the benefits of Trial by Jury: For transporting us beyond Seas to be tried for pretended offences: For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government,

enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies: For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments: For suspending our own Legislatures, and declaring themselves invested with powers to legislate for us in all cases whatsoever. He has abdicated Government here, by declaring us out of his Protection and waging War against us. He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people. He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation, and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. He has constrained our fellow Citizens taken Captive on the high Seas, to bear Arms against their Country, to become executioners of their friends and Brethren, or to fall themselves by their Hands. He has incited domestic insurrections among us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions. In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE, THEREFORE, THE REPRESENTATIVES OF THE UNITED STATES OF AMERICA, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of the Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

—JOHN HANCOCK.

New Hampshire
Josiah Bartlett,
Wm. Whipple,
Matthew Thornton.

Massachusetts Bay
Saml. Adams,
John Adams,
Robt. Treat Paine,
Elbridge Gerry.

Rhode Island
Step. Hopkins,
William Ellery.

Connecticut
Roger Sherman,
Sam'el Huntington,
Wm. Williams,
Oliver Wolcott.

New York
Wm. Floyd,
Phil. Livingston,
Frans. Lewis,
Lewis Morris.

New Jersey
Richd. Stockton,
Jno. Witherspoon,
Fras. Hopkinson,
John Hart,
Abra. Clark.

Pennsylvania
Robt. Morris,
Benjamin Rush,
Benja. Franklin,
John Morton,
Geo. Clymer,
Jas. Smith,
Geo. Taylor,
James Wilson,
Geo. Ross.

Delaware
Caesar Rodney,
Geo. Read,
Tho. M'Kean.

Maryland
Samuel Chase,
Wm. Paca,
Thos. Stone,
Charles Carroll of Carrollton.

Virginia
George Wythe,
Richard Henry Lee,
Th. Jefferson,
Benja. Harrison,
Ths. Nelson, Jr.,
Francis Lightfoot Lee,
Carter Braxton.

North Carolina
Wm. Hooper,
Joseph Hewes,
John Penn.

South Carolina
Edward Rutledge,
Thos. Heyward, Junr.,
Thomas Lynch, Junr.,
Arthur Middleton.

Georgia
Button Gwinnett,
Lyman Hall,
Geo. Walton.

ARTICLES OF CONFEDERATION,[1] March 1, 1781.

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names, send greeting.

[1]Journals of the Continental Congress, Library of Congress edition, Vol. XIX (1912), p. 214.
The Articles of Confederation were agreed to by the Congress, November 15, 1777. They were, as appears from the list of signatures affixed to these Articles, signed at different times by the delegates of the different American States. On March 1, 1781, the delegates from Maryland, the last of the States to take action, "did, in behalf of the said State of Maryland, sign and ratify the said articles, by which act the Confederation of the United States of America was completed, each and every of the Thirteen United States, from New Hampshire to Georgia, both included, having adopted and confirmed, and by their delegates in Congress, ratified the same."

Whereas the Delegates of the United States of America, in Congress assembled, did, on the 15th day of November, in the Year of Our Lord One thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America, agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia in the words following, viz: "Articles of Confederation and perpetual Union between the states of Newhampshire, Massachusetts-bay, Rhodeisland, and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

Article I. The Stile of this confederacy shall be "The United States of America."

Article II. Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state, of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the United States, or either of them.

If any Person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

Article V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state, ~~to~~ recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.

No state shall be represented in Congress by less than two, nor by more than seven Members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any Court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No state, without the Consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the United States, in Congress

assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for the occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled, shall determine otherwise.

Article VII. When land-forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors —entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities, whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the party shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties

concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also, that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which pass such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing or regulating post-offices from one state to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expences of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expences—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expence of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: But if the United States in Congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six Months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment requires secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the Journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Article X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every state shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every state.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the ninth day of July, in the Year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America.

Josiah Bartlett, John Wentworth, junr. August 8th, 1778,	On the part and behalf of the State of New Hampshire.
John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holton,	On the part and behalf of the State of Massachusetts Bay.
William Ellery, Henry Marchant, John Collins,	On the part and behalf of the State of Rhode-Island and Providence Plantations.
Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams,	On the part and behalf of the State of Connecticut.
Jas. Duane, Fra. Lewis, Wm. Duer, Gouvr. Morris,	On the part and behalf of the State of New York.
Jno. Witherspoon, Nathl. Scudder, Nov. 26th, 1778.	On the part and in behalf of the State of New Jersey.
Robert Morris, Daniel Roberdeau, Jon. Bayard Smith, William Clingar, Joseph Reed, 22nd July, 1778.	On the part and behalf of the State of Pennsylvania.
Thos. McKean, Feby. 22d, 1779, John Dickinson, May 5th, 1779, Nicholas Van Dyke,	On the part and behalf of the State of Delaware.
John Hanson, March 1, 1781, Daniel Carroll, do	On the part and behalf of the State of Maryland.
Richard Henry Lee, John Banister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee,	On the part and behalf of the State of Virginia.
John Penn, July 21st, 1778, Corns. Harnett, Jno. Williams,	On the part and behalf of the State of North Carolina.
Henry Laurens, William Henry Drayton, Jno. Mathews, Richd. Hutson, Thos. Heyward, junr.	On the part and behalf of the State of South Carolina.
Jno. Walton, 24th July, 1778, Edwd. Telfair, Edwd. Langworthy,	On the part and behalf of the State of Georgia.

TREATY OF PARIS OR VERSAILLES.

Following the Declaration of Independence and the Revolutionary War, the complete independence and sovereignty of the United States of America was established by the Treaty of Paris or Versailles, between the United States and Great Britain.

Definitive Treaty of Peace Between the United States of America and His Britannic Majesty, Concluded September 3, 1783.

In the name of the Most Holy and Undivided Trinity.

It having pleased the Divine Providence to dispose the heart of the most serene and most potent Prince George the Third, by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, Duke of Brunswick and Luneburg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &ca., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony: And having for this desirable end already laid the foundation of peace and reconciliation, by the provisional articles, signed at Paris on the 30th of Nov'r, 1782, by the commissioners empowered on each part, which articles were agreed to be inserted in and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such treaty accordingly; and the treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full effect the provisional articles above mentioned, according to the tenor thereof, have constituted and appointed, that is to say, His Britannic Majesty on his part, David Hartley, esqr., member of the Parliament of Great Britain; and the said United States on their part, John Adams, esqr., late a commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachusetts, and chief justice of the said State, and Minister Plenipotentiary of the said United States to their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, esq're, late Delegate in Congress, from the State of Pennsylvania, president of the convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay, esq're, late president of Congress, and chief justice of the State of New York; and Minister Plenipotentiary from the said United States at the Court of Madrid, to be the Plenipotentiaries for the concluding and signing the present definite treaty; who, after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following articles:

ARTICLE I.

His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the Government, proprietary and territorial rights of the same, and every part thereof.

ARTICLE II.

And that all disputes which might arise in future, on the subject of the boundaries of the United States may be prevented, it is hereby agreed and declared, that the following are, and shall be their boundaries, viz: From the north-west angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of Saint Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on the said latitude, until it strikes the river Iroquois or Cataraquy; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Philipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the

northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence strait to the head of St. Mary's River; and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

ARTICLE III.

It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulph of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

ARTICLE IV.

It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.

ARTICLE V.

It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective States, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British subjects, and also of the estates, rights, and properties of persons resident in districts in the possession of His Majesty's arms, and who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavors to obtain the restitution of such of their estates, rights, and properties as may have been confiscated; and that Congress shall also earnestly recommend to the several States a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail. And that Congress shall also earnestly recommend to the several States, that the estates, rights, and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

ARTICLE VI.

That there shall be no future confiscations made, nor any prosecutions commenc'd against any person or persons for, or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

ARTICLE VII.

There shall be a firm and perpetual peace between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities, both by sea and land, shall from henceforth cease: All prisoners on both sides shall be set at liberty, and His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States, and from every port, place, and harbour within the same; leaving in all fortifications the American artillery that may be therein: And shall also order and cause all archives, records, deeds, and papers, belonging to any of the said States, or their citizens, which in the course of the war, may have fallen into the hands of his officers, to be forthwith restored and deliver'd to the proper States and persons to whom they belong.

ARTICLE VIII.

The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain, and the citizens of the United States.

ARTICLE IX.

In case it should so happen that any place or territory belonging to Great Britain or to the United States, should have been conquer'd by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation.

ARTICLE X.

The solemn ratifications of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties, in the space of six months, or sooner if possible, to be computed from the day of the signature of the present treaty. In witness whereof, we the undersigned, their Ministers Plenipotentiary, have in their name and in virtue of our full powers, signed with our hands the present definitive treaty, and caused the seals of our arms to be affixed thereto.

Done at Paris, this third day of September, in the year of our Lord one thousand seven hundred and eighty-three.

D. Hartley (L.S.)
John Adams (L.S.)
B. Franklin (L.S.)
John Jay (L.S.)

Ratified by the Congress of the Confederation, January 14, 1784. Woodrow Wilson's History of the American People, Vol. III, pp. 18, 293.

HISTORY OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.[2]

In May, 1785, a committee of congress made a report recommending an alteration in the articles of confederation, but no action was taken on it, and it was left to the state legislatures to proceed in the matter. In January, 1786, the legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other states of the union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several states such an act, relative to this great object, as, when ratified by them, will enable the United States in congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the City of Annapolis as the place for the meeting, but only four other states were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report (drawn by Mr. Hamilton, of New York), expressing their unanimous conviction that it might essentially tend to advance the interests of the union if the states by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other states, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the constitution of the federal government adequate to the exigencies of the union; and to report such an act for that purpose to the United States in congress assembled as, when agreed to by them, and afterwards confirmed by the legislatures of every state, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the legislatures of those states which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven states having convened, George Washington, of Virginia, was unanimously elected president, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to congress, with a resolution stating how the proposed federal government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of government under the new constitution, it had been ratified by the conventions chosen in each state to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland,

[2]The constitution of the United States and the amendments thereto, and the constitution of the State of Florida as amended, appear in Volume I, Florida Statutes, 1941.

April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The president informed congress, on the 28th of January, 1790, that North Carolina had ratified the constitution November 21, 1789; and he informed congress on the 1st of June, 1790, that Rhode Island had ratified the constitution May 29, 1790. Vermont, in convention, ratified the constitution January 10, 1791, and was on March 4, 1791, by an act of congress approved February 18, 1791, "received and admitted into this union as a new and entire member of the United States."

After the convention of delegates from states then cooperating under the articles of confederation of the United States of America had, at Philadelphia, Pennsylvania, September 17, 1787, completed their authorized task of framing an organic instrument designed to form a more perfect union capable of affording safety and strength in the progress of an independent nation, the following official proceedings were had, resulting in the adoption and operation of the constitution of the United States.

Letter of the President of the Federal Convention, to the President of Congress, Transmitting the Constitution.

In Convention, September 17, 1787.

Sir,

We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most adviseable.

* * *

That it will meet the full and entire approbation of every state is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, We have the honor to be, Sir,

Your Excellency's

Most obedient and humble servants,

George Washington, President.

By unanimous Order of the Convention.

His Excellency the President of Congress.

Resolution of the Federal Convention Submitting the Constitution to Congress.

In Convention Monday, September 17th, 1787.

Present

The State of

New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled. Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the Convention

Go. Washington, Presidt.

W. Jackson Secretary.

Resolution of Congress Submitting the Constitution to the Several States.

Friday, Sept. 28, 1787.

Congress assembled present Newhampshire, Massachusetts, Connecticut, New York, New Jersey, Pensylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia, and from Maryland Mr. Ross.

Congress having received the report of the

Convention lately assembled in Philadelphia.

Resolved Unanimously that the said Report with the resolutions and letter accompanying the same be transmitted to the several legislatures in Order to be submitted to a convention of Delegates chosen in each state by the people thereof in conformity to the resolves of the Convention made and provided in that case.

Resolution of the Congress, Fixing Date For Election of a President, and the Organization of the Government.

Saturday, Sept. 13, 1788.

Congress assembled present New hampshire Massachusetts Connecticut New York New Jersey Pensylvania Virginia North Carolina South Carolina & Georgia & from Rhodeisland Mr. Arnold & from Delaware Mr. Kearney.

Whereas the Convention assembled in Philadelphia pursuant to the resolution of Congress of the 21st of Feby. 1787 did on the 17th of Sept in the same year report to the United States in Congress assembled a constitution for the people of the United States, Whereupon Congress on the 28 of the same Sept did resolve unanimously "That the said report with the resolutions & letter accompanying the same be transmitted to the several legislatures in order to be submitted to a convention of Delegates chosen in each state by the people thereof in conformity to the resolves of the convention made and provided in that case" And whereas the constitution so reported by the Convention and by Congress transmitted to the several legislatures has been ratified in the manner therein declared to be sufficient for the establishment of the same and such ratifications duly authenticated have been received by Congress and are filed in the Office of the Secretary therefore Resolved That the first Wednesday in Jany next be the day for appointing Electors in the several states, which before the said day shall have ratified the said Constitution; that the first Wednesday in feby next be the day for the electors to assemble in their respective states and vote for a president; And that the first Wednesday in March[3] next be the time and the present seat of Congress the place for commencing proceedings under the said constitution—

[3]The first Wednesday in March, 1789, was March 4th. Thereafter Inauguration Day was March 4th; it is now January 20th. Congress convenes January 3rd, instead of the first Monday in December. (See amendment XX to the federal constitution).

The States and the Territories and Possessions of the United States.

The constitution was ratified by popular conventions in the several original states, in the following order:

Name of State	Date of ratification
Delaware	December 7, 1787
Pennsylvania	December 12, 1787
New Jersey	December 18, 1787
Georgia	January 2, 1788
Connecticut	January 9, 1788
Massachusetts	February 6, 1788
Maryland	April 28, 1788
South Carolina	May 23, 1788
New Hampshire	June 21, 1788
Virginia	June 26, 1788
New York	July 26, 1788
North Carolina	November 21, 1789
Rhode Island and Providence Plantations	May 29, 1790

Later states were admitted as follows:

Name of State	Date of admission
Vermont	March 4, 1791
Kentucky	June 1, 1792
Tennessee	June 1, 1796
Ohio	March 1, 1803
Louisiana	April 30, 1812
Indiana	December 11, 1816
Mississippi	December 10, 1817
Illinois	December 3, 1818
Alabama	December 14, 1819
Maine	March 15, 1820
Missouri	August 10, 1821
Arkansas	June 15, 1836
Michigan	January 26, 1837
Florida	March 3, 1845
Texas	December 29, 1845
Iowa	December 28, 1846
Wisconsin	May 29, 1848
California	September 9, 1850
Minnesota	May 11, 1858
Oregon	February 14, 1859
Kansas	January 29, 1861
West Virginia	June 19, 1863
Nevada	October 31, 1864
Nebraska	March 1, 1867
Colorado	August 1, 1876
North Dakota	November 2, 1889
South Dakota	November 2, 1889
Montana	November 8, 1889
Washington	November 11, 1889
Idaho	July 3, 1890
Wyoming	July 10, 1890
Utah	January 4, 1896
Oklahoma	November 16, 1907
New Mexico	January 6, 1912
Arizona	February 14, 1912

Territories of the United States:

Alaska, acquired from Russia on March 30, 1867; made a territory, August 24, 1912.

Hawaii, annexed on July 7, 1898; made a territory, April 30, 1900.

Possessions of the United States:

Puerto Rico, acquired from Spain, December 10, 1898.

Guam, acquired from Spain, December 10, 1898.

Philippine Islands, ceded by Spain, December 10, 1898.

American Samoa, acquired by tripartite treaty with Germany and Great Britain, December 2, 1899.

Canal Zone, acquired by treaty with Panama, November 18, 1903.

Virgin Islands, bought from Denmark, August 4, 1916.

SPANISH CLAIMS

Spain based her claim and exercise of rights of ultimate dominion over her possessions in the New World upon discovery by Christopher Columbus while acting under a prerogative granted by the king and queen of Spain, on April 30, 1492, and upon a grant from Pope Alexander VI, on May 4, 1493. Translations of the prerogative and grant are as follows:

PREROGATIVES GRANTED TO CHRISTOPHER COLUMBUS.

Ferdinand and Elizabeth, by the Grace of God, King and Queen of Castile, of Leon, of Arragon, of Sicily, of Granada, of Toledo, of Valencia, of Galicia, of Majorca, of Minorca, of Sevil, of Sardinia, of Jaen, of Algarve, of Algezira, of Gilbraltar, of the Canary Islands, Count and Countess of Barcelona, Lord and Lady of Biscay and Molina, Duke and Duchess of Athens and Neopatria, Count and Countess of Rousillion and Cerdaigne, Marquess and Marchioness of Oristan and Gociano, &c. For as much as you, Christopher Columbus, are going by our command, with some of our vessels and men, to discover and subdue some Islands and Continent in the ocean, and it is hoped that by God's assistance, some of the said Islands and Continent in the ocean will be discovered and conquered by your means and conduct, therefore it is but just and reasonable, that since you expose yourself to such danger to serve us, you should be rewarded for it. And we being willing to honour and favour you for the reasons aforesaid; Our will is, That you, Christopher Columbus, after discovering and conquering the said Islands and Continent in the said ocean, or any of them, shall be our Admiral of the said Islands and Continent you shall so discover and conquer; and that you be our Admiral, Vice-Roy, and Governour in them, and that for the future, you may call and stile yourself, D. Christopher Columbus, and that your sons and successors in the said employment, may call themselves Dons, Admirals, Vice-Roys, and Governours of them; and that you may exercise the office of Admiral, with the charge of Vice-Roy and Governour of the said Islands and Continent, which you and your Lieutenants shall conquer, and freely decide all causes, civil and criminal, appertaining to the said employment of Admiral, Vice-Roy, and Governour, as you shall think fit in justice, and as the Admirals of our kingdoms use to do; and that you have power to punish offenders; and you and your Lieutenants exercise the employments of Admiral, Vice-Roy, and Governor, in all things belonging to the said offices, or any of them; and that you enjoy the perquisites and salaries belonging to the said employments, and to each of them, in the same manner as the High Admiral of our kingdoms does. And by this our letter, or a copy of it signed by a Public Notary: We command Prince John, our most dearly beloved Son, the Infants, Dukes, Prelates, Marquesses, Great Masters and Military Orders, Priors, Commendaries, our Counsellors, Judges, and other Officers of Justice whatsoever, belonging to our Household, Courts, and Chancery, and Constables of Castles, Strong Houses, and others; and all Corporations, Bayliffs, Governours, Judges, Commanders, Sea Officers; and the Aldermen, Common Council, Officers, and Good People of all Cities, Lands, and Places in our Kingdoms and Dominions, and in those you shall conquer and subdue, and the captains, masters, mates, and other officers and sailors, our natural subjects now being, or that shall be for the time to come, and any of them, that when you shall have discovered the said Islands and Continent in the ocean; and you, or any that shall have your commission, shall have taken the usual oath in such cases, that they for the future, look upon you as long as you live, and after you, your son and heir, and so from one heir to another forever, as our Admiral on our said Ocean, and as Vice-Roy and Governour of the said Islands and Continent, by you, Christopher Columbus, discovered and conquered; and that they treat you and your Lieutenants, by you appointed, for executing the employments of Admiral, Vice-Roy, and Governour, as such in all respects, and give you all the perquisites and other things belonging and appertaining to the said offices; and allow, and cause to be allowed you, all the honours, graces, concessions, preheminences, prerogatives, immunities, and other things, or any of them which are due to you, by virtue of your commands of Admiral, Vice-roy, and Governour, and to be observed completely, so that nothing be diminished; and that they make no objection to this, or any part of it, nor suffer it to be made; forasmuch as we from this time forward, by this our letter, bestow on you the employments of Admiral, Vice-Roy, and perpetual Governour forever; and we put you into

possession of the said offices, and of every of them, and full power to use and exercise them, and to receive the perquisites and salaries belonging to them, or any of them, as was said above. Concerning all which things, if it be requisite, and you shall desire it, We command our Chancellour, Notaries, and other Officers, to pass, seal, and deliver to you, our Letter of Privilege, in such firm and legal manner, as you shall require or stand in need of. And that none of them presume to do any thing to the contrary, upon pain of our displeasure, and forfeiture of 30 ducats for each offense. And we command him, who shall show them this our Letter, that he summon them to appear before us at our Court, where we shall then be, within fifteen days after such summons, under the said penalty. Under which same, we also command any Public Notary whatsoever, that he give to him that shows it him, a certificate under his seal, that we may know how our command is obeyed.

GIVEN at Granada, on the 30th of April, in the year of our Lord, 1492.—

I, THE KING, I, THE QUEEN.

By their Majesties Command,

JOHN COLOMA,

Secretary to the King and Queen.

BULL OF POPE ALEXANDER CONCEDING AMERICA TO SPAIN.

Alexander, Bishop, servant of the servants of God, to his beloved son in Christ King Ferdinand, and to his beloved daughter in Christ Elizabeth (Isabella), the Queen, illustrious princes of Castille, Leon, Aragon, Sicily, and Granada, health and apostolic benediction:

Among other works acceptable to the Divine Majesty and in accordance with the desire of our heart, that assuredly has been the chief that the Catholic Faith and the Christian Religion be in our time especially exalted and everywhere enlarged and extended, and the salvation of souls procured and barbarous nations depressed and brought back to the faith. Wherefore since through the favor of the Divine mercy, notwithstanding our unworthiness, we have been called to this sacred seat of Peter, knowing you as true Catholic kings and rulers, such as we have ever known you to have been, and the great deeds done by you clearly demonstrate to the whole world, and that you not only desire, but have earnestly striven, sparing no labor, no trouble, and no danger, even that of shedding your own blood in the attempt, and have devoted thereto your whole souls and your untiring energies, as your recovery of the Kingdom of Granada from the tyranny of the Saracens in our times testifies, with so much glory to the Divine Name, we deem it to be not unbecoming in us and to be due to you, that we should freely and cheerfully concede to you that whereby you may be able further to prosecute with more ardent effort for the honor of God and the propagation of the domain of Christianity the praiseworthy enterprise upon which you have entered so acceptable to the immortal God. We have been advised that, whereas for some time you have proposed to yourselves to seek and discover certain islands and lands remote and heretofore unknown, in order that their inhabitants might be brought to the knowledge of our Redeemer, and the profession of our Catholic Faith, yet, in consequence of your having been so long engaged in the conquest and recovery of the Kingdom of Granada, you have not been able to bring that laudable and holy project to the desired conclusion.

Now, however, inasmuch as it has pleased Almighty God, to enable you to accomplish your purpose, Granada having been reduced and to send our beloved son Christopher Columbus, a man every way worthy and most thoroughly accomplished for so great an enterprise, with ships and men well suited for the work, not without labor, and expense, and danger, diligently to explore all those remote and unknown continents and islands, in the far-off Ocean where no ships have ever yet gone; and these daring navigators, traversing with the Divine aid and supreme enterprise the distant Ocean Sea, have actually discovered islands most remote and continents heretofore unknown, wherein reside numerous peaceful nations, naked of clothing, as it is asserted, and eating no flesh meat, yet believing, as these envoys of yours seem to think in one overruling God, the Creator of all things, and so ready to embrace the Catholic Faith and to adopt the Christian morality; and the hope is therefore entertained that, if they were duly instructed, the name of our Lord and Saviour Jesus Christ could easily be extended through those unknown regions; and inasmuch as the said Christopher has caused to be constructed in one of the principal of these islands a settlement of some of the Christians who had gone with him sufficiently fortified, so that they might explore the other islands and more remote lands; and these islands and lands already discovered are found to produce gold, and spices, and precious things of many different kinds and qualities; wherefore, all these things being considered, and especially the purpose, which it becomes you as Catholic Kings and rulers to entertain, of the exaltation and spread of the Catholic Faith, therein following the example of the Kings your ancestors of illustrious memory, and to bring, with the Divine assistance, those islands and continents and their inhabitants, to the knowledge of that true Catholic Faith, we, greatly commending in the Lord your holy and most praiseworthy enterprise, and desirous that it should be brought to its desired consumation, and that the name of our Redeemer should be made known in these regions, exhort you most

earnestly in the Lord, and by the Sacrament of Baptism by which you have bound yourselves to the teachings of the Apostles, and by the mercy of our Lord Jesus Christ we earnestly require you, that, when you devote your efforts to the prosecution of this enterprise, you do so with an earnest zeal for the orthodox faith, and that you spare no labor and no danger to bring the denizens of these lands to embrace the Christian Religion, in the firm hope and trust that Almighty God will bless your efforts.

And in order that you may the more freely and courageously assume the conduct of the enterprise under the influence of the Apostolic grace, we, of our own motion, and not in consequence of any solicitation by you or by any one on your behalf, do of our own liberality and certain knowledge, and of the fulness of Apostolic power, all the islands and continents discovered and to be discovered towards the west and south, drawing a line from the North to the South Pole, distant one hundred leagues towards the west and south from any of the Islands known as the Azores and Cape De Verde Islands, whether such islands and continents be in the direction of India or in any other direction, if such islands and continents so discovered or to be discovered west and south of said line have not been actually possessed by any other Christian King or ruler before Christmas Day last passed preceding the present year One Thousand Four Hundred and Ninety Three, when some of those islands were discovered by your envoys and captains, by the authority of Almighty God vested in us through the Blessed Peter, and the authority delegated to us on earth by Jesus Christ, together with all the provinces, cities, fortresses, districts, and towns, and all their appurtenances, according to the tenor of these presents, do give, grant, and assign to you, your heirs, and successors, Kings of Castille and Leon: and you, and your heirs and successors aforesaid we constitute and appoint Lords of them, with full and free power, authority and jurisdiction of every kind whatsoever: it being fully understood, however, that by this concession and grant it is not intended that any Christian Prince, who may have actually possessed any of those islands or continents before the aforesaid Christmas Day, should not be deprived of any just right that he may have acquired.

And moreover, in virtue of the holy obedience which you have promised and which we have no doubt from your great devotion and royal magnanimity you will continue to observe, we urge you to send to those islands and continents holy men, God-fearing, learned, skilled, and experienced, to instruct the inhabitants thereof in the Catholic Faith and the principles of Christian morality, and that you send them with all reasonable diligence.

And we hereby forbid all persons, of whatever rank, station or condition, even be it royal or imperial, under pain of excommunication, which upon the commission of the overt act we pronounce against them, from presuming to go for the purpose of trade or for any other purpose, without your special permission or that of your heirs or successors, as aforesaid, to any of those islands or continents discovered or to be discovered, whether towards India or in any other direction, beyond the line aforesaid drawn from the North Pole to the South Pole one hundred leagues west and south of the islands commonly known as the Azores and Cape De Verde Islands. And this we decree in Him from whom all power and authority and all good things proceed, all ordinances and decrees of the Apostolic See to the contrary notwithstanding, confiding that, under the direction of our Lord, if you prosecute this laudable and holy enterprise, your labors and your efforts will soon have most happy results for the happiness and glory of all Christian people.

But inasmuch as it may be difficult to transmit these letters to all places where it may be expedient to have them known, it is our will, and we hereby upon the same authority as aforesaid decree, that whithersoever they shall be transferred and made known under the seal and signature of a notary public, or under the seal of any person established in ecclesiastical dignity, or under the authority of any ecclesiastical court, the same faith and credit shall be given to them in judicial proceedings and elsewhere, as if the originals hereof were themselves exhibited.

To no man, therefore, shall it be lawful to infringe or rashly to contravene these letters of our commendation, exhortation, request, gift, grant, assignment, commission, authority, decree, mandate, prohibition, and will. But if, however, any person shall so presume, let him know that he will incur the indignation of Almighty God and of his holy Apostles Peter and Paul.

Given at Rome at Saint Peter's, in the year of the Incarnation of our Lord 1493, on the fourth day before the Nones of May (May 4), in the first year of our Pontificate.

THE FLORIDAS

FLORIDA CEDED BY SPAIN TO GREAT BRITAIN.

Extracts from the definitive treaty of friendship and peace between His Britannic Majesty, the most Christian king and the king of Spain, concluded at Paris, the 10th day of February, 1763.

"ART. 7. In order to establish peace on solid and durable foundations, and to remove forever all subjects of dispute with regard to the limits of the British and French territories on the continent of America, it is agreed, that for the future the confines between the dominions of his Britannic Majesty and those of his most Christian Majesty in that part of the world, shall be fixed irrevocably by a line drawn

along the middle of the river Mississippi, from its source to the river Iberville, and from thence by a line drawn along the middle of this river, and the lakes Maurepas and Pontchartrain, to the sea; and for this purpose, the most Christian King cedes, in full right, and guarantees to his Britannic Majesty, the river and port of Mobile, and every thing which he possesses or ought to possess on the left side of the river Mississippi, with the exception of the town of New Orleans, and of the island in which it is situated, which shall remain to France; * * *.

"ART. 20. In consequence of the restitution stipulated in the preceding article,[4] his Catholic Majesty cedes and guarantees, in full right, to his Britannic Majesty, Florida, with Fort St. Augustine, and the Bay of Pensacola, as well as all that Spain possesses on the continent of North America, to the east or to the southeast of the river Mississippi; and, in general, every thing that depends on the said countries and lands, with the sovereignty, property, possession, and all rights acquired by treaties or otherwise, which the Catholic King and the crown of Spain have had, till now, over the said countries, lands, places, and their inhabitants; so that the Catholic King cedes and makes over the whole to the said King, and to the crown of Great Britain, and that in the most ample manner in form."

[4]Viz., the 19th in the treaty, which provides for the restoration of Cuba to Spain.

Proclamation of the King of Great Britain.

By the King, a Proclamation — George R.

"Whereas we have taken East and West Florida into our royal consideration the extensive and valuable acquisitions in America, secured to our crown by the late definitive treaty of peace concluded at Paris, the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdoms as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation; we have thought fit, with the advice of our privy council, to issue this our royal proclamation, hereby to publish and declare to all our loving subjects that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain to erect, within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz:

"First, * * *.

"Secondly, the Government of the East Florida, bounded to the westward by the Gulf of Mexico and the Apalachicola river; to the northward by a line drawn from that part of the said river where the Chatahoochie and Flint rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic ocean; and to the east and south by the Atlantic ocean and the Gulf of Florida, including all islands within six leagues of the sea-coast.

"Thirdly, the Government of West Florida, bounded to the southward by the gulf of Mexico, including all islands within six leagues of the coast, from the river Apalachicola to lake Pontchartrain; to the westward by the said lake, the lake Maurepas, and the river Mississippi; to the northward, by a line drawn due east from that part of the river Mississippi which lies in thirty-one degrees north latitude, to the river Apalachicola or Chatahoochie, and to the eastward by the said river."

(See White's Spanish Laws, pp. 258-260).

GREAT BRITAIN RE-CEDES THE FLORIDAS TO SPAIN 1783.

The treaty between Great Britain and Spain, 1783, in French appears in A **Collection of All the Treaties of Peace, Alliances, and Commerce between Great Britain and Other Powers,** vol. 3 (p. 375), edited by Charles Jenkinson (London, 1785).

A translation of article V, of the treaty relative to Florida, is given below.

Article V.

His Britannic Majesty moreover cedes and guarantees, in full ownership, to his Catholic Majesty, Eastern Florida as well as Western Florida. His Catholic Majesty agrees that the British inhabitants or others who may have been subjects of the King of Great Britain in said lands, may withdraw in all safety and liberty, where it seems good to them, and may sell their goods and transport their effects as well as their persons without being hindered in their emigration, under any pretext at all, except that of debts or criminal process. The limit of time for this emigration is fixed at eighteen months, counting from the day of exchange of ratifications of this treaty: but if, because of the value of the possessions of the English owners, they cannot be disposed of in said period, then His Catholic Majesty will grant them proportionate delay for that purpose. It is further stipulated that His Britannic Majesty will be allowed to transport from Eastern Florida all the effects which belong to him, whether artillery or otherwise.

(See White's Spanish Laws, p. 270).

TREATY OF AMITY, SETTLEMENT AND LIMITS.

(Between Spain and United States)

The Floridas were ceded by Spain to the United States under the Treaty of Amity, Settlements and Limits, entered into by and between Spain and the United States. This treaty was dated February 22nd, 1819, ratified and confirmed by the king of Spain on October 24, 1820, and by the Senate of the United States on February 19th, 1821, and by the President of the United States on February 22, 1821. The proclamation of the President, which contains a full copy of the treaty, is as follows:

By the President of the United States.

A Proclamation.

WHEREAS a treaty of Amity, Settlement and Limits, between the United States of America, and His Catholic Majesty, was concluded and signed between their Plenipotentiaries in this city, on the twenty-second day of February, in the year of our Lord, one thousand eight hundred and nineteen, which treaty, word for word, is as follows:

Treaty of Amity, Settlement and Limits.

(Between the United States of America and His Catholic Majesty.)

The United States of America and his Catholic Majesty, desiring to consolidate, on a permanent basis, the friendship and good correspondence which happily prevails between the two parties, have determined to settle and terminate all their differences and pretensions, by a Treaty, which shall designate, with precision, the limits of their respective bordering territories in North America.

With this intention, the President of the United States has furnished with their full powers John Quincy Adams, Secretary of State of the United States; and his Catholic Majesty has appointed the most excellent Lord Don Luis De Onis, Gonzales, Lopez y Vara, Lord of the town of Rayaces, perpetual Regidor of the Corporation of the City of Salamanca, Knight Grand-Cross of the Royal American Order of Isabella the Catholic, decorated with the Lys of La Vendee, Knight Pensioner of the Royal and distinguished Spanish Order of Charles the Third, Member of the Supreme Assembly of the said Royal Order, of the Council of his Catholic Majesty; his Secretary, with the Exercise of Degrees, and his Envoy Extraordinary and Minister Plenipotentiary near the United States of America.

And the said Plenipotentiaries, after having exchanged their powers, have agreed upon and concluded the following articles:

ARTICLE I.

There shall be a firm and inviolable peace and sincere friendship between the United States and their citizens, and his Catholic Majesty, his successors and subjects, without exception of persons or places.

ARTICLE II.

His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of the said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them.

ARTICLE III.

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Nachitoches, or Red River; then following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then crossing the said Red River, and running thence, by a line due north to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea, The whole being, as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But, if the source of the Arkansas River shall be found to fall north or south of latitude 42, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea: All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus

described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions, to the territories prescribed by the said line; that is to say, the United States cede to his Catholic Majesty, and renounce forever, all their rights, claims, and pretensions to the territories lying west and south of the above-described line; and, in like manner, his Catholic Majesty cedes to the said United States, all his rights, claims, and pretensions, to any territories east and north of the said line; and for himself, his heirs, and successors, renounces all claim to the said territories forever.

ARTICLE IV.

To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a Commissioner and a Surveyor, who shall meet before the termination of one year, from the date of the ratification of this treaty, at Nachitoches, on the Red River, and proceed to run and mark the said line, from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is above agreed upon and stipulated, and the line of latitude 42, to the South Sea; they shall make out plans, and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

ARTICLE V.

The inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction; and all those who may desire to remove to the Spanish dominions, shall be permitted to sell or export their effects, at any time whatever, without being subject, in either case, to duties.

ARTICLE VI.

The inhabitants of the territories which his Catholic Majesty cedes to the United States, by this Treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities, of the citizens of the United States.

ARTICLE VII.

The officers and troops of his Catholic Majesty, in the territories hereby ceded by him to the United States, shall be withdrawn, and possession of the places occupied by them shall be given within six months after the exchange of the ratifications of this Treaty, or sooner, if possible, by the officers of his Catholic Majesty, to the commissioners or officers of the United States, duly appointed to receive them; and the United States shall furnish the transports and escort necessary to convey the Spanish officers and troops, and their baggage, to the Havana.

ARTICLE VIII.

All the grants of land made before the 24th of January, 1818, by his Catholic Majesty, or by his lawful authorities, in the said territories ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which, the said grants shall be null and void. All grants made since the said 24th of January, 1818, when the first proposal, on the part of his Catholic Majesty, for the cession of the Floridas, was made, are hereby declared, and agreed to be, null and void.

ARTICLE IX.

The two high contracting parties, animated with the most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be forever maintained between them, reciprocally renounce all claims for damages or injuries which they, themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this Treaty.

The renunciation of the United States will extend to all the injuries mentioned in the Convention of the 11th of August, 1802.

2. To all claims on account of prizes made by French privateers, and condemned by French consuls, within the territory and jurisdiction of Spain.

3. To all claims of indemnities on account of the suspension of the right of deposit at New Orleans, in 1802.

4. To all claims of citizens of the United States upon the government of Spain, arising from the unlawful seizures at sea, and in the ports and territories of Spain, or the Spanish colonies.

5. To all claims of citizens of the United States upon the Spanish government, statements of which, soliciting the interposition of the government of the United States, have been

presented to the Department of State, or to the Minister of the United States in Spain, since the date of the Convention of 1802, and until the signature of this Treaty.

The renunciation of his Catholic Majesty extends:

1. To all the injuries mentioned in the Convention of the 11th of August, 1802.

2. To the sums which his Catholic Majesty advanced for the return of Captain Pike from the Provincias Internas.

3. To all injuries caused by the expedition of Miranda, that was fitted out and equipped at New York.

4. To all claims of Spanish subjects upon the government of the United States, arising from unlawful seizures at sea, or within the ports and territorial jurisdiction of the United States.

Finally, to all the claims of subjects of his Catholic Majesty upon the government of the United States, in which the interposition of his Catholic Majesty's government has been solicited, before the date of this Treaty, and since the date of the Convention of 1802, or which may have been made to the Department of Foreign Affairs of his Majesty, or to his Minister in the United States.

And the high contracting parties, respectively, renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida.

ARTICLE X.

The Convention entered into between the two Governments, on the 11th of August, 1802, the ratifications of which were exchanged the 21st December, 1818, is annulled.

ARTICLE XI.

The United States, exonerating Spain from all demands in future, on account of the claims of their citizens to which the renunciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same, to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of those claims, a Commission, to consist of three Commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate, which Commission shall meet at the City of Washington, and, within the space of three years from the time of their first meeting, shall receive, examine, and decide upon the amount and validity of, all the claims included within the descriptions above mentioned. The said Commissioners shall take an oath or affirmation, to be entered on the record of their proceedings, for the faithful and diligent discharge of their duties; and, in case of the death, sickness, or necessary absence, of any such Commissioner, his place may be supplied by the appointment, as aforesaid, or by the President of the United States, during the recess of the Senate, of another Commissioner in his stead. The said Commissioners shall be authorized to hear and examine on oath, every question relative to the said claims, and to receive all suitable authentic testimony concerning the same. And the Spanish government shall furnish all such documents and elucidations as may be in their possession, for the adjustment of the said claims, according to the principles of justice, the laws of nations, and the stipulations of the Treaty, between the two parties, of 27th, October, 1795; the said documents to be specified, when demanded, at the instance of the said Commissioners.

The payment of such claims as may be admitted and adjusted by the said Commissioners, or the major part of them, to an amount not exceeding five millions of dollars, shall be made by the United States, either immediately at their Treasury, or by the creation of stock bearing an interest of six per cent. per annum, payable from the proceeds of sale of public lands within the Territories hereby ceded to the United States, or in such other manner as the Congress of the United States may prescribe by law.

The records of the proceedings of the said Commissioners, together with the vouchers and documents produced before them, relative to the claims to be adjusted and decided upon by them, shall, after the close of their transactions, be deposited in the Department of State of the United States; and copies of them, or any part of them, shall be furnished to the Spanish government, if required, at the demand of the Spanish Minister in the United States.

ARTICLE XII.

The Treaty of limits and navigation, of 1795, remains confirmed in all, and each one of its articles, excepting the 2, 3, 4, 21, and the second clause of the 22d article, which, having been altered by this Treaty, or having received their entire execution, are no longer valid.

With respect to the 15th article of the same Treaty of Friendship, Limits, and Navigation, of 1795, in which it is stipulated that the flag shall cover the property, the two high contracting parties agree that this shall be so understood with respect to those powers who recognize this principle; but, if either of the two contracting parties shall be at war with a third party, and the other neutral, the flag of the neutral shall cover the property of enemies whose government acknowledges this principle, and not of others.

ARTICLE XIII.

Both contracting parties, wishing to favor their mutual commerce, by affording in their ports every necessary assistance to their re-

spective merchant vessels, have agreed, that the sailors who shall desert from their vessels in the ports of the other, shall be arrested and delivered up, at the instance of the consul, who shall prove, nevertheless, that the deserters belonged to the vessels that claim them, exhibiting the document that is customary in their nation; that is to say, the American consul in a Spanish port, shall exhibit the document known by the name of the articles; and the Spanish consul in American ports, the roll of the vessel; and if the name of the deserter or deserters, who are claimed, shall appear in the one or the other, they shall be arrested, held in custody, and delivered to the vessel to which they shall belong.

ARTICLE XIV.

The United States hereby certify that they have not received any compensation from France, for the injuries they suffered from her privateers, consuls, and tribunals, on the coasts and in the ports of Spain, for the satisfaction of which provision is made by this Treaty; and they will present an authentic statement of the prizes made, and of their true value, that Spain may avail herself of the same, in such manner as she may deem just and proper.

ARTICLE XV.

The United States, to give to his Catholic Majesty a proof of their desire to cement the relations of amity subsisting between the two nations, and to favor the commerce of the subjects of his Catholic Majesty, agree that Spanish vessels, coming laden only with productions of Spanish growth or manufacture, directly from the ports of Spain, or of her colonies, shall be admitted, for the term of twelve years, to the ports of Pensacola and St. Augustine, in the Floridas, without paying other or higher duties on their cargoes, or of tonnage, than will be paid by the vessels of the United States. During the said term, no other nation shall enjoy the same privileges within the ceded Territories. The twelve years shall commence three months after the exchange of the ratifications of this Treaty.

ARTICLE XVI.

The present Treaty shall be ratified in due form, by the contracting parties, and the ratifications shall be exchanged in six months from this time, or sooner, if possible.

In witness whereof, we, the underwritten Plenipotentiaries of the United States of America and of his Catholic Majesty, have signed, by virtue of our powers, the present Treaty of Amity, Settlement, and Limits, and have thereunto affixed our seals, respectively.

Done at Washington, this twenty-second day of February, one thousand eight hundred and nineteen.

JOHN QUINCY ADAMS, (L.S.)
LUIS DE ONIS, (L.S.)

And whereas his said Catholic Majesty did, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and twenty, ratify and confirm the said treaty, which ratification is in the words and of the tenor following:

"Ferdinand the Seventh, by the Grace of God, and by the Constitution of the Spanish monarchy, king of the Spains.

"Whereas, on the twenty-second day of February, of the year one thousand eight hundred and nineteen last past, a treaty was concluded and signed in the City of Washington, between Don Luis de Onis, my Envoy Extraordinary and Minister Plenipotentiary, and John Quincy Adams, Esquire, Secretary of State of the United States of America, competently authorized by both parties, consisting of sixteen articles, which had for their object the arrangement of differences and of limits between both governments and their respective territories; which are of the following form and literal tenor:

(Here follows the above Treaty, word for word.)

"Therefore, having seen and examined the sixteen articles aforesaid, and having first obtained the consent and authority of the General Cortes of the nation with respect to the cession mentioned and stipulated in the 2d and 3d articles, I approve and ratify all and every one of the articles referred to, and the clauses which are contained in them; and in virtue of these presents, I approve and ratify them; promising, on the faith and word of a King, to execute and observe them, and cause them to be executed and observed entirely as if I myself had signed them: and that the circumstance of having exceeded the term of six months, fixed for the exchange of the ratifications in the 16th article may afford no obstacle in any manner, it is my deliberate will that the present ratification be as valid and firm, and produce the same effect, as if it had been done within the determined period. Desirous at the same time of avoiding any doubt or ambiguity concerning the meaning of the 8th article of the said treaty, in respect to the date which is pointed out in it as the period for the confirmation of the grants of lands in the Floridas, made by me, or by the competent authorities in my royal name, which point of date was fixed in the positive understanding of the three grants of land made in favor of the Duke of Alagon, the Count of Punonrostro, and Don Pedro de Vargas, being annulled by its tenor, I think proper to declare that the said three grants have remained and do remain entirely annulled and invalid; and that neither the three individuals mentioned, nor those who may have title or interests through them, can avail themselves of the said grants at any time, or in any manner: under which explicit declaration the said 8th article is to be understood as ratified. In the faith of all which I have commanded to despatch these presents. Signed by my hand, sealed with my secret seal, and

countersigned by the underwritten my Secretary of Despatch of State.

"Given at Madrid, the twenty-fourth of October, one thousand eight hundred and twenty.

(Signed.) FERNANDO.

(Countersigned.) Evaristo Perez de Castro."

And whereas the Senate of the United States did, on the nineteenth day of the present month, advise and consent to the ratification, on the part of these United States, of the said treaty, in the following words.

In Senate of the United States,
February 19th, 1821.

"Resolved, two thirds of the Senators present concurring therein, That the Senate, having examined the treaty of Amity, Settlement, and Limits, between the United States of America, and his Catholic Majesty, made and concluded on the twenty second of February, one thousand eight hundred and nineteen, and seen and considered the ratification thereof made by his Catholic Majesty, on the twenty fourth day of October, one thousand eight hundred and twenty, do consent to, and advise the President of the United States to ratify the same."

And whereas in pursuance of the said advice and consent of the senate of the United States, I have ratified and confirmed the said Treaty, in the words following, viz;

"Now, therefore, I, James Monroe, President of the United States of America, having seen and considered the treaty above recited, together with the ratification of his Catholic Majesty thereof, do in pursuance of the aforesaid advice and consent of the Senate of the United States by these presents, accept, ratify, and confirm the said treaty, and every clause and article thereof, as the same are herein before set forth.

In faith whereof, I have caused the seal of the United States of America to be hereunto affixed.

Given under my hand, at the City of Washington, this twenty-second day of February, in the year of our Lord, one thousand eight hundred and twenty-one, and of the Independence of the United States, the forty-fifth.

JAMES MONROE.

By the President:
John Quincy Adams,
Secretary of State.

And whereas the said ratifications, on the part of the United States, and of his Catholic Majesty, have been this day, duly exchanged, at Washington, by John Quincy Adams, Secretary of State of the United States, and by General Don Francisco Dionisio Vives, Envoy Extraordinary, and Minister Plenipotentiary of his Catholic Majesty: Now therefore, to the end that the said treaty may be observed and performed with good faith, on the part of the United States, I have caused the premises to be made public; and I do hereby enjoin and require all persons bearing office, civil or military, within the United States, and all others, citizens or inhabitants thereof, or being within the same, faithfully to observe and fulfil the said treaty, and every clause and article thereof.

In testimony whereof, I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand.

Done at the city of Washington, the twenty-second of February, in the year of our Lord one thousand eight hundred and twenty-one, and of the Sovereignty and Independence of the United States the forty-fifth.

JAMES MONROE.

By the President:
John Quincy Adams,
Secretary of State."

ACQUISITION AND OCCUPATION OF THE FLORIDAS.

ACT OF MARCH 3, 1819
(3 U. S. Stat. 523)

AN ACT to authorize the President of the United States to take possession of East and West Florida, and establish a temporary government therein.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of, and occupy, the territories of East and West Florida, and the appendages and appurtenances thereof; and to remove and transport the officers and soldiers of the king of Spain, being there, to the Havana, agreeably to the stipulations of a treaty between the United States and Spain, executed at Washington, on the twenty-second day of February, in the year one thousand eight hundred and nineteen, providing for the cession of said territories to the United States; and he may, for these purposes, and in order to maintain in said territories the authority of the United States, employ any part of the army and navy of the United States, and the militia of any state or territory which he may deem necessary.

Sec. 2. **And be it further enacted,** That, until the end of the first session of the next Congress, unless provision for the temporary government of said territories be sooner made by Congress, all the military, civil, and judicial, powers, exercised by the officers of the existing government of the same territories, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for the maintaining the inhabitants of said territories in the free enjoyment of their liberty, property, and religion; and the laws of the United States, relative to the collection of revenue, and the importation of persons of colour, shall be extended to the said territories; and the President

of the United States shall be, and he is hereby, authorized, within the term aforesaid, to establish such districts, for the collection of the revenue, and, during the recess of Congress, to appoint such officers, whose commissions shall expire at the end of the next session of Congress, to enforce the said laws, as to him shall seem expedient.

Sec. 3. **And be it further enacted,** That the sum of twenty thousand dollars is hereby appropriated for the purpose of carrying this act into effect, to be paid out of any moneys in the treasury not otherwise appropriated, and to be applied under the direction of the President of the United States.

Sec. 4. **And be it further enacted,** That this act shall take effect, and be in force, whenever the aforesaid treaty, providing for the cession of said territories to the United States, shall have been ratified by the king of Spain, and the ratifications exchanged, and the king of Spain shall be ready to surrender said territory to the United States, according to the provisions of said treaty.

ACT OF MARCH 3, 1821
(3 U. S. Stat. 637)

AN ACT for carrying into execution the Treaty between the United States and Spain, concluded at Washington on the twenty-second day of February, one thousand eight hundred and nineteen.

'Be it Enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby authorized to take possession of, and occupy the territories of East and West Florida, and the appendages and appurtenances thereof, and to remove and transport the officers and soldiers of the King of Spain, being there, to the Havana, agreeably to the stipulations of the treaty between the United States and Spain, concluded at Washington on the twenty-second day of February, in the year one thousand eight hundred and nineteen, providing for the session of said territories to the United States; and he may, for these purposes, and in order to maintain in said territories, the authority of the United States, employ any part of the army and navy of the United States, and the militia of any state or territory which he may deem necessary.

Section 2. And be it further enacted, That, until the end of the first session of the next Congress, unless provision for the temporary government of said territories be sooner made by Congress, all the military, civil, and judicial powers exercised by the officers of the existing government of the same territories, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for the maintaining the inhabitants of said territories in the free enjoyment of their liberty, property, and religion; and the laws of the United States, relating to the revenue and its collection, subject to the modification stipulated by the fifteenth article of the said treaty, in favor of Spanish vessels and their cargoes, and the laws relating to the importation of persons of colour, shall be extended to the said territories. And the President of the United States shall be, and he is hereby authorized, within the term aforesaid, to establish such districts for the collection of the revenue, and, during the recess of Congress, to appoint such officers, whose commissions shall expire at the end of the next session of Congress, to enforce the said laws, as to him shall seem expedient.

Sec. 3. And be it further enacted, That, the President of the United States be, and he is hereby authorized to appoint, during the recess of the Senate, a commissioner and surveyor, whose commissions shall expire at the end of the next session of Congress, to meet the commissioner and surveyor who may be appointed on the part of Spain, for the purposes stipulated in the fourth article of said treaty; and that the President be, and he is hereby further authorized to take all other measures which he shall judge proper, for carrying into effect the stipulations of the said fourth article.

Sec. 4. And be it further enacted, That a board of three commissioners shall be appointed, conformably to the stipulations of the eleventh article of the said treaty; and the President of the United States is hereby authorized to take any measures which he may deem expedient, for organizing the said board of commissioners; and, for this purpose, may appoint a secretary, well versed in the French and Spanish languages, and a clerk; which appointments, if made during the recess of the Senate, shall, at the next meeting of that body, be subject to nomination for their advice and consent.

Sec. 5. And be it further enacted, That the compensation of the respective officers, for whose appointment provision is made by this act, shall not exceed the following sums.

The commissioner to be appointed conformably to the fourth article, at the rate, by the year, of three thousand dollars.

To the surveyor, two thousand dollars.

To each of the three Commissioners to be appointed conformably to the eleventh article of the treaty, three thousand dollars.

To the Secretary of the Board, two thousand dollars.

To one Clerk, one thousand five hundred dollars.

Sec. 6. And be it further enacted, That, for carrying this act into execution, the sum of one hundred thousand dollars be, and hereby is appropriated, to be taken from any moneys in the Treasury, not otherwise appropriated.

JOHN W. TAYLOR,
Speaker of the House of Representatives.
JOHN GAILLARD,
President of the Senate, pro tempore.
JAMES MONROE.

Approved,
Washington, March 3, 1821.

INSTRUCTIONS AND COMMISSIONS FOR OCCUPATION OF THE FLORIDAS.

The Secretary of State to Major General Andrew Jackson.

Department of State, Washington,
March 12, 1821.

Sir:

By direction of the President of the United States, I have the honor of transmitting to you three commissions:

1. As commissioner to receive possession of the provinces of East and West Florida, conformably to the treaty between the United States and Spain, concluded on the 22d of February, 1819.

2. As governor of the whole territories of which possession is to be thus taken.

3. As commissioner vested with special and extraordinary powers, conformably to the stipulations of the treaty, and to the act of Congress for carrying the same into execution; copies of both of which are also among the enclosures with this letter.

Together with the Spanish ratification of the treaty, there was transmitted to the Spanish minister at this place a royal order to the Captain General and Governor of the island of Cuba for delivering possession of the provinces of East and West Florida, according to the stipulations of the second article of the treaty.

Colonel James G. Forbes has been appointed by the President agent and commissary to deliver this royal order to the Governor of Cuba, to concert and arrange with him the execution of it, and to receive any documents or archives which may be at the Havana, and which are stipulated to be delivered by this article. A copy of his instructions is herewith enclosed, by which you will perceive that he is to deliver over to you all such documents or archives as he may receive at the Havana. It is desirable that those relating to each of the two provinces should be kept distinct from each other, and that this Government should be informed generally of their character and quantity.

Colonel Forbes is to take passage at New York in the United States sloop of war Hornet, Captain Read, and, on arriving at Pensacola, is to give you immediate notice, that you may repair thither to receive possession of that place. The Hornet is to remain there to escort the transports in which the Spanish officers and troops and their baggage are to be conveyed to the Havana.

The Spanish minister has expressed a strong wish that no troops of the United States may be introduced into Pensacola or St. Augustine until after the evacuation by those of Spain. The object of this request being to avoid any possible unpleasant altercations between the soldiers of the two nations, the President thinks it reasonable to comply with it, unless you should be of the opinion that it will be attended with inconvenience. In that event, he relies that you will take every measure of precaution which may be necessary to guard against any such collisions between the soldiers; and he trusts with confidence that, in every arrangement for the evacuation, the utmost delicacy will be observed to avoid every thing which might tend to wound the feelings of any of the Spanish officers, soldiers or subjects who are to remove.

It is the President's desire that you should appoint General Gaines, or such other officer as you may deem expedient, to receive possession of St. Augustine; and that the same instructions should be applied to the execution of that service. The United States brig Enterprise or schooner Porpoise will be ordered to proceed to that place to escort the transports which are to convey the Spanish officers and troops thence to the Havana. The care of providing the transports at both places is referred to you. The number of troops at either place is not known, but supposed to amount to about five hundred men at each. The stipulation is understood to include civil as well as military officers, and provisions as well as passage.

Instructions will be given by the Secretary of War to the quartermasters and commissaries to furnish to your orders provisions and transports for the conveyance of the Spanish officers and troops. It is expected they will be supplied at New Orleans and Mobile for those to embark within the Gulf, and at Savannah and Charleston for those going from St. Augustine.

A copy and translation of the royal order to the Governor of Cuba, for delivering the possession of the provinces, is among the enclosures herewith. You will observe that it includes expressly the islands appurtenant to them. It will be proper that attention should be paid to taking possession of all these islands, but it may not be necessary that a formal delivery of them in every case should be made.

On receiving from the Governors of West and of East Florida possession of those respective provinces, it will be proper to exchange certificates of the time and mode of the transaction. Orders for the delivery of any military posts within the provinces will be expected, and they will be occupied by detachments of our troops, as you may deem expedient.

As soon as the possession shall be transferred, you will, in pursuance of your authority over the ceded territories, issue proclamations announcing the fact. A form adapted from that which was issued on the first occupation of Louisiana is herewith enclosed, to be modified as the circumstances, in your opinion, may require.

The powers vested in you by the enclosed commissions are also conformable to those which were intrusted to the Governor of Louisiana under an act of Congress of similar import. The President is satisfied that they will be exercised by you with a due regard as well to the privileges and usages of the inhabitants

under the Government to which they have been subject, as to the personal and social rights to which they will be entitled by the stipulations of the treaty, and as associates to the union of these States. The money paid into the Spanish treasury before the delivery of possession, and whatever may be due thereto at that date, is to be considered as the property of Spain. Payments and debts subsequent to that date will belong, of course, to the United States.

The laws of the United States relating to the revenue and its collection, and those relating to the introduction of persons of color, being extended by the act of Congress to the territory, the execution of them will be superintended by officers to be appointed for the several collection districts to be established by the President conformably to the law.

Your compensation as governor will be at the rate of five thousand dollars a year. As commissioner for receiving possession of the provinces, such reasonable expenses as may be incurred will be allowed. Whenever your military command ceases, your salary as governor will commence.

In the taking possession of St. Augustine and East Florida, similar proceedings to those relative to the occupation of West Florida will be proper. Both provinces being placed under your direction, the proclamation to be issued there will be in your name; and General Gaines, or such other officer as you may appoint, will be instructed to consider himself, for all the purposes of the Government, subject to your orders.

At the ensuing session of Congress it is to be presumed one of the earliest objects of attention to that body will be to make further provision for the government of these territories. The President wishes you, in the interval, to collect and communicate to this Department any information relating to the country and its inhabitants which may be useful to the exercise of the legislative authority of the Union concerning them.

For the expenses incident to the services herewith required, you will draw upon this Department. Strict economy is to be observed in incurring them; and I have urgently to request the transmission, as early as possible, of all the accounts resulting from them, with the vouchers necessary for their settlement at the Treasury.

I am, with great respect, &c.

JOHN QUINCY ADAMS.

Commissions to Andrew Jackson.

1.

James Monroe, President of the United States of America.

To all to whom these presents shall come, Greeting:

Know Ye, That reposing special Trust and Confidence in the Patriotism and Abilities of Major General Andrew Jackson of Tennessee, I have appointed him Commissioner of the United States with full power and authority to him to take possession of and occupy the territories ceded by Spain to the United States, by the Treaty concluded at Washington on the twenty second day of February, in the year one thousand eight hundred and nineteen, and for that purpose to repair to the said Territories and there to execute and perform all such acts and things touching the premises as may be necessary for fulfilling his appointment conformable to the said Treaty and the laws of the United States: and I do moreover authorize the said Andrew Jackson to appoint any person or persons in his stead to receive possession of any part of the said ceded Territories, according to the stipulations of the said Treaty.

In Testimony whereof, I have caused these Letters to be made patent, and the Seal of the United (Seal) States to be hereunto affixed. Given under my hand at the City of Washington the tenth day of March, A. D. 1821; and of the Independence of the United States of America, the Forty Fifth.

JAMES MONROE.

By the President,
JOHN QUINCY ADAMS,
Secretary of State.

2.

James Monroe, President of the United States of America,

To all to whom these presents shall come, Greeting:

Whereas the Congress of the United States by An Act passed on the third day of the present month did provide that until the end of the first Session of the next Congress, unless provision be sooner made for the temporary Government of the Territories of East and West Florida, ceded by Spain to the United States, by the Treaty between the said Parties concluded at Washington on the twenty second day of February, one thousand eight hundred and Nineteen, all the military civil and judicial powers exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct, for maintaining the inhabitants of said Territories in the free enjoyment of their liberty, property and religion. Now Know Ye, that reposing special Trust and Confidence in the Integrity, Patriotism and Abilities of Major General Andrew Jackson, I do in virtue of the above recited Act appoint him to exercise within the said ceded Territories under such limitations as have been or may hereafter be prescribed to him by my instructions, and by law, all the powers and authorities heretofore exercised by the Governor and Captain General and Intendant of Cuba, and by the Governors of East and West Florida within the said provinces respectively; and do authorize and empower him the said Andrew Jackson to execute and fulfil the duties of this present

appointment according to law; and to Have and to Hold the same with all its powers and privileges until the end of the next Session of Congress unless provision be sooner made for the temporary government of the said Territories so ceded by Spain to the United States; Provided however and it is the true intent and meaning of these presents that the said Andrew Jackson or any person acting under him or in the said territories shall have no power or authority to lay or collect any new or additional taxes or to grant or confirm to any person or persons whomsoever any title or claims to lands within the same.

In Testimony whereof, I have caused these Letters to be made patent, and the Seal of the United
(Seal) States to be hereunto affixed. Given under my hand at the City of Washington the tenth day of March, A. D. 1821; and of the Independence of the United States of America, the Forty Fifth.

JAMES MONROE.

By the President,
JOHN QUINCY ADAMS,
Secretary of State.

3.

James Monroe, President of the United States of America,

To Andrew Jackson, Greeting.

Whereas by An Act of Congress passed on the third day of the present month entitled "An Act for carrying into execution the Treaty between the United States and Spain, concluded at Washington on the twenty-second day of February, one thousand eight hundred and nineteen," it is provided that until the end of the first Session of the next Congress, unless provision be sooner made for the temporary Government of the Territories ceded by Spain to the United States by the Treaty concluded at Washington on the twenty-second day of February, one thousand eight hundred and nineteen between the two Nations, all the Military Civil and judicial powers exercised by the officers of the existing Government of the same shall be vested in such person or persons, and shall be exercised in such manner as the President of the United States shall direct for maintaining the Inhabitants of said Territories in the free enjoyment of their liberty, property and religion; and Whereas on the tenth day of the present month, I did by letters patent under the Seal of the United States in pursuance of the powers vested in me as aforesaid appoint you the said Andrew Jackson to exercise under certain limitations within the said ceded Territories all the powers and authorities heretofore exercised by the Governor and Captain General and by the Intendant of Cuba, and by the Governors of East and West Florida within the said Provinces respectively, with the clauses and conditions in the said Letters patent expressed; and Whereas it appears to me expedient that you should be vested with the other powers hereinafter specified: Therefore be it known that in virtue of the above recited Act of Congress I do by these presents appoint and authorize you the said Andrew Jackson to administer the government with the existing authorities in the best manner in your power for the present, and to report without delay, the actual state, with such alterations as you may think advisable, that further instructions may be given respecting the same: and I do moreover authorize you to suspend any officer or officers in the said Territories which the public good may seem to you to require, with the exception always of such as are or may be appointed by the President of the United States, making a report to this government of your proceedings therein: these Letters patent are to continue in force until the end of the first Session of the next Congress, unless provision be sooner made for the temporary Government of the said Territories so as aforesaid ceded by Spain to the United States, and unless it should be sooner revoked by the President of the United States.

In Testimony whereof, I have caused these Letters to be made patent, and the Seal of the United
(Seal) States to be hereunto affixed. Given under my hand at the City of Washington the twentieth day of March A. D. 1821; and of the Independence of the United States of America, the Forty Fifth.

JAMES MONROE

By the President,
JOHN QUINCY ADAMS
Secretary of State.

PROCESS VERBAL AT ST. AUGUSTINE.

In the place of St. Augustine, and on the 10th day of July, eighteen hundred and twenty-one, Don Jose Coppinger, colonel of the National Armies, and commissioner appointed by his Excellency the Captain General of the Island of Cuba, to make a formal delivery of his said place and province of East-Florida, to the government of the United States of America, by virtue of the treaty of cession concluded at Washington, on the twenty-second of February, eighteen hundred and nineteen, and the royal schedule of delivery of the twenty-fourth of October of the last year, annexed to the documents mentioned in the certificate that form a heading to these instruments in testimony thereof. And the adjutant general of the southern division of said states colonel Robert Butler, duly authorized by the aforesaid government to receive the same, we having had several conferences in order to carry into effect our respec-

tive commissions, as will appear by our official communications—and having received through officers nominated by the latter, the documents, inventories and plans, appertaining to the property and sovereignty of the Spanish nation held in this province, and in its adjacent Islands depending thereon, with the sites, public squares, vacant lands, public edifices, fortifications, and other works not being private property; and the same having been preceded by the arrangements and formalities, that for the greater solemnity of this important act, they have judged proper, there has been verified at 4 o'clock of the evening of this day the complete and personal delivery of the fortifications, and all else of this aforesaid province, to the commissioner, officers and troops of the United States, and in consequence thereof, having embarked for the Havana, the military and civil officers and Spanish troops in the American transports provided for this purpose, the Spanish authorities having this moment ceased the exercise of their functions, and those appointed by the American government having begun theirs—duly noting, that we have transmitted to our governments, the doubt occurring whether the artillery ought to be comprehended in the fortifications, and if the public archives relating to private property ought to remain, and be delivered to the American government by virtue of the cession: and that there remain in the fortifications, until the aforesaid resolution is made, the artillery, munitions and implements, specified in a particular inventory, awaiting on these points and the others appearing in question in our correspondence, the superior decision of our respective governments and which is to have, whatever may be the result, the most religious compliance at any time that it may arrive, and in which the possession that at present appears given, shall not serve as an obstacle. In testimony of which, and that they may at all times serve as an expressive and formal receipt in this act, we the subscribing commissioners, sign four instruments of this same tenor in the English and Spanish languages, at the above mentioned place, and said day, month and year.

(Signed) JOSE COPPINGER.
(Signed) ROBERT BUTLER.

I do hereby certify and attest that the foregoing act was solemnized in the presence of the illustrious assembly, as well as of a number of private individuals convened on the occasion, and of several officers of the army and navy of the United States.

(Signed) JUAN DE ENTRALGO
Gov't Scribe and Secretary of the City Council.

PROCESS VERBAL AT PENSACOLA.

The undersigned, Major General Andrew Jackson, of the State of Tennessee, Commissioner of the United States, in pursuance of the full powers received by him from James Monroe, President of the United States of America, of the date of the 10th of March, 1821, and of the forty-fifth of the Independence of the United States of America, attested by John Quincy Adams, Secretary of State; and Don Jose Callava, Commandant of the Province of West Florida, and Commissioner for the delivery, in the name of His Catholic Majesty, of the country, territory and dependencies of West Florida, to the Commissioner of the United States, in conformity with the powers, commission and special mandate received by him from the Captain General of the Island of Cuba, of the date of the fifth of May, 1821, imparting to him therein the royal order of the 24th of October, 1820, issued and signed by his Catholic Majesty Ferdinand VII, and attested by the Secretary of State, Don Evaristo Perez de Castro:

Do certify by these presents, that on the seventeenth day of July, 1821, of the Christian era, and forty-sixth of the Independence of the United States, having met in the court room of the government house in the town of Pensacola, accompanied on either part by the chiefs and officers of the army and navy, and by a number of the citizens of the respective nations, the said Andrew Jackson, Major General and Commissioner, has delivered to the said Colonel Commandant Don Jose Callava, his before-mentioned powers, whereby he recognizes him to have received full power and authority to take possession of and to occupy the territories ceded by Spain to the United States, by the Treaty concluded at Washington on the 22d day of February, 1819, and for that purpose to repair to said territories, and there to execute and perform all such acts and things touching the premises as may be necessary for fulfilling his appointment conformably to the said treaty and the laws of the United States—with authority likewise to appoint any person or persons in his stead to receive possession of any part of the said ceded territories according to the stipulations of the said treaty; whereupon the Colonel Commandant, Don Jose Callava immediately declared that in virtue and in performance of the power, commission & special mandate dated at Havana on the 5th of May 1821, be thenceforth and from that moment placed the said commissioner of the United States in possession of the country, territories and dependencies of West Florida including the fortress of St. Marks, with the adjacent islands dependent upon said province, all public lots and squares, vacant lands, public edifices, fortifications, barracks and other buildings which are not private property according to the manner set forth in the inventories and schedules which he has signed and delivered with the archives and documents directly relating to the property and sovereignty of the said territory of West Florida, including the fortress of St. Marks, and situated to the east of the Mississippi river, the whole in conformity with the second article of the treaty of cession; concluded at Washington the twenty-second of February, 1819, between Spain and the United States, by Don

Louis de Onis, Minister Plenipotentiary of his Catholic Majesty, and John Quincy Adams, Secretary of State of the United States, both provided with full powers, which treaty has been ratified on the part of his Catholic Majesty Ferdinand the seventh, on the one part, and the President of the United States, with the advice and consent of the Senate of the United States on the other part; which ratifications have been duly received and exchanged at Washington, the twenty-second of February, 1821, and the forty-fifth of the Independence of the United States of America, by General Don Dyonisius Vives, Minister Plenipotentiary of his Catholic Majesty, and John Quincy Adams, Secretary of State of the United States, according to the instrument signed on the same day.

And the present delivery of the country is made in order, that in the execution of the said treaty, the sovereignty and the property of that province of West Florida, including the fortress of St. Marks, shall pass to the said United States, under the stipulations therein expressed.

And the said Colonel Commandant, Don Jose Callava, has, in consequence, at this present time, made to the Commissioner of the United States, Major General Andrew Jackson, in this public cession, a delivery of the keys of the town of Pensacola, of the archives, documents and other articles in the inventory before mentioned, declaring that he releases from their oath of allegiance to Spain, the citizens and inhabitants of West Florida, who may choose to remain under the dominion of the United States.

And that this important and solemn act may be in perpetual memory, the within named have signed the same in the English and Spanish languages, and have sealed with their respective seals, and caused to be attested by their Secretaries of Commission, the day and year aforesaid.

(Signed) ANDREW JACKSON,
Commissioner on the part of the U. S.
(Signed) JOSE CALLAVA.
Commissioner on the part of H. C. M.

By order of the Commissioners on the part of the United States.
R. K. CALL,
Secretary of the Commission.

PROCLAMATION.

By Major General Andrew Jackson, Governor of the Provinces of the Floridas, exercising the powers of the Captain General and of the Intendant of the Island of Cuba, over the said Provinces, and of the Governors of said Provinces respectively.

WHEREAS, by the treaty concluded between the United States and Spain, on the 22d day of February, 1819, and duly ratified, the Provinces of the Floridas were ceded by Spain to the United States, and the possession of the said Provinces is now in the United States:

And whereas, the Congress of the United States, on the third day of March, in the present year, did enact, that until the end of the first Session of the seventeenth Congress, unless provision for the temporary government of said provinces be sooner made by Congress, all the military, civil and judicial powers exercised by the officers of the existing government of the said provinces, shall be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct, for the maintaining the inhabitants of said territories in the free enjoyment of their Liberty, Property, and Religion; and the President of the United States, has, by his commission bearing date the tenth day of said March, invested me with all the powers and charged me with the several duties heretofore held and exercised by the Captain General, Intendant and Governors aforesaid:

I have therefore thought fit to issue this my Proclamation, making known the premises, and to declare that the government heretofore exercised over the said Provinces under the authority of Spain, has ceased, and that that of the United States of America is established over the same; that the inhabitants thereof will be incorporated in the union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the citizens of the United States—that in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess; that all laws and municipal regulations which were in existence at the cessation of the late government, remain in full force, and all civil officers, charged with their execution, except those whose powers have been specially vested in me, and except also, such officers as have been intrusted with the collection of the revenue, are continued in their functions, during the pleasure of the Governor for the time being, or until provision shall otherwise be made.

And I do hereby exhort and enjoin all the inhabitants and other persons within the said Provinces, to be faithful and true in their allegiance to the United States, and obedient to the authorities of the same, under full assurance that their just rights will be under the guardianship of the United States, and will be maintained from all force and violence from without or within.

Given at Pensacola, this 17th day of July, one thousand eight hundred and twenty-one.

ANDREW JACKSON.

By the Governor,
R. K. CALL,
Acting Secretary, West Florida.

ORDINANCES OF MAJOR GENERAL ANDREW JACKSON.

By Major General Andrew Jackson, Governor of the Provinces of the Floridas, exercising the powers of the Captain General and of the Intendant of the Island of Cuba, and of the Governors of said Provinces respectively:

No. 4
An Ordinance

Dividing the Floridas into two counties.

Whereas, from the extent of the ceded territories it becomes necessary to make such divisions as will promote the convenience of the inhabitants, and the speedy execution of the laws—wherefore, and in virtue of the authority vested in me by the government of the United States I do ordain: -

Sec. 1. That the said Provinces be divided as follows:

All the country lying between the Perdido and Suwaney rivers, with all the islands therein, shall form one county to be called Escambia.

All the country lying East of the river Suwaney, and every part of the ceded territories, not designated as belonging to the former county, shall form a county to be called St. Johns.

Sec. 2. In each of said counties, and for the government thereof, there shall be established a court, to be designated a county court, and to be composed of five justices of the peace, any three of whom shall form a quorum, and the eldest by appointment to be president of said court, whose jurisdiction shall extend to all civil cases originating in the county, where the matter in controversy shall exceed twenty dollars, and to all criminal cases saving to the parties the right of appeal to the Governor, in all cases above the sum of five hundred dollars; and that there shall be no execution for a capital offence, until the warrant of the Governor be first had and obtained.

Sec. 3. That the judicial proceedings in all civil cases shall be conducted, except as to the examination of witnesses, according to the course of the existing laws, or to the laws of Spain, and in criminal cases, according to the course of the common law: that is, no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, and in all criminal cases, the accused shall enjoy the right to a speedy, and public trial, by an impartial Jury of the county wherein the crime shall have been committed; and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defence.

Sec. 4. There shall be a clerk appointed for each of said county courts, who shall receive for his services, such compensation as the court for which he is appointed may from time to time, and in each suit, tax or allow; and there shall also be a sheriff appointed to each court, to execute the process thereof, whose services shall be compensated by the court to which he is appointed in like manner as is provided for the clerk—and the said clerk and sheriff shall give bond to the presiding justice, for the faithful discharge of their duties.

Sec. 5. Each County Court shall hold quarterly sessions, and to continue the same until all the business pending therein shall be disposed of. The first session to be held at Pensacola, on the first Monday of August next, for the county of Escambia—and, at St. Augustine, on the second Monday of September next, for the county of St. Johns—with the power to adjourn the same from time to time.

Sec. 6. There shall not be less than ten Justices of the Peace commissioned for each county, whose jurisdiction shall extend to all civil cases, not exceeding fifty dollars; saving to the parties or suitors, an appeal to the county court, in all cases wherein the matter in dispute shall exceed the sum of twenty dollars—and shall also be authorized in all criminal cases to exact surety for good behavior, and to take recognizances in cases bailable, for the appearance of the accused before the county courts.

Sec. 7. That the examination of all witnesses within the jurisdiction of the courts, except when their personal attendance cannot be procured, shall be conducted viva voce and in open court: that the parties may conduct their suits in person, or by such counsel as they may choose: Provided, that the said counsel or counsellors, shall have been duly licensed to practice in the courts of said ceded territories by the Governor.

Sec. 8. The Alcaldes shall continue to exercise the powers of Judges of probate, Registers of Wills, Notaries Public, of Justices of the Peace, and such other powers, appertaining to the said offices, as have not been otherwise distributed, saving the right of appeal to the county court in all cases.

Sec. 9. That the judges of the said county courts shall have power to impose such taxes upon the inhabitants of their counties respectively, as in their discretion may be necessary to meet and defray the expenses which may be incurred in carrying this ordinance into effect.

Sec. 10. That the said county courts shall have and exercise the powers of directing by special venire or otherwise, the summoning of all Jurors, Grand as well as petit.

Sec. 11. That the said courts shall have the power of creating and regulating their process and proceedings from time to time, as they may deem necessary, and shall as soon as convenient after their organization, prepare and report a fee bill to the Governor for his approbation.

Sec. 12. That the said court shall have, and exercise beyond the limits of Pensacola and St. Augustine, the power of granting and recalling licenses or commissions for innkeepers, retailers of liquors of every description and keepers of billiard tables, and to require of them such surety as they may deem proper, and impose such price for such license as in their opinion may be reasonable.

Sec. 13. That it shall be the duty of said courts in regulating their process and proceedings to confine the parties strictly to the

merits of their cause, and to cause all useless matter, as well as unnecessary form to be expunged from the pleadings at the expense of the party introducing the same, so that justice may be administered, in the most simple, cheap, and speedy manner.

Sec. 14. In all criminal cases, the process and indictment shall be in the name of the United States, and there shall be appointed a prosecuting Attorney for each of the said counties, who shall receive in each case, a reasonable compensation, to be taxed by the court.

Sec. 15. That the police of the roads and bridges without the limits of Pensacola and St. Augustine, shall be under the immediate direction of the said county courts; the police of the city to be exclusively confided to the Mayor and Aldermen.

Pensacola, July 21st, 1821.

(Signed) ANDREW JACKSON.

By the Governor:
R. K. CALL,
Acting Secretary of West-Florida.

No. 3

An Ordinance

Providing for the Naturalization of the Inhabitants of the Ceded Territory.

Prescribing the mode of carrying into effect the 6th article of the Treaty of Amity; settlement of differences and limits between the United States of America and his Catholic Majesty.

Whereas by the sixth article of the said treaty, it is among other things provided; that on the entrance of the ceded territories into the Union, the inhabitants thereof shall be 'admitted to the enjoyment of all the privileges, rights and immunities of the citizens of the United States.' Now, therefore, as well with a view to guard against impositions, that may be practiced by foreigners, as to secure to the inhabitants their free choice to become citizens of the United States, under the provisions of the said treaty.

Sec. 1. I do ordain, That the Mayor of the City of Pensacola, and such other persons as may be appointed for the purpose in any town or county of these provinces, shall open a register, and cause to be inscribed the name, age, and occupation of every free male inhabitant of such town or county, who may be desirous to profit by the provisions of the sixth article of the treaty, so as aforesaid in part recited, provided the person or inhabitant who may thus desire to have his name inscribed, shall first satisfy the mayor or such other persons as may be appointed to open Registers; that he was really an inhabitant of the ceded territory on the 17th day of July 1821: and provided also, that he will of his own free will and accord, abjure all foreign allegiance, and take the oath of allegiance prescribed by the laws of the United States.

Sec. 2. That the office or register shall continue open for and during the space of twelve months, when the same shall be closed, and a copy thereof transmitted under the seal of the said Mayor, or other persons appointed to open registers to the secretaries of the said territories.

Sec. 3. That from and after the period that the said register shall be so closed, no other free male inhabitant above the age of twenty one, and entitled to make his election as aforesaid, shall be, within the ceded territories, entitled to any of the rights, privileges and immunities of a citizen of the United States, but shall to all intents and purposes be considered as foreigners, and subject to the laws of the United States, in relation to aliens.

Sec. 4. It shall be the duty of heads of families within the said provinces, being desirous to profit by this act, to furnish the Mayor or such other persons as may be appointed to open registers, with the name and age of every free male member of his family, and the said Mayor shall cause the same to be inscribed on the register, as before provided for.

Sec. 5. In order to guard the more effectually against impositions, as well as to give to the inhabitants the security which citizenship will afford them abroad. It is further ordained, That the Secretary or Secretaries of the ceded territories, grant to such inhabitants as may be desirous of receiving the same, certificates of citizenship, he or they being first satisfied that the provisions of this ordinance shall have been complied with.

Sec. 6. The evidence upon which the Secretary or Secretaries shall proceed to grant certificates of citizenship shall be a certificate of the clerk of the Mayor, or such other persons as may be appointed to open registers, that the applicant has complied with the requisitions of this ordinance, upon the receipt of which it shall be the duty of the Secretary or Secretaries, to grant to all and every such applicant or applicants, certificates of citizenship, for which the said clerk and Secretary shall be entitled to one dollar each, and for every name entered on the register the Mayor or other person authorized to open the same shall be entitled to one dollar.

Pensacola, 21st July, 1821.

(Signed) ANDREW JACKSON.

By the Governor:
R. K. CALL,
Acting Secretary of West Florida.

TERRITORIAL GOVERNMENT OF FLORIDA
LAWS OF THE UNITED STATES ESTABLISHING

ACT OF MARCH 30, 1822
(3 U. S. Stat. 654)

AN ACT for the Establishment of a Territorial Government in Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the Territory ceded by Spain to the United States, known by the name of East and West Florida, shall constitute a Territory of the United States, under the name of the Territory of Florida; the government whereof shall be organized and administered as follows:

Sec. 2. And be it further enacted, That the executive power shall be vested in a Governor, who shall reside in the said Territory, and hold his office during the term of three years, unless sooner removed by the President of the United States. He shall be Commander-in-Chief of the militia of the said Territory, and be, ex officio, Superintendent of Indian affairs, and shall have power to grant pardons for offences against the said Territory, and reprieves for those against the United States, until the decision of the President of the United States thereon shall be made known; and to appoint and commission all officers, civil and of the militia, whose appointments are not herein otherwise provided for, and which shall be established by law; he shall take care that the laws be faithfully executed.

Sec. 3. And be it further enacted, That a Secretary of the Territory shall also be appointed, who shall hold office during the term of four years, unless sooner removed by the President of the United States, whose duty it shall be, under the direction of the Governor, to record and preserve all the papers and proceedings of the Executive, and all the acts of the Governor and Legislative Council, and transmit authentic copies of the proceedings of the Governor, in his Executive Department, every six months to the President of the United States.

Sec. 4. And be it further enacted, That in the case of the death, removal, resignation, or necessary absence of the Governor of the said Territory, the Secretary thereof shall be and is hereby authorized and required, to execute all the powers, and perform all the duties of the Governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said Governor.

Sec. 5. And be it further enacted, That the Legislative power shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed annually, by the President of the United States, by and with the advice and consent of the Senate, from among the citizens of the United States residing there. The Governor, by and with the advice and consent of the said Legislative Council, or a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act. Their legislative power shall also extend to all the rightful subjects of legislation; but no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint, burthen, or disability, on account of his religious opinions, professions or worship; in all which he shall be free to maintain his own, and not burthened with those of another. The Governor shall publish, throughout the said Territory, all the laws which shall be made, and shall, on or before the first day of December, in each year, report the same to the President of the United States, to be laid before Congress, which if disapproved by Congress, shall thenceforth be of no force. The Governor and Legislative Council shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to lands within the said Territory. The Legislative Council shall hold a session once in each year, commencing its first session on the second Monday in June next, at Pensacola, and continue in session not longer than two months; and thereafter, on the first Monday in May, in each and every year, but shall not continue longer in session than four weeks, to be held at such place in said territory, as the Governor and Council shall direct. It shall be the duty of the Governor to obtain all the information in his power in relation to the customs, habits and dispositions, of the inhabitants of the said Territory, and communicate the same, from time to time, to the President of the United States.

Sec. 6. And be it further enacted, That the judicial power shall be vested in two Superior Courts, and in such inferior Courts and Justices of the Peace, as the Legislative Council of the Territory may, from time to time, establish. There shall be a Superior Court for that part of the Territory, known as East Florida, to consist of one Judge; he shall hold a Court on the first Monday in January, April, July, and October, in each year, at St. Augustine, and at such other times and places as the Legislative Council shall direct. There shall be a Superior Court for that part of the Territory, known as West Florida, to consist of one Judge; he shall hold a Court at Pensacola, on the first Monday in January, April, July and October, in each year, and at such other times and places as the Legislative Council shall direct. Within its limits herein described, each Court shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all capital cases, and original jurisdiction in all civil cases of the value of one hundred dollars, arising under, and cognizable by, the laws of the Territory, now of force therein, or which may at any time be enacted by the Legislative Council thereof. Each Judge shall appoint a clerk for his respective Court, who shall reside, respectively, at St. Augustine and Pensacola, and they shall keep the records there. Each clerk shall receive for his services, in all

cases arising under the Territorial laws, such fees as may be established by the Legislative Council.

Sec. 7. And be it further enacted, That each of the said Superior Courts shall, moreover, have and exercise the same jurisdiction within its limits, in all cases arising under the laws and Constitution of the United States, which by an act to establish the Judicial Courts of the United States, approved the twenty-fourth day of September, one thousand seven hundred and eighty-nine; and an act in addition to the act, entitled "An Act to establish the Judicial Courts of the United States," approved the second day of March, one thousand seven hundred and ninety-three, was vested in the Court of the Kentucky district. And writs of error and appeals from the decisions in the said Superior Courts, authorized by this section of this act, shall be made to the Supreme Court of the United States, in the same cases, and under the same regulations, as from the Circuit Courts of the United States. The clerks, respectively, shall keep the records at the places where the Courts are held, and shall receive, in all cases arising under the laws and Constitution of the United States, the same fees which the clerk of the Kentucky district received for similar services, whilst that Court exercised the powers of the Circuit and District Courts. There shall be appointed in the said Territory, two persons learned in the law, to act as Attorneys for the United States, as well as for the Territory; one for that part of the Territory known as East Florida, the other for that part of the Territory known as West Florida. To each of whom, in addition to his stated fees, shall be paid annually two hundred dollars, as a full compensation for all extra services. There shall also be appointed two marshals, one for each of the said Superior Courts, who shall each perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, to which marshals in other districts are entitled for similar services; and shall, in addition, be paid the sum of two hundred dollars annually, as a compensation for all extra services.

Sec. 8. And be it further enacted, That the Governor, Secretary, Judges of the Superior Courts, District Attorneys, Marshals, and all general officers of the militia, shall be appointed by the President of the United States, by and with the advice and consent of the Senate. All judicial officers shall hold their offices for the term of four years, and no longer. The Governor, Secretary, Judges, members of the Legislative Council, Justices of the Peace, and all other officers, civil and of the militia, before they enter upon the duties of their respective offices, shall take an oath or affirmation to support the Constitution of the United States, and for the faithful discharge of the duties of their office; the Governor, before the President of the United States, or before a Judge of the Supreme Court of the United States, or before such other person as the President of the United States shall authorize to administer the same; the Secretary, Judges, members of the Legislative Council before the Governor; and all other officers before such persons as the Governor shall direct. The Governor shall receive an annual salary of two thousand five hundred dollars; the Secretary, of one thousand five hundred dollars; and the Judges, of one thousand five hundred dollars each; to be paid quarter yearly out of the Treasury of the United States. The members of the Legislative Council shall receive three dollars each, per day, during their attendance in Council, and three dollars for every twenty miles in going to, and returning from, any meeting of the Legislative Council, once in each session, and no more. The members of the Legislative Council shall be privileged from arrest, except in cases of treason, felony, and breaches of the peace, during their going to, attendance at, and returning from, each session of said Council.

Sec. 9. And be it further enacted, That the following acts, that is to say:

"An act for the punishment of certain crimes against the United States," approved April thirteenth, one thousand seven hundred and ninety, and all acts in addition or supplementary thereto, which are now in force.

"An act to provide for the punishment of crimes and offences committed within the Indian boundaries," approved March third, one thousand eight hundred and seventeen.

"An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," approved April twentieth, one thousand eight hundred and eighteen.

"An act for the punishment of crimes therein specified," approved January thirteenth, one thousand seven hundred and ninety-nine.

"An act respecting fugitives from justice, and persons escaping from the service of their masters," approved twelfth February, one thousand seven hundred and ninety-three.

"An act to prohibit the carrying on the slave trade from the United States to any foreign place or country," approved March twenty-second, one thousand seven hundred and ninety-nine.

"An act in addition to the act, entitled 'An act to prohibit the carrying on the slave trade from the United States to any foreign place or country,'" approved May tenth, one thousand eight hundred.

"The act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight," approved March second, one thousand eight hundred and seven.

"An act to prevent settlements being made on lands ceded to the United States until authorized by law," approved March third, one thousand eight hundred and seven.

"An act in addition to 'An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, and to repeal certain parts of the same,' " approved April twentieth, one thousand eight hundred and eighteen.

"An act in addition to the acts prohibiting the slave trade," approved March third, one thousand eight hundred and nineteen.

"An act to establish the Post-office of the United States."

"An act further to alter and establish certain post-roads, and for the more secure carriage of the mail of the United States."

"An act for the more general promulgation of the laws of the United States."

"An act in addition to an act, entitled 'An act for the more general promulgation of the laws of the United States.' "

"An act to provide for the publication of the laws of the United States, and for other purposes."

"An act to promote the progress of useful arts, and to repeal the act heretofore made for that purpose."

"An act to extend the privilege of obtaining patents for useful discoveries and inventions to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees."

"An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the time herein mentioned."

"The act supplementary thereto, and for extending the benefits thereof to the arts of designing, engraving, and etching, historical and other prints."

"An act to prescribe the mode in which the public acts, records, and judicial proceedings, in each State, shall be authenticated, so as to take effect in any other State."

"An act supplementary to the act, entitled 'An act to prescribe the mode in which the public acts, records, and judicial proceedings, in each State, shall be acknowledged, so as to take effect in any other State.' "

"An act for establishing trading-houses with the Indian tribes," and the several acts continuing the same.

"An act making provisions relative to rations for Indians, and their visits to the seat of government."

And the laws of the United States relating to the revenue and its collection, subject to the modification stipulated by the fifteenth article of the treaty of the twenty-second February, one thousand eight hundred and nineteen, in favor of Spanish vessels and their cargoes; and all other public laws of the United States, which are not repugnant to the provisions of this act, shall extend to, and have full force and effect in the Territory aforesaid.

Sec. 10. And be it further enacted, That to the end that the inhabitants may be protected in their liberty, property, and the exercise of their religion, no law shall ever be valid which shall impair, or in any way restrain, the freedom of religious opinions, professions, or worship. They shall be entitled to the benefit of the writ of habeas corpus. They shall be bailable in all cases, except for capital offences, where the proof is evident or the presumption great. All fines shall be moderate and proportioned to the offence; and excessive bail shall not be required, nor cruel or unusual punishments inflicted. No ex post facto law, or law impairing the obligation of contracts, shall ever be passed; nor shall private property be taken for public uses without just compensation.

Sec. 11. And be it further enacted, That all free white persons, who are housekeepers, and who shall have resided one year, at least, in the said Territory, shall be qualified to act as grand and petit jurors in the Courts of the said Territory; and they shall, until the Legislature thereof shall otherwise direct, be selected in such manner as the Judges of the said Courts shall respectively prescribe, so as to be most conducive to an impartial trial, and to be least burthensome to the inhabitants of the said Territory.

Sec. 12. And be it further enacted, That it shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place without the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves. And any person so offending, and being thereof convicted before any Court within the said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought, the sum of three hundred dollars, one moiety for the use of the United States and the other moiety for the use of the person or persons who shall sue for the same; and every slave so imported or brought, shall thereupon become entitled to, and receive, his or her freedom.

Sec. 13. And be it further enacted, That the laws in force in the said Territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force until altered, modified, or repealed by the Legislature.

Sec. 14. And be it further enacted, That the citizens of the said Territory shall be entitled to one Delegate to Congress, for the said Territory, who shall possess the same power heretofore granted to the delegates from the several Territories of the United States. The said delegate shall be elected by such description of persons, at such times, and under such regulations, as the Governor and Legislative Council may, from time to time, ordain and direct.

ACT OF MARCH 3, 1823

(3 U. S. Stat. 750)

AN ACT to Amend "An Act for the Establishment of a Territorial Government in Florida," and for Other Purposes.

Be it enacted by the Senate and the House

of Representatives of the United States of America in Congress assembled, That all that Territory ceded by Spain to the United States, known by the name of East and West Florida, shall constitute a Territory of the United States, under the name of the Territory of Florida, the government whereof shall be organized and administered as follows:

Sec. 2. And be it further enacted, That the executive power shall be vested in a Governor, who shall reside in the said Territory, and hold his office during the term of three years, unless sooner removed by the President of the United States. He shall be Commander-in-Chief of the militia of the said Territory, and be ex-officio Superintendent of Indian affairs; and shall have power to grant pardons for offences against the said Territory, and reprieves for those against the United States, until the decision of the President of the United States thereon shall be made known; and to appoint and commission, by and with the consent of the Legislative Council, all officers, civil and of the militia, whose appointments are not herein otherwise provided for, which shall be established by law. He shall take care that the laws be faithfully executed.

Sec. 3. And be it further enacted, That a Secretary of the Territory shall be appointed, who shall hold the office during the term of four years, unless sooner removed by the President of the United States; whose duty it shall be, under the direction of the Governor, to record and preserve all the papers and proceedings of the Executive, and all the acts of the Governor and Legislative Council; and transmit authentic copies of the proceedings of the Governor, in his executive department, every six months to the President of the United States.

Sec. 4. And be it further enacted, That in case of the death, removal, resignation, or necessary absence of the Governor of the said Territory, the Secretary thereof shall be, and is hereby authorized and required to execute all the powers, and perform all the duties of the Governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said Governor, who shall in no case leave the said Territory without permission first had of the President of the United States.

Sec. 5. And be it further enacted, That the Legislative powers shall be vested in the Governor, and in thirteen fit and discreet persons of the Territory, nine of whom shall constitute a quorum to do business, to be called the Legislative Council, who shall be appointed annually, by the President of the United States, by and with the advice and consent of the Senate, from among the citizens of the United States, or from among the inhabitants of the Territory, resident there at the session; but no person shall be eligible as a member of the said Legislative Council, who shall not have resided in the said Territory at least six months previous to his appointment. The Governor and Legislative Council shall have legislative powers over all rightful subjects of legislation; but no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under the restraint, burthen, or disability, on account of his religious opinions, professions or worship. The Governor shall publish, throughout the said Territory, all the laws which shall be made, and shall, on or before the first of December, in each year, report the same to the President of the United States, to be laid before Congress, which, if disapproved by Congress, shall thenceforth be of no force. The Governor and Legislative Council shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to land within the said Territory. The Legislative Council shall hold a session once in each year, commencing on the first Monday in May, in each and every year, but shall not continue longer in session than four weeks, after the first session, which shall not continue longer than eight weeks; to be held in the city of St. Augustine, or at such other place or places as the Governor and Council may from time to time direct. It shall be the duty of the Governor to obtain all the information in his power in relation to the customs, habits, and dispositions of the inhabitants of the said Territory, and communicate the same, from time to time, to the President of the United States.

Sec. 6. And be it further enacted, That every bill which shall have passed the Legislative Council, shall, before it becomes a law, be presented to the Governor. If he approves it he shall sign it; and if not, he shall return it, with his objections in writing, to the Legislative Council, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of the members of the Legislative Council agree to pass the bill, it shall become a law; and the names of the persons voting for or against the bill shall be entered on the journal: Provided, nevertheless, that all bills to tax the inhabitants of the said Territory or their property, shall, before they become laws, receive the sanction of Congress; except when the said bills shall authorize county, city, and town officers to collect taxes for the use and benefit of their respective counties, cities, and towns; and for no other purposes.

Sec. 7. And be it further enacted, That the judicial power shall be vested in two Superior Courts, and in such inferior Courts and Justices of the Peace, as the Legislative Council of the Territory may, from time to time, establish. There shall be a Superior Court for that part of the Territory, known as East Florida, to consist of one Judge; he shall hold his Court on the first Mondays in May and November, in each year, at St. Augustine, and at such other times and places as the Legislative Council shall direct. There shall be a Superior Court for that part of the Territory, known as West Florida, to consist of one Judge; he shall hold a Court at Pensacola, on

the first Mondays in May and November, in each year, and at such other times and places as the Legislative Council shall direct. Within its limits herein described, each Court shall have jurisdiction in criminal cases, and exclusive jurisdiction in all capital offences, and original jurisdiction in all civil cases of the value of one hundred dollars, arising under, and cognizable by, the laws of the Territory, now of force therein, or which may at any time be enacted by the Legislative Council thereof. Each Judge shall appoint a clerk for his respective Court, who shall reside, respectively, at St. Augustine and Pensacola, and they shall keep the records there. Each clerk shall receive for his services in all cases arising under the Territorial laws, such fees as may be established by the Legislative Council. And the said Judges may adjourn their respective Courts to any other time or place, whenever St. Augustine or Pensacola shall be infected with a malignant fever; and writs of error and appeal from the final decisions of the said Superior Courts authorized by this section of this act, shall be made to the Supreme Court of the United States, in the same manner, and under the same regulations, as from the Circuit Courts of the United States, where the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars.

Sec. 8. And be it further enacted, That each of the said Superior Courts shall, moreover, have and exercise the same jurisdiction within its limits, in all cases arising under the laws and Constitution of the United States, which by an act to establish the Judicial Courts of the United States, approved the twenty-fourth day of September, one thousand seven hundred and eighty-nine; and an act in addition to the act, entitled "An Act to establish the Judicial Courts of the United States," approved the second day of March, one thousand seven hundred and ninety-three, was vested in the Court of the Kentucky district. And writs of error and appeal from the decisions in the said Superior Courts, authorized by this section of this act, shall be made to the Supreme Court of the United States, in the same cases, and under the same regulations, as from the Circuit Courts of the United States. The clerks respectively shall keep the records at the places where the Courts are held, and shall receive in all cases arising under the laws and Constitution of the United States, the same fees which the clerk of the Kentucky district received for similar services, whilst that Court exercised the powers of the Circuit and District Courts.

Sec. 9. And be it further enacted, That there shall be appointed two persons learned in the law, to act as Attorneys for the United States, as well as for the Territory; one for that part of the Territory known as East Florida, the other for that part of the Territory known as West Florida. To each of whom, in addition to their stated fees in civil cases, shall be paid as a full compensation for all extra services, annually, the sum of two hundred dollars. There shall also be appointed two Marshals, one for each of the said Superior Courts, who shall each perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, to which marshals in other districts are entitled for similar services; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services; and shall also be subject to such regulations and penalties as the Legislative Council shall impose, while acting under, and in virtue of, the Territorial laws.

Sec. 10. And be it further enacted, That the Governor, Secretary, Judges of the Superior Courts, District Attorneys, Marshals, and all general officers of the militia, shall be appointed by the President of the United States, by and with the advice and consent of the Senate. All judicial officers shall hold their offices for the term of four years, and no longer. The Governor, Secretary, Judges, Members of the Legislative Council, Justices of the Peace, and all other officers, civil and of the militia, before they enter upon the duties of their respective offices, shall take an oath or affirmation to support the Constitution of the United States, and for the faithful discharge of the duties of their office, before a Judge of the Supreme or District Court of the United States, or before a Judge or Justice of the Peace of the Territory. The Governor shall receive an annual salary of two thousand five hundred dollars; the Secretary, of one thousand five hundred; and the Judges, of fifteen hundred each; to be paid quarterly out of the Treasury of the United States. The members of the Legislative Council shall receive three dollars each per day, during their attendance in Council, and three dollars for every twenty miles in going to, and returning from, any meeting of the Legislative Council, once in each session, and no more. The members of the Legislative Council shall be privileged from arrest, except in case of treason, felony, or breaches of the peace, during their going to, attendance at, and returning from, each session of said council.

Sec. 11. And be it further enacted, That the laws of the United States relating to the revenue and its collection, subject to the modification stipulated by the fifteenth article of the treaty of the twenty-second of February, one thousand eight hundred and nineteen, in favor of Spanish vessels and their cargoes, and all other public acts of the United States, not inconsistent or repugnant to the provisions of this act, now in force, or which may hereafter be in force, shall extend to, and have full force and effect in, the Territory aforesaid.

Sec. 12. And be it further enacted, That to the end that the inhabitants may be protected in their liberty, property, and religion, no law shall ever be valid which shall impair, or in anywise restrain the freedom of religious opinions, professions, and worship. They shall be entitled to the benefit of the writ of habeas corpus. They shall be bailable in all cases,

except for capital offences, where the proof is evident or the presumption great. All fines shall be moderate and proportionate to the offence; and excessive bail shall not be required, nor cruel or unusual punishments inflicted. No ex post facto law, or law impairing the obligation of contracts, shall ever be passed; nor shall private property be taken for public uses without just compensation.

Sec. 13. And be it further enacted, That all free male white persons, of full age, who are housekeepers, and who shall have resided one year in the said Territory, shall be qualified to act as grand and petit jurors in the Courts of the said Territory; and they shall, until the Legislature thereof shall otherwise direct, be selected in such manner as the judges of the said Courts shall respectively prescribe, so as to be most conducive to an impartial trial, and be least burthensome to the inhabitants of the said Territory.

Sec. 14. And be it further enacted, That it shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place without the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves. And any person so offending, and being thereof convicted before any Court within the said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought, the sum of three hundred dollars, one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and every slave so imported or brought, shall thereupon become entitled to and receive his or her freedom.

Sec. 15. And be it further enacted, That the citizens of the said Territory shall be entitled to one Delegate to Congress, for the said Territory, who shall possess the same powers heretofore granted to the delegates from the other Territories of the United States: Provided, that no person shall be eligible for that office who shall not have resided at least twelve months in the said Territory. The delegate shall be elected by such description of persons, at such times, and under such regulations as the Governor and Legislative Council may from time to time ordain and direct; soldiers of the United States excepted, who shall, under no circumstances, be qualified to vote.

Sec. 16. And be it further enacted, That an act entitled "An act for the establishment of a Territorial Government in Florida," be, and the same is hereby repealed, so far as the same is inconsistent with the provisions of this act; and that the proceedings of the last session of the Legislative Council of Florida shall be, and the same are hereby confirmed to remain in full force and effect, until the end of the next session of said Council, unless sooner altered, modified, or repealed, with the exception of all revenue laws imposing taxes on the inhabitants or their property, and the law authorizing the Governor to borrow five thousand dollars on the credit of the said Territory, and the law establishing County Courts, which are hereby declared null and void: Provided, that no loan of money already made or obtained under said law, shall be affected by this act, and that the act approved the second of September, one thousand eight hundred and twenty-two, by the Governor repealing all the laws and ordinances in force in the said Territory shall be, and is hereby declared to have effect on the day of its passage by the Legislative Council, and not of its approval by the Governor.

ACT OF MAY 26, 1824
(4 U. S. Stat. 45)

AN ACT to amend an act, entitled An Act to amend an act for the establishment of a territorial government in Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the judicial power of the territory of Florida shall be vested in three superior courts, and in such inferior courts, and justices of the peace as the legislative council of the territory may, from time to time, establish. There shall be a superior court for that part of the territory situated to the west of the river Apalachicola, to consist of one judge; he shall hold his court on the first Mondays in May and November, in each and every year, at Pensacola, and at such other times and places as the legislative council may direct. There shall be a superior court for that part of the territory situated between the Apalachicola and Suwannee rivers, to consist of one judge; he shall hold his court on the first Mondays of April and October, in each and every year, at the seat of government in said territory, and at such other times and places as the legislative council may direct. There shall be a superior court for that part of the territory situated to the east and south of the Suwannee river, to consist of one judge; he shall hold his court on the first Monday in May and November, in each and every year, at St. Augustine, and at such other times and places as the legislative council shall direct. Within its limits, herein described, each court shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all capital offences, and original jurisdiction in all civil cases of the value of one hundred dollars, arising under the laws of the territory now in force, or which may, at any time hereafter, be enacted by the legislative council, and shall have and exercise appellate jurisdiction over the inferior courts of said territory. Each judge shall appoint a clerk, who shall reside, respectively, at the place where his said court is, or may, by law, be directed to be held, and they shall keep the records there. Each clerk shall receive for his services, in all cases, arising under the laws of the territory, such fees as shall be established by the legislative council. And writs of error and appeal from the final decision of the said superior courts, authorized by this section of this act, shall be

made to the appellate court of said territory, hereinafter provided for, in such manner, and under such regulations, as the legislative council may direct; and, until the legislative council shall have made such regulations, writs of error and appeal from the final decision of the said superior courts shall be made to the appellate court of the territory, in the same manner that writs of error and appeals are taken and prosecuted in the next adjoining state.

Sec. 2. **And be it further enacted,** That each of the said superior courts shall, moreover, have and exercise the same jurisdiction within its limits, in all cases arising under the laws and Constitution of the United States, which, by an act to establish the judicial courts of the United States, approved the twenty-fourth day of September, one thousand seven hundred and eighty-nine, and "An act in addition to the act, entitled 'An act to establish the judicial courts of the United States,'" approved the second of March, one thousand seven hundred and ninety-three, was vested in the court of the Kentucky district. The first six days of each term of the said courts, or so much thereof as may be necessary, shall be appropriated to the trial of causes arising under the laws and Constitution of the United States. And writs of error and appeal from the decisions in the said superior courts, authorized by this section of this act, shall be made to the appellate court of said territory, in such manner, and under such regulations, as the legislative council shall direct. The clerks, respectively, shall keep the records at the places where the courts are held, and no one clerk shall, by himself or deputy, officiate at more than one place for holding said courts: they shall receive, in all cases under the laws and Constitution of the United States, the same fees which the clerks of the district court of the next adjoining state receives (receive) for similar services.

Sec. 3. **And be it further enacted,** That there shall be appointed, for each of the said courts, a person, learned in the law, to act as attorneys of the United States, as well as for the territory, each of whom shall receive the same fees, both in civil and criminal cases, as are received by the district attorneys of the United States, of the next adjoining state, for similar services; and shall, moreover, receive, as a full compensation for all extra services, annually, the same salary, as is provided, by law, for the district attorney of the district of Kentucky, to be paid, quarterly, by the treasury of the United States. There shall, also, be appointed, for each of the said courts, a marshal, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, to which marshals, in other districts are entitled for similar services; and shall, in addition, be paid the sum of two hundred dollars annually, as a compensation for extra services; and shall, also, be subject to such regulations and penalties as the legislative council shall impose, while acting under, and in virtue of, the territorial laws. Each judge shall receive a salary of fifteen hundred dollars per annum, to be paid, quarterly, by the treasury of the United States.

Sec. 4. **And be it further enacted,** That there shall be organized in said territory a court of appeals, to be composed of the judges of the superior courts of said territory, any two of whom shall be a quorum, and shall hold, annually, at the seat of government of said territory, one session, commencing on the first Monday in January, in each and every year. The senior judge shall be the presiding judge of said court, and the other judges shall have precedence according to the date of their commissions, or where their commissions are of the same date, according to their respective ages. That the said court may by any one of its judges being present, be adjourned, from day to day, until a quorum be convened; and if no one of its judges be present, by the marshal of said court, until a quorum be convened; and the district attorney, marshal, and clerk, of the superior court, of the middle district, shall be officers of the said court of appeals; and writs of error and appeal from the decision of the said court shall be made to the Supreme Court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars.

Sec. 5. **And be it further enacted,** That so much of the act, of which this is an amendment, as requires the legislative council of said territory to commence its sessions on the first Monday in May, in each and every year, be, and the same is hereby, repealed; and the said legislative council shall, hereafter, hold a session in every year commencing on the second Monday in November, in each and every year, but shall not continue longer in session than four weeks after the first session, which shall not continue longer than eight weeks; to be held at the seat of government in said territory, or at such other place or places as the governor and council may, from time to time, direct.

Sec. 6. **And be it further enacted,** That so much of the act, of which this is an amendment, as requires that the governor of Florida shall not leave the territory without the permission of the President of the United States, be, and the same is hereby, repealed.

ACT OF MAY 15, 1826
(4 U. S. Stat. 164)

AN ACT to amend the several acts for the establishment of a territorial government in Florida.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the superior courts of the territory of Florida, within their respective districts, shall have and exercise original jurisdiction in all civil causes, in law

and equity, whether arising under the laws of the said territory or otherwise, where the sum in controversy shall amount to one hundred dollars; and shall have original and exclusive cognisance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, whether such seizures be made on land or water, and of all suits for penalties and forfeitures incurred under the laws of the United States; and original, but not exclusive jurisdiction, of all suits in which the United States shall be a party, whatever may be the amount in controversy in such causes and suits; and shall have and exercise appellate jurisdiction, in all civil causes, originating in the inferior courts of said territory, whatever may be the amount in controversy; and shall have and exercise original and exclusive jurisdiction of all crimes and offences committed against the laws of the said territory, where the punishment shall be death; and original and appellate jurisdiction of all other crimes and offences committed against the laws of the said territory; and original and exclusive jurisdiction of all crimes and offences which shall be cognisable, under the authority of the United States, committed within the respective districts of the said superior courts, or upon the high seas.

Sec. 2. **And be it further enacted,** That the said superior courts, and court of appeals, in term, and the judges thereof, in vacation, shall, respectively, have full power and authority, in all civil causes and criminal cases, to issue writs of habeas corpus, of error, of certiorari, of mandamus, of prohibition, of scire facias, and of quo warranto, according to the principles and rules of law.

Sec. 3. **And be it further enacted,** That the said superior courts, respectively, shall be held as occasion may require, to prevent a delay of justice, for the trial of causes of admiralty and maritime jurisdiction, and for the hearing of causes in equity, as often as the judges of the said courts, respectively, shall deem fit to appoint.

Sec. 4. **And be it further enacted,** That the said superior courts, respectively, shall have power, in cases where there has been a trial by jury, to grant new trials, as often as may be deemed necessary for the due administration of justice, for reasons for which new trials have usually been granted in the courts of law, and shall have power to administer all necessary oaths or affirmations, and to make and establish all necessary rules of practice and pleading, and for the orderly conducting of the business of the said courts: **Provided,** Such rules be not repugnant to the laws of the United States, or of the said territory.

Sec. 5. **And be it further enacted,** That writs of error and appeal shall lie, and may be taken on all final decisions of said superior courts, where the matter in dispute shall amount to the sum or value of one hundred dollars, exclusive of costs, to the court of appeals of said territory; in all civil causes of admiralty and maritime jurisdiction; in all causes of seizure, under the laws of impost, navigation, and trade, of the United States; in all suits for penalties and forfeitures incurred under the laws of the United States, and in all suits in which the United States shall be a party; in all civil causes, in law and equity, arising under the Constitution and laws of the United States, and treaties made, and which shall be made, under their authority; and in all civil cases affecting ambassadors, other public ministers and consuls; in controversies between citizens of two different states, and between aliens and citizens of the United States; in the same manner, and under the same regulations, as appeals are directed to be taken from a district to a circuit court of the United States. And writs of error and appeal shall lie, and may be taken from the final decisions of the said court of appeals, in all such cases, to the Supreme Court of the United States, in the same manner and under the same restrictions and regulations, as writs of error and appeals are directed to be taken from the circuit courts of the United States. And in all other cases, writs of error and appeal may be taken and prosecuted from said superior courts to the court of appeals, in such manner as the legislative council have directed, or shall direct.

Sec. 6. **And be it further enacted,** That the regulations prescribed by the nineteenth, twentieth, twenty-first, twenty-second, twenty-third, and twenty-fourth sections of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States," and by the act of the twelfth of December, seventeen hundred and ninety-four, entitled, "An act to amend and explain the twenty-second section of the act establishing the judicial courts of the United States," as far as said regulations shall be practicable, shall be observed in respect to all writs of error and appeals, from the said superior courts to the court of appeals in the cases enumerated in the first part of the preceding section, and in writs of error and appeals from the said court of appeals to the Supreme Court of the United States.

Sec. 7. **And be it further enacted,** That the clerks of the said superior courts, respectively, where the courts are held shall keep correct, particular, and regular minutes and records of every day's proceedings of the said courts, and the said clerks, marshals, and district attorneys, shall respectively, receive for their services, in all causes of admiralty and maritime jurisdiction, and in causes arising on seizures under the laws of impost navigation, and trade of the United States, the same fees and compensation as are allowed by law to the clerks, marshals and district attorneys, of the district court of the United States for Louisiana district, in similar causes, and in all other causes, such fees as have been or shall be hereafter

established by the legislative council of the said territory. And the clerk, United States' attorney, and marshal, of the court of appeals, shall have the same fees and compensation for attending said court, whilst exercising the powers of a circuit court, as directed in this act, as are allowed to the clerk, attorney, and marshals of the circuit courts of the United States: and, in all other cases, such fees as the legislative council of said territory have established, or may direct.

Sec. 8. **And be it further enacted,** That the judges of the superior courts shall only be required to hold a court in one other place, in their respective districts, than the one assigned by the laws of the United States, to be designated by the governor and legislative council; and so much of any law, as restricts said courts to a particular number of days, for the trial of causes arising under the constitution and laws of the United States, be, and the same is hereby, repealed.

Sec. 9. **And be it further enacted,** That the marshals of each district shall reside within the same, and execute all the process of said courts, whether arising under the laws of the United States, or of said territory; and perform all the duties of ministerial officers of the same; and shall execute bond, with security, to be approved by said judges, conditioned for the performance of the duties required of the executive officers, by the laws of said territory, in the sum of ten thousand dollars, which shall be recorded by the clerks of said courts.

Sec. 10. **And be it further enacted,** That thirteen persons shall be annually elected by the people of said territory who shall compose the legislative council thereof, each of whom shall be an inhabitant of said territory, and shall have resided therein one year next preceding his election; and the term for which each shall be elected shall be one year, to commence on the second Monday of December annually. And it shall be the duty of the governor to divide the said territory into thirteen convenient districts, so as to give to each district, as near as may be, an equal number of free white inhabitants, for the purpose of electing members of the legislative council of said territory; and he shall also designate places for holding elections in each district, and appoint judges or managers to preside at, and conduct the same, who shall take the same oath, and observe the same formality, as is now required by law, in the election of delegate to Congress. The time and place of holding the elections shall be made known, by proclamation, and sent to each district, respectively: and it shall be lawful for the inhabitants within the respective districts, who are, or may be qualified voters, under the laws of the same, to elect one person in each district, as a member of the legislative council. And it shall be the duty of the said judges or managers, in each district, to make a return to the governor of the name of every person voted for as a member of the legislative council, in such district, together with the number of votes which each person shall have received, written in full, opposite his name; and the votes in each district shall be canvassed by the governor and secretary of the territory, or by such other persons, or in such other manner, as the legislative council may hereafter direct by law; and the person in each district, having the greatest number of legal votes, shall be declared elected, and entitled to a seat in the legislative council; and in case two or more persons shall have the greatest, and an equal number of votes in any district, it shall be lawful for the governor to order a new election in such district, in such manner, and at such time, as the legislative council may by law prescribe. And the said legislative council shall hold a session in every year, commencing on the second Monday in December, in each year, at the seat of government in said territory, and continue not longer than six weeks; and the members of said council shall receive three dollars each per day, during their attendance in council, and three dollars for every twenty miles, to be estimated by the actual distance from the place of residence to the seat of government, and so distinctly certified by the governor of said territory, in going to, and returning from, any meeting of the legislative council, once in each session, and no more; and the first election shall be held on the first Monday of October next, and at such times thereafter, and under such regulations, as the governor and legislative council shall direct.

Sec. 11. **And be it further enacted,** That the members of the legislative council shall not be eligible to any office created during the period of their service, or the fees of which were regulated by laws passed whilst they were members, or for one year thereafter.

Sec. 12. **And be it further enacted,** That it shall not be lawful for the legislative council to pass any law imposing a higher tax on the lands of non-residents, than those of residents of said territory.

Sec. 13. **And be it further enacted,** That so much of the several acts of which this is an amendment, as may be inconsistent with the provisions of this act, be, and the same are hereby, repealed; and so much of any of the laws of said territory, as are repugnant to the same, are disapproved and annulled.

Sec. 14. **And be it further enacted,** That the several acts passed by the governor and legislative council, granting divorces; the four first sections of "An act to amend an act to define crimes,"&c. approved December tenth, eighteen hundred and twenty-five; and "An act to prescribe the forms of actions,"&c. approved December fifth, eighteen hundred and twenty-five; the act "in addition and amendment of an act to determine fees,"&c. approved December ninth, eighteen hundred and twenty-five; and "An act to amend an act regulating judicial proceedings,"&c. approved December eighth, eighteen hundred and twenty-five; and "An act to provide, in part, for raising a revenue," approved the ninth of December, eighteen hundred and twenty-five, be, and the same are hereby, disapproved and annulled.

ACT OF MARCH 22, 1832
(4 U. S. Stat. 501)

AN ACT to amend the several acts establishing a territorial government in Florida.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there shall be elected one member of the legislative council in the territory of Florida, from the counties of Madison and Hamilton, and one from the county of Walton, in said territory.

ACT OF JULY 14, 1832
(4 U. S. Stat. 600)

AN ACT to amend the several acts for the establishment of a territorial government in Florida.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the court of appeals in the territory of Florida, established in virtue of the fourth section of the act of the twenty-sixth of May, one thousand eight hundred and twenty-four, to which this act is an amendment, shall be composed of the judges of the superior courts in said territory respectively, a majority of whom shall be necessary to be present to constitute a quorum to hear and decide causes; but any two of the said judges shall be sufficient to make any interlocutory order, or to grant any writ authorized by any of the acts to which this is an amendment.

Sec. 2. **And be it further enacted,** That the provisions and regulations contained in the twenty-fifth section of the act of the twenty-fourth of September, one thousand seven hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States," in regard to writs of error and appeals to the Supreme Court of the United States, from a final judgment or decree in any suit in the highest court of law or equity of a state, shall be applicable to writs of error and appeals to the Supreme Court of the United States from the highest court of law or equity in said territory, having jurisdiction of the subject matter, in the same manner as writs of error and appeals are authorized now to be taken and prosecuted under the aforesaid twenty-fifth section of the act of the twenty-fourth of September, one thousand seven hundred and eighty-nine, from any court in any state; and writs of error and appeals, in virtue of the said twenty-fifth section, are hereby authorized to be taken and prosecuted from the highest court of law or equity having jurisdiction of the subject matter in the said territory.

Sec. 3. **And be it further enacted,** That the regulations prescribed by the second section of the act entitled "An act in addition to an act entitled An act to amend the judicial system of the United States," approved the third of March, one thousand eight hundred and three, as far as said regulations shall be practicable, shall be observed in respect to all writs of error and appeals from the said court of appeals in the said territory to the Supreme Court of the United States.

Sec. 4. **And be it further enacted,** That appeals and writs of error may be taken and prosecuted, in all cases, from the decisions and judgments of the highest court of said territory to the Supreme Court of the United States, where the amount in controversy exceeds one thousand dollars.

MISCELLANEOUS ACTS OF CONGRESS.

The Congress of the United States, from time to time, enacted various laws relating to the Territory of Florida, its people and their property, as follows:

May 7, 1822, c. 86, 3 Stat. 685, entitled "An Act to relieve the people of Florida from the operation of certain ordinances."

May 8, 1822, c. 122, 3 Stat. 699, entitled "An Act confirming claims to lots in the town of Mobile, and to land in the former province of West Florida, which claims have been reported favourably on by the commissioners appointed by the United States."

May 8, 1822, c. 129, 3 Stat. 709, entitled "An Act for ascertaining claims and titles to land within the territory of Florida."

March 3, 1823, c. 29, 3 Stat. 754, entitled "An Act amending and supplementary to, the 'Act for ascertaining claims and titles to land in the territory of Florida,' and to provide for the survey and disposal of the public lands in Florida."

March 3, 1823, c. 35, 3 Stat. 768, entitled "An Act to carry into effect the ninth article of the treaty concluded between the United States and Spain, the twenty-second day of February, one thousand eight hundred and nineteen."

February 28, 1824, c. 25, 4 Stat. 6, entitled "An Act to extend the time limited for the settlement of private land claims in the territory of Florida."

April 22, 1824, c. 39, 4 Stat. 19, entitled "An Act supplementary to the act, entitled 'An act supplementary to the act, entitled "An act for the relief of persons imprisoned for debt."'"

May 24, 1824, c. 137, 4 Stat. 30, entitled "An Act providing for a grant of land for the seat of government in the territory of Frorida, (Florida) and for other purposes."

May 24, 1824, c. 140, 4 Stat. 33, entitled "An Act to authorize the creation of a stock to an amount not exceeding five millions of dollars, to provide for the awards of the commissioners under the treaty with Spain, of the twenty-second of February, one thousand eight hundred and nineteen."

May 26, 1824, c. 158, 4 Stat. 43, entitled "An Act to allow a salary to the collectors of the dis-

tricts of Nantucket and Pensacola, and to abolish the office of surveyor of the district of Pensacola."

May 26, 1824, c. 164, 4 Stat. 47, entitled "An Act granting donations of land to certain actual settlers in the territory of Florida."

March 3, 1825, c. 57, 4 Stat. 102, entitled "An Act making appropriation to satisfy certain balances due to the commissioners and secretaries of land claims in Florida."

March 3, 1825, c. 83, 4 Stat. 125, entitled "An Act to extend the time for the settlement of private land claims in the territory of Florida, to provide for the preservation of the public archives in said territory, and for the relief of John Johnson."

February 1, 1826, c. 5, 4 Stat. 138, entitled "An Act to annul 'An act concerning wreckers and wrecked property,' passed by the governor and legislative council of the territory of Florida."

April 22, 1826, c. 28, 4 Stat. 154, entitled "An Act giving the right pre-emption, in the purchase of lands, to certain settlers in the states of Alabama, Mississippi, and territory of Florida."

April 22, 1826, c. 29, 4 Stat. 156, entitled "An Act to confirm the reports of the commissioners for ascertaining claims and titles to lands in West Florida, and for other purposes."

May 4, 1826, c. 31, 4 Stat. 157, entitled "An Act to authorize the President of the United States to run and mark a line dividing the territory of Florida from the state of Georgia."

January 29, 1827, c. 8, 4 Stat. 201, entitled "An Act to provide for the location of the two townships of land reserved for a seminary of learning in the territory of Florida, and to complete the location of the grant to the Deaf and Dumb Asylum of Kentucky."

February 8, 1827, c. 9, 4 Stat. 202, entitled "An Act to provide for the confirmation and settlement of private land claims in East Florida, and for other purposes."

March 3, 1827, c. 91, 4 Stat. 241, entitled "An Act to authorize the governor and legislative council of Florida, to provide for holding additional terms of the superior courts therein."

April 28, 1828, c. 42, 4 Stat. 264, entitled "An Act authorizing the legislative council of Florida to meet in October instead of September; and repealing the proviso in the sixth section of the act entitled 'An act to amend an act, for the establishment of a territorial government in Florida, and for other purposes,' approved March the third, one thousand eight hundred and twenty-three."

May 23, 1828, c. 70, 4 Stat. 284, entitled "An Act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida."

May 23, 1828, c. 77, 4 Stat. 291, entitled "An Act to establish a southern judicial district in the territory of Florida."

January 21, 1829, c. 13, 4 Stat. 332, entitled "An Act to authorize the citizens of the territories of Arkansas and Florida, to elect their officers, and for other purposes."

March 2, 1829, c. 39, 4 State. 357, entitled "An Act to authorize the establishment of a town, on land reserved for the use of schools, and to direct the manner of disposing of certain reserved quarter sections of land for the seat of government in Florida."

May 14, 1830, c. 96, 4 Stat. 403, entitled "An Act to alter the time of holding the sessions of the legislative council of the territory of Florida."

May 26, 1830, c. 106, 4 Stat. 405, entitled "An Act to provide for the final settlement of land claims in Florida."

March 2, 1831, c. 86, 4 Stat. 479, entitled "An Act to ascertain and mark the line between the state of Alabama and the territory of Florida, and the northern boundary of state of Illinois, and for other purposes."

January 23, 1832, c. 10, 4 Stat. 498, entitled "An Act to direct the manner of issuing patents on confirmed land claims in the territory of Florida."

June 28, 1832, c. 152, 4 Stat. 550, entitled "An Act making provision for the sale and disposition of the public grounds in the cities of St. Augustine and Pensacola, and to reserve certain lots and buildings for public purposes, and to provide for their repair and preservation."

July 14, 1832, c. 241, 4 Stat. 601, entitled "An Act to authorize the disposition of the fund arising from the sale of a quarter section of land, reserved for the use of schools, in Florida."

June 18, 1834, c. 46, 4 Stat. 677, entitled "An Act to equalize representation in the territory of Florida, and for other purposes."

June 28, 1834, c. 97, 4 Stat. 701, entitled "An Act to authorize the removal of the custom-house from Magnolia, to St. Marks in Florida."

June 30, 1834, c. 166, 4 Stat. 740, entitled "An Act repealing certain acts of the legislative council of the territory of Florida."

February 24, 1835, c. 22, 4 Stat. 752, entitled "An Act for the completion of certain improvements in Florida."

March 3, 1835, c. 45, 4 Stat. 778, entitled "An Act to authorize the construction of a railroad upon the public lands, from Tallahassee to St. Marks, in Florida."

February 25, 1836, c. 41, 5 Stat. 5, entitled "An Act authorizing a special term of the Court of Appeals, for the Territory of Florida, and for other purposes."

July 1, 1836, c. 236, 5 Stat. 63, entitled "An Act to authorize the Governor and Legislative Council of the Territory of Florida, to sell the lands heretofore reserved for the benefit of a general seminary of learning in said Territory."

July 2, 1836, c. 261, 5 Stat. 69, entitled "An Act regulating the terms of the superior courts

of the middle district of Florida, and for other purposes."

January 31, 1837, c. 9, 5 Stat. 144, entitled "An Act to authorize certain rail-road companies to construct railroads through the public lands in the Territory of Florida."

June 28, 1838, c. 150, 5 Stat. 253, entitled "An Act to confirm the act of the Legislative Council of Florida, incorporating the 'Florida Peninsula Railroad and Steamboat Company,' and granting the right of way to said company through the public lands, and for other purposes."

July 7, 1838, c. 168, 5 Stat. 263, entitled "An Act to reorganize the Legislative Council of Florida, and for other purposes."

July 7, 1838, c. 181, 5 Stat. 294, entitled "An Act to establish a new judicial district in the Territory of Florida."

March 3, 1839, c. 70, 5 Stat. 323, entitled "An Act to provide for the erection of public buildings in the Territory of Florida."

August 4, 1842, c. 122, 5 Stat. 502, entitled "An Act to provide for the armed occupation and settlement of the unsettled part of the peninsula of East Florida."

August 30, 1842, c. 271, 5 Stat. 567, entitled "An Act to establish an additional land office in Florida."

June 15, 1844, c. 55, 5 Stat. 666, entitled "An Act to authorize the selection of certain school lands in the Territories of Florida, Iowa, and Wisconsin."

June 15, 1844, c. 71, 5 Stat. 671, entitled "An Act to amend an act 'An act to provide for the armed occupation and settlement of the unsettled part of the peninsula of Florida.'"

July 1, 1848, c. 90, 9 Stat. 243, entitled "An Act for the Relief of the bona fide Settlers under the Acts for the armed Occupation and Settlement of a Part of the Territory of Florida."

INDIAN TREATIES

TREATY OF FORT MOULTRIE.

Treaty of peace and friendship, made and concluded between William P. Duval, James Gadsden, and Bernard Segui, commissioners on the part of the United States, and certain chiefs and warriors of the Florida tribes of Indians.

Article I. The undersigned chiefs and warriors for themselves and their tribes, have appealed to the humanity, and thrown themselves on and have promised to continue under the protection of the United States, and of no other nation power or sovereign, and in consideration of the promises and stipulations herinafter made, do cede and relinquish all claim or title which they may have to the whole Territory of Florida, with the exception of such district of country, as shall herein be alotted them.

Article II. The Florida tribes of Indians, will hereafter be concentrated and confined to the following metes and boundaries: commencing five miles north of Okehumke, running in a direct line to a point, five miles west of Setarky's settlement on the waters of Amazura, (or Withlachuche River) leaving said settlement two miles south of the line, from thence in a direct line to the south end of the Big Hammock, to include Chickuchate, continuing on in the same direction for five miles beyond the said hammock, provided said point does not approach nearer than fifteen miles the sea coast of the Gulf of Mexico, if it does the said line will terminate at that distance from the sea coast, thence south twelve miles, thence in a south 30° east direction, until the same shall strike within five miles of the main branch of the Charlotte River, thence in a due east direction to within twenty miles of the Atlantic coast, thence north fifteen, west for fifty miles, and from this last to the beginning point.

Article III. The United States will take the Florida Indians under their care and patronage, and will afford them protection against all persons whatsoever, provided, they conform to the laws of the United States, and refrain from making war, or giving any insult to any foreign nation, without having first obtained the permission and consent of the United States: And in consideration of the appeal and cession made in the first article of this treaty, by the aforesaid chiefs and warriors, the United States promise to distribute among the tribes, as soon as concentrated under the direction of their agent, implements of husbandry, and stocks of cattle and hogs, to the amount of six thousand dollars and an annual sum of five thousand dollars a year, for twenty successive years, to be distributed as the President of the United States shall direct through the Secretary of War, or his superintendents and agent of Indian affairs.

Article IV. The United States promise to guarantee to the said tribes, the peaceable possession of the district of country assigned them, reserving the right of opening through it such roads, as may from time to time be deemed necessary, and to restrain and prevent all white persons from hunting, settling, or otherwise intruding upon it. But any citizen of the United States being lawfully authorized for that purpose, shall be permitted to pass and repass through the said district, and to navigate the waters thereof, without any hindrance, toll, or exaction from said tribes.

Article V. For the purpose of facilitating the removal of the said tribes to the district of country allotted to them, and as a compensation for the losses sustained, or the inconveniences to which they may be exposed by said removal, the United States will furnish them with rations of corn, meat and salt, for twelve months, commencing on the first day of February next. And they further agree, to compensate those individuals who have been

compelled to abandon improvements on lands, not embraced within the limits allotted, to the amount of four thousand five hundred dollars, to be distributed among the sufferers, in a ratio to each, proportional to the value of the improvements abandoned. The United States further agree, to furnish a sum not exceeding two thousand dollars, to be expended by their agent, to facilitate the transportation of the different tribes to the point of concentration designated.

Article VI. An agent, sub-agent and interpreter, shall be appointed to reside within the Indian boundary, aforesaid, to watch over the interests of said tribes; and the United States further stipulate, as an evidence of their humane policy towards said tribes who have appealed to their liberality, to allow for the establishment of a school at the agency, one thousand dollars per year, for twenty successive years; and one thousand dollars per year, for the same period, for the support of a gun, and black smith, with the expenses incidental to his shop.

Article VII. The chiefs and warriors aforesaid, for themselves and tribes, stipulate to be active and vigilant in the preventing the retreating to, or passing through of the district of country assigned them of any absconding slaves or fugitives from justice, and further agree to use all necessary exertions to apprehend and deliver the same to the agent, who shall receive orders to compensate them agreeably to the trouble and expenses incurred.

Article VIII. A commissioner, or commissioners, with a surveyor, shall be appointed by the President of the United States, to run and mark, (blazing fore and aft the trees) the line as defined in the second article of this treaty; who shall be attended by a chief, or warrior, to be designated by a council of their own tribes, and who shall receive while so employed, a daily compensation of three dollars.

Article IX. The undersigned chiefs and warriors, for themselves and tribes, having objected to their concentration within the limits described in the second article of this treaty, under the impression that the said limits did not contain a sufficient quantity of good land for them to subsist on, and for other reasons: it is therefore expressly understood between the United States, and the aforesaid chiefs and warriors, that, should the country embraced in said limits, upon examination by the Indian agent and the commissioner, or commissioners, to be appointed under the 8th article of this treaty, be by them considered insufficient for the support of the said Indian tribes, then the north line as defined in the 2d article of this treaty, shall be removed so far north as to embrace a sufficient quantity of good tillable land.

Article X. The undersigned chiefs and warriors, for themselves and tribes, have expressed to the commissioners their unlimited confidence in their agent, Colonel Gad Humphreys, and their interpreter, Stephen Richards; and, as an evidence of their gratitude for their services and humane treatment, and brotherly attentions to their wants, request that one mile square, embracing the improvements of Ewhe Mathla, at Tallahassee, (said improvements to be considered as the centre) be conveyed in fee simple as a present to Colonel Gad Humphreys: and they further request that one mile square at the Ochesee Bluffs, embracing Stephen Richards' field on said bluffs, be conveyed in fee simple as a present to said Stephen Richards. The commissioners accord in sentiment with the undersigned chiefs and warriors, and recommend a compliance with their wishes to the President and Senate of the United States, but the disapproval on the part of the said authorities of this article, shall in no wise affect the other articles and stipulations concluded on in this treaty.[5]

In testimony whereof, the commissioners, William P. Duval, James Gadsden, and Bernard Segui, and the undersigned chiefs and warriors have hereunto subscribed their names and affixed their seals. Done at Camp, on Moultrie Creek, in the Territory of Florida, this eighteenth day of September, one thousand eight hundred and twenty-three, and of the Independence of the United States, the Forty-eighth.

Fuhelusta Hajo, his X mark,	L. S.
Octapamico, his X mark,	L. S.
Tusteneck Hajo, his X mark,	L. S.
Okoske Amathla, his X mark,	L. S.
Ochany Tuskenuky, his X mark,	L. S.
Philip, his X mark	L. S.
Charley Amathla, his X mark,	L. S.
John Hassorey, his X mark,	L. S.
Rat Head, his X mark	L. S.
Holata Amathla, his X mark,	L. S.
Foschati-Mico, his X mark,	L. S.

Signed, sealed, and delivered in presence of George Murray, Secretary to the Commission.
G. Humphreys, Indian Agent.
Stephen Richards, Interpreter.
Isaac N. Cox.
I. Erving, Capt. 4th Artillery.
Harvey Brown, Lieut. 4th Artillery.
C. D'Espinvelle, Lieut. 4th Artillery.
Jno. B. Scott, Lieut. 4th Artillery.
William Travers.
Horatio S. Dexter.
Ratified, January 2nd, 1824.

Wm. P. Duval,	L. S.
James Gadsden,	L. S.
Bernard Segui,	L. S.
Nea Mathla, his X mark,	L. S.
Tokose Mathla, his X mark,	L. S.
Ninnee Homata Tustenuky, his X mark,	L. S.
Micanopy, his X mark,	L. S.
Nocosee Apola, his X mark,	L. S.
John Blunt, his X mark,	L. S.
Ottemata, his X mark,	L. S.
Tuskeneka, his X mark	L. S.
Tuski Hajo, his X mark,	L. S.
Econchatimico, his X mark,	L. S.
Emoteley, his X mark,	L. S.
Mulato King, his X mark,	L. S.
Chocolohano, his X mark,	L. S.
Emathlochee, his X mark,	L. S.
Wekse Holata, his X mark,	L. S.
Amathla Ho, his X mark,	L. S.
Holatifiscico, his X mark,	L. S.
Chefiscico Hajo, his X mark,	L. S.
Lathlon Mathla, his X Mark,	L. S.
Senufky, his X mark,	L. S.
Alak Hajo, his X mark,	L. S.

(Additional Article.)

"Whereas, Nea Mathla, John Blount, Tuski Hajo, Mulatto King, Emathlochee, and Econ-

[5] Disapproved by Government.

chatimico, six of the principal chiefs of the Florida Indians, and parties to the treaty to which this article has been annexed, have warmly appealed to the commissioners for permission to remain in the district of country now inhabited by them; and, in consideration of their friendly disposition, and past services to the United States and the aforesaid chiefs, that the following reservation shall be surveyed and marked by the commissioner or commissioners to be appointed under the eighth article of this treaty. For the use of Nea Mathla and his connexions, two miles square, embracing the Tuphulga village, on the waters of Rocky Comfort Creek. For Blunt and Tuski Hajo, a reservation commencing on the Apalachicola, one mile below Tuski Hajo's improvements running up said river four miles; thence west two miles; thence southerly to a point two miles due west of the beginning; thence east to the beginning point. For Mulatto King and Emathlochee, a reservation commencing on the Apalachicola, at a point to include Yellow Hair's improvements; thence up said river for four miles; thence west one mile; thence southerly to a point one mile west of the beginning; and thence east to the beginning. For Econchatimico, a reservation commencing on the Chattahoochie, one mile below Econchatimico's house; thence up said river for four miles; thence one mile west; thence southerly to a point one mile west of the beginning; thence east to the beginning point. The United States promise to guaranty the peaceable possession of the said reservations, as defined, to the aforesaid chiefs and their descendants only, so long as they shall continue to occupy, improve, or cultivate the same; but in the event of the abandonment of all or either of the reservations, by the chief or chiefs, to whom they have been allotted, the reservation or reservations so abandoned shall revert to the United States, as included in the cession made in the first article of this treaty. It is further understood that the names of the individuals remaining on the reservations aforesaid shall be furnished by the chiefs in whose favor the reservations have been made, to the superintendent or agent of Indian affairs, in the territory of Florida: and that no other individual shall be received or permitted to remain within said reservations, without the previous consent of the superintendent or agent aforesaid. And, as the aforesaid chiefs are authorized to select the individuals remaining with them, so they shall be separately held responsible for the peaceable conduct of their towns, or the individuals residing on the reservations allotted to them. It is further understood between the parties, that this agreement is not intended to prohibit the voluntary removal, at any future period, of all or either of the aforesaid chiefs and their connexions to the district of country south, allotted to the Florida Indians by the second article of this treaty, whenever either or all may think proper to make such an election; the United States reserving the right of ordering for any outrage or misconduct, the aforesaid chiefs, or either of them, with their connexions, within the district of country south, aforesaid. It is further stipulated by the United States, that of the six thousand dollars appropriated for implements of husbandry, stock, &c., in the third article of this treaty, eight hundred shall be distributed in the same manner, among the aforesaid chiefs and their towns; and it is understood that, of the annual sum of five thousand dollars, to be distributed by the president of the United States, they will receive their proportion. It is further stipulated, that of the four thousand, five hundred dollars and two thousand dollars, provided for by the fifth article of this treaty, for the payment for improvements and transportation, five hundred dollars shall be awarded to Nea Mathla, as a compensation for the improvements abandoned by him, as well as to meet the expenses he will unavoidably be exposed to by his own removal, and that of his connexions.

In testimony whereof, the commissioners, William P. Duval, James Gadsden, and Bernard Segui, and the undersigned, chiefs and warriors, have hereunto subscribed their names and affixed their seals. Done at camp on Moultrie Creek in the Territory of Florida, this eighteenth day of September, one thousand eight hundred and twenty-three, and of the Independence of the United States, the forty-eighth.

William P. Duval,	L. S.
James Gadsden,	L. S.
Bernard Segui,	L. S.
Nea Mathla, his X mark,	L. S.
John Blunt, his X mark,	L. S.
Tuski Hajo, his X mark,	L. S.
Mulatto King, his X mark,	L. S.
Emathlochee, his X mark,	L. S.
Econchatimico, his X mark,	L. S.

Signed, sealed, and delivered in the presence of

George Murray, Secretary to the Commission.
Ja. W. Ripley.
G. Humphreys, Indian Agent.
Stephen Richards, Interpreter."

Ratified January 2, 1824.

TREATY OF PAYNE'S LANDING

Whereas, a treaty between the United States and the Seminole nation of Indians, was made and concluded at Payne's Landing on the Ocklawaha river, on the 9th day of May, one thousand eight hundred and thirty-two, by James Gadsden, commissioner on the part of the United States, and chiefs and head-men of said Seminole nations of Indians, on the part of said nation; which treaty is in the words following, to wit:

The Seminole Indians, regarding with just respect the solicitude manifested by the president of the United States for the improvement of their condition, by recommending a removal

to the country more suitable to their habits and wants than the one they at present occupy in the territory of Florida, are willing that their confidential chiefs, Jumper, Fuch-a-lus-to-had-jo, Charley Emathla, Coi-had-jo, Holati-Emathla, Ya-ha-had-jo, Sam Jones, accompanied by their agent, Major John Phagan, and their faithful interpreter, Abraham, should be sent, at the expense of the United States, as early as convenient, to examine the country assigned to the Creeks, west of the Mississippi river, and should they be satisfied with the character of that country, and of the favorable disposition of the Creeks to re-unite with the Seminoles as one people; the articles of the compact and agreement herein stipulated, at Payne's Landing, on the Ocklawaha river, this ninth day of May, one thousand eight hundred and thirty-two, between James Gadsden, for and in behalf of the government of the United States, and the undersigned chiefs and head-men, for and in behalf of the Seminole Indians, shall be binding on the respective parties.

Article 1. The Seminole Indians relinquish to the United States all claim to the land they at present occupy in the territory of Florida, and agree to emigrate to the country assigned to the Creeks, west of the Mississippi river, it being understood that an additional extent of country, proportioned to their numbers, will be added to the Creek territory, and that the Seminoles will be received as a constituent part of the Creek nation, and be re-admitted to all the privileges as a member of the same.

Article II. For and in consideration of the relinquishment of claim in the first article of this agreement, and in full compensation for all the improvements which may have been made on the lands thereby ceded, the United States stipulate to pay to the Seminole Indians fifteen thousand four hundred (15,400) dollars to be divided among the chiefs and warriors of the several towns, in a ratio proportioned to their population, the respective proportions of each to be paid on their arrival in the country they consent to remove to; it being understood that their faithful interpreters, Abraham and Cudjo, shall receive two hundred dollars each, of the above sum, in full remuneration for the improvements to be abandoned on the lands now cultivated by them.

Article III. The United States agree to distribute, as they arrive at their new homes in the Creek territory, west of the Mississippi river, a blanket and a homespun frock to each of the warriors, women and children, of the Seminole tribe of Indians.

Article IV. The United States agree to extend the annuity for the support of a blacksmith, provided for in the sixth article of the treaty at Camp Moultrie, for ten (10) years beyond the period therein stipulated, and in addition to the other annuties secured under that treaty, the United States agree to pay the sum of three thousand (3000) dollars a year, for fifteen (15) years, commencing after the removal of the whole tribe; these sums to be added to the Creek annuities, and the whole amount to be so divided, that the chiefs and warriors of the Seminole Indians may receive their equitable proportion of the same, as members of the Creek confederation.

Article V. The United States will take the cattle belonging to the Seminoles at the valuation of some discreet person, to be appointed by the president, and the same shall be paid for in money to the respective owners, after their arrival at their new homes; or other cattle, such as may be desired, will be furnished them; notice being given through their agent, of their wishes upon this subject, before their removal, that time may be afforded to supply the demand.

Article VI. The Seminoles being anxious to be relieved from the repeated vexatious demands for slaves, and other property, alleged to have been stolen and destroyed by them, so that they may remove unembarrassed to their new homes, the United States stipulate to have the same property (properly) investigated, and to liquidate such as may be satisfactorily established, provided the amount does not exceed seven thousand (7000) dollars.

Article VII. The Seminole Indians will remove within three (3) years after the ratification of this agreement and the expenses of their removal shall be defrayed by the United States, and such subsistence shall also be furnished them, for a term not exceeding twelve (12) months after their arrival at their new residence, as in the opinion of the president their numbers and circumstances may require; the emigration to commence as early as practicable in the year eighteen hundred and thirty-three, (1833), and with those Indians at present occupying the Big Swamp, and other parts of the country beyond the limits, as defined in the second article of the treaty concluded at Camp Moultrie Creek, so that the whole of that proportion of the Seminoles may be removed within the year aforesaid, and the remainder of the tribe, in about equal proportions, during the subsequent years of eighteen hundred and thirty-four and five, (1834 and 1835.)

In testimony whereof, the commissioner, James Gadsden, and the undersigned chiefs and head-men of the Seminole Indians, have hereunto subscribed their names and affixed their seals.

Done at camp, at Payne's Landing, on the Ocklawaha river, in the territory of Florida, on this ninth day of May, one thousand eight hundred and thirty-two, and of the independence of the United States of America, the fifty-sixth.

(Signed) James Gadsden. L. S.
Holati Emathlar, his X mark.

Witnesses.

Douglas Vass, Sec. to Comm.
John Phagan, Agent.
Stephen Richards, Interpreter.
Abraham, Interpreter, his X mark.
Cudjo, Interpreter, his X mark.
Erastus Rodgers.
B. Joscan.
Jumper, his X mark
Fuch-Ta-Lus-Ta-Hadjo, his X mark.

Charley Emathla, his X mark.
Coi Hadjo, his X mark.
Ar-pi-uck-i, or Sam Jones, his X mark.
Y -ha-Hadio, his X mark.
Mico-Noha, his X mark.
Tokose Emathla, or John Hicks, his X mark.
Cat-sha-Tustenuggee, his X mark.
Holat-a-Mico, his X mark.
Hitch-it-i-Mico, his X mark.
E-ne-hah, his X mark.
Ya-ha-Emathla-Chopco, his X mark.
Moki-his-she-lar-ni, his X mark.

Now, therefore, be it known that I, Andrew Jackson, President of the United States of America, having seen and considered said treaty, do, by and with the advice and consent of the senate, as expressed by their resolution of the eighth day of April, one thousand eight hundred and thirty-four, accept, ratify, and confirm the same, and every clause and article thereof.

In witness whereof, I have caused the seal of the United States to be hereunto affixed, having signed the same with my hand.

Done at the city of Washington, this twelfth day of April, in the year of our Lord one thousand eight hundred and thirty-four, and of the independence of the United States of America, the fifty-eighth.

(Signed) Andrew Jackson.

By the President,
Louis McLane, Secretary of State.

ADDITIONAL TREATY.

Made at Fort Gibson, Arkansas, with the Seminole Delegation of Indians.

To all and singular to whom these presents shall come, Greeting:

Whereas, a treaty between the United States and the Seminole nation of Indians, was made and concluded at Fort Gibson, on the twenty-eighth day of March, one thousand eight hundred and thirty-three, by Montfort Stokes, Henry L. Ellsworth, and John F. Schermerhorn, commissioners on the part of the United States, and the delegates of the Seminole nation of Indians, on the part of said nation; which treaty is in the words following, to wit:

Whereas, the Seminole Indians of Florida entered into certain articles of agreement with James Gadsden, commissioner, on behalf of the United States, at Payne's Landing, on the ninth day of May, one thousand eight hundred and thirty-two, the first article of which treaty or agreement provides as follows: The Seminole Indians relinquish to the United States all claim to the land they at present occupy in the territory of Florida, and agree to emigrate to the country assigned to the Creeks west of the Mississippi river; it being understood that an additional extent of territory, proportioned to their number, will be added to the Creek country, and that the Seminoles will be received as a constituent part of the Creek nation, and be re-admitted to all the privileges as members of the same. And whereas, the said agreement also stipulates and provides that a delegation of Semiñoles should be sent, at the expense of the United States, to examine the country to be allotted them among the Creeks, and should this delegation be satisfied with the character of the country, and of the favorable disposition of the Creeks to unite with them as one people, then the aforementioned treaty would be considered binding and obligatory upon the parties. And whereas, a treaty was made between the United States and the Creek Indians west of the Mississippi, at Fort Gibson, on the fourteenth day of February, one thousand eight hundred and thirty-three, by which a country was provided for the Seminoles in pursuance of the existing arrangements between the United States and that tribe. And whereas, the special delegation appointed by the Seminoles on the ninth of May, one thousand eight hundred and thirty-two, have since examined the land designated for them by the undersigned commissioners, on behalf of the United States, and have expressed themselves satisfied with the same, in and by their letter dated March, one thousand eight hundred and thirty-three, addressed to the undersigned commissioners:

Now, therefore, the commissioners aforesaid, by virtue of the power and authority vested in them by the treaty made with the Creek Indians, on the fourteenth day of February, one thousand eight hundred and thirty-three, as above stated, hereby designate and assign to the Seminole tribe of Indians, for their separate future residence forever, a tract of country lying between the Canadian river and the north fork thereof, and extending west to where a line running north and south between the main Canadian and north branch will strike the forks of Little river; provided said west line does not extend more than twenty-five miles west from the mouth of said Little river. And the undersigned Seminole Chiefs, delegated as aforesaid, on behalf of their nation, hereby declare themselves well satisfied with the location provided for them by the commissioners, and agree that their nation shall commence the removal to their new home as soon as the government will make arrangements for their emigration, satisfactory to the Seminole nation.

And whereas, the said Seminoles have expressed high confidence in the friendship and ability of their agent, Major Phagan, and desire that he may be permitted to remove them to their new homes west of the Mississippi; the commissioners have considered their request, and cheerfully recommend Major Phagan as a suitable person to be employed to remove the Seminoles as aforesaid, and trust his appointment will be made, not only to gratify the wishes of the Indians, but as conducive to the public welfare.

In testimony whereof, the commissioners, on behalf of the United States, and the delegates of the Seminole nation, have hereunto signed

their names, this 28th day of March, A. D. 1833, at Fort Gibson.

(Signed) Montfort Stokes,
Henry L. Ellsworth,
John F. Schermerhorn.

Seminole Delegates:

John Hicks (representing Sam Jones), his X mark.
Holata Emathla, his X mark.
Jumper, his X mark.
Coi Hadjo, his X mark.
Charly Emathlar, his X mark.
Ya-ha-Hadjo, his X mark.
Ne-ha-tho-clo, (representing Fuch-ta-luste-Hadjo,) his X mark.

Read and signed in our presence:

S. C. Stambaugh, Secretary to Comm.
John Phagan, Agent.
P. L. Chouteau, U. S. Agent for Osages.
A. P. Chouteau.
Enoch Steer.
Abraham, Seminole Interpreter.

Now, therefore, be it known, that I, Andrew Jackson, President of the United States of America, having seen and considered said treaty, do, by and with the advice and consent of the senate, as expressed by their resolution of the eighth day of April, one thousand eight hundred and thirty-four, accept, ratify, and confirm the same.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed, having signed the same with my hand.

Done, at the city of Washington, this twelfth day of April, in the year of our Lord one thousand eight hundred and thirty-four, and of the Independence of the United States of America the fifty-eighth.

(L. S.) (Signed) Andrew Jackson.

By the President,
Louis McLane, Secretary of State.

FLORIDA ADMITTED AS A STATE

ACTS PROVIDING FOR AN ELECTION AND CONVENTION.

The legislative council of the Territory of Florida, by an act approved February 12, 1837, provided for the taking of "the sense of the people of this territory on the policy and propriety of becoming a state" and, by an act approved February 2, 1838, called "a convention for the purpose of organizing a state government." These two acts are as follows:

AN ACT to take the sense of the people of this territory on the policy and propriety of becoming a state.

Sect. 1. **Be it enacted by the Governor and Legislature of the Territory of Florida,** That at the next election for delegate to congress from this Territory, it shall be the duty of the judges and inspectors of the election aforesaid, at every place or precinct where any such election may be held, to put the question to every voter who may present himself to vote, whether said voter wishes a State or Territorial government; and the judges aforesaid, if he shall answer, shall before any ballot is put into the box, write on the back of every ballot the answer of the voter presenting the same, State or Territory, as his answer may be, after which the ballot shall be put into the box; and the judges of any such election shall, when they count over the votes, specify and set forth, in their certificate of the election held by them, to the governor, how many votes were given for a State, and how many for a Territory; and the governor shall, in his proclamation of the election, declare how many votes were for State, and how many were for a Territory.

Sect. 2. **Be it further enacted,** That it shall be the duty of the sheriff of every county in this Territory, to ascertain by the first day of June next, the number of inhabitants, male and female, white, black, and colored, which may be in the several counties, and the sheriff of every county aforesaid, shall, immediately thereafter, transmit in triplicate, to the treasurer of the Territory a certified copy of the number of persons found in the several counties, in the manner before mentioned; and the treasurer shall report to the next legislative council, in the first week of its session, the number of inhabitants in this Territory, male and female, white, black and colored, according to the certificates of the sheriffs of the several counties in the Territory; and the legislative council shall order such compensation to the sheriffs of the several counties for performing the services hereby prescribed to be performed by them, as the council may deem reasonable and just, not exceeding three quarters of one cent per head; and if the sheriff of any county shall fail to perform the duties herein prescribed for them to perform, any such sheriff and his securities shall forfeit and pay the sum of one thousand dollars, for the use of the Territory, to be recovered at the first term of any court of competent jurisdiction, and said sheriffs shall be permitted to employ, in the execution of the duties herein before prescribed for them, their deputies, legally sworn, according to the laws of this Territory.

(Approved, Feb. 12, 1837).

AN ACT to call a convention for the purpose of organizing a state government.

Sect. 1. **Be it enacted by the Governor and Legislative Council of the Territory of Florida,** That an election shall be held in the several counties of this Territory, on the second Monday of October next, under the regulations and restrictions hereinafter imposed, for members of a convention, to devise and adopt the most efficient, speedy, and proper measures for the formation and establishment of an independent State Government for the people of Florida, and to form and adopt a bill of rights and constitution for the same, and all needful measures preparatory to the admission of Florida into the national confederacy.

Sect. 2. **Be it further enacted,** That the apportionment of members to the said convention,

shall be as follows: In the middle district, the county of Leon, shall be entitled to eight members; the county of Gadsden to four members; the county of Jefferson to four members; the county of Madison to two members; the county of Hamilton to two members. In the eastern district, the county of St. Johns shall be entitled to four members; the county of Duval to three members; the county of Columbia to three members; the county of Alachua to three members; the county of Nassau to two members; the county of Musquito[a] to one member, and the county of Hillsborough to one member. In the southern district, the county of Monroe shall be entitled to two members; the county of Dade to one member. In the western district, the county of Jackson shall be entitled to four members; the county of Escambia to four members; the county of Walton to two members; the county of Washington to two members; the county of Franklin to two members, and the county of Calhoun to two members.

Sect. 3. **Be it further enacted,** That it shall be the duty of the Judges or clerks of the county court of the several counties, to advertise said election at least thirty days before the second Monday in October next, and to appoint inspectors thereof, who shall be sworn to conduct said election in the manner and form as prescribed for members to the legislative council, not contrary to the provisions of this act; and the inspectors so appointed, shall seal up and transmit the returns of said election, within ten days thereafter to the governor of the Territory, at Tallahassee, to be laid before the convention, and that they shall within thirty days file with the clerks of their respective counties, a copy thereof.

Sect. 4. **Be it further enacted,** That the governor of the Territory shall announce by proclamation the names of the persons elected to said convention, and in case the returns from any county shall not be completed by that day, as soon thereafter as practicable; and in case of a tie, a new election is to be ordered by the judges or clerks of the county court giving five days notice thereof, under qualified inspectors appointed for said special election.

Sect. 5. **Be it further enacted,** That said convention shall be held on the first Monday of December next at the City of St. Joseph.

Sect. 6. **Be it further enacted,** That two thirds of said convention shall be necessary to constitute a quorum, and that the said convention shall determine upon the returns and qualifications of its members, and shall have and exercise all the rights, privileges, and immunities, incident to such bodies, and may adopt such rules and regulations for its government as a majority thereof may direct, and provided two-thirds of said convention do not assemble on the day appointed therefor, a less number is authorized to adjourn from day to day.

Sect. 7. **Be it further enacted,** That in case of the death, resignation, or non-attendance of any delegate chosen from any district of the Territory, that the delegation present from such district thus partially represented, shall be entitled to elect from their own number, a proxy to vote in the place of such absent member.

Sect. 8. **Be it further enacted,** That all white male inhabitants, citizens of the United States, above the age of twenty-one years, who have resided in the Territory of Florida for the space of six months immediately preceding the day of election, shall be entitled to vote for delegates to said convention, and all white male inhabitants, citizens of the United States, above the age of twenty-one years, who have resided in the Territory of Florida for the space of twelve months immediately preceding the day of election, shall be eligible as delegates to said body.

Sect. 9. **Be it further enacted,** That on the adoption of a constitution for the State of Florida, the convention shall transmit an authenticated copy thereof to the President of the United States, to the presiding officers of both houses of congress, and to the delegate from Florida, and adopt such other measures as will secure to the people of Florida the rights and privileges of a sovereign state.

Sect. 10. **Be it further enacted,** That the members of the convention shall receive as compensation the same rates as **there** (are) allowed to members of the legislative council, and that the expenses of the convention shall be paid out of the Territorial Treasury if no appropriation be made by congress for that purpose.

Sect. 11. **Be it further enacted,** That if at the time of giving notice of said election, or of holding the same, it shall be inconvenient on account of Indian hostilities, or other cause, to hold an election in any county, the county Judge or clerk, as the case may be, shall order said election to be held at the most convenient place in an adjoining county, and all persons who have been residents of such county for the space of three months at one time, or who are at the time of election proprietors of legal or equitable titles to lands in said county, shall have the right to vote at said election.

Passed 30th January, 1838—Approved 2d, Feb. 1838.

[a]Now Orange County.

CONVENTION OF 1838.

Pursuant to the act of February 2, 1838, a convention was held in the City of Saint Joseph, beginning December 3, 1838. The convention ended its deliberations January 11, 1839, after framing and adopting the first constitution for the State of Florida. The document was submitted to the people of the territory for ratification and was by them ratified. After ratification it was submitted to the congress of the United States and application was made for

admission of the Territory of Florida into the union as a state on equal footing with the original states. By act of congress, March 3, 1845, Florida was admitted into the union.

The act of congress admitting Florida into the union as a state, and an act supplemental thereto, approved March 3, 1845, together with the act of the legislature of the State of Florida assenting to admission into the union, are as follows, to wit:

ACTS ADMITTING FLORIDA INTO THE UNION.

ACT OF MARCH 3, 1845
(5 U. S. Stat. 742)

AN ACT for the admission of the states of Iowa and Florida into the union.

Whereas, the people of the Territory of Iowa did, on the seventh day of October, eighteen hundred and forty-four, by a convention of delegates called and assembled for that purpose, form for themselves a Constitution and State Government; and whereas, the people of the Territory of Florida did in like manner, by their delegates, on the eleventh day of January, eighteen hundred and thirty-nine, form for themselves a Constitution and State Government, both of which said Constitutions are republican; and said conventions having asked the admission of their respective Territories into the Union as States, on equal footing with the original States:

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That the States of Iowa and Florida be, and the same are hereby declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

Sec. 2. **And be it further enacted,** That the following shall be the boundaries of the said State of Iowa, to wit: Beginning at the mouth of the Des Moines River, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato, or Blue-Earth River, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the State of Missouri, thence eastwardly, following that boundary to the point at which the same intersects the Des Moines River, thence by the middle of the channel of that river to the place of beginning.

Sec. 3. **And be it further enacted,** That the said State of Iowa shall have concurrent jurisdiction on the River Mississippi, and every other river bordering on the said State of Iowa, so far as the said river shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same, such Rivers to be common to both: and that the said river Mississippi, and the navigable waters leading to the same, shall be common highways, and forever free as well to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State of Iowa.

Sec. 4. **And be it further enacted,** That it is made and declared to be a fundamental condition of the admission of said State of Iowa into the Union, that so much of this act as relates to the said State of Iowa shall be assented to by a majority of the qualified electors at their township elections, in the manner and at the time prescribed in the sixth section of the thirteenth article of the Constitution adopted at Iowa city the first day of November, Anno Domini eighteen hundred and forty-four, or by the Legislature of said State. And as soon as such assent shall be given, the President of the United States shall announce the same by proclamation; and therefrom and without further proceedings on the part of Congress, the admission of the said State of Iowa into the Union, on an equal footing, in all respects whatever, with the original States, shall be considered as complete.

Sec. 5. **And be it further enacted,** That said State of Florida shall embrace the Territories of East and West Florida, which, by the treaty of amity, settlement, and limits between the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, were ceded to the United States.

Sec. 6. **And be it further enacted,** That until the next census and apportionment shall be made, each of said States of Iowa and Florida shall be entitled to one Representative in the House of Representatives of the United States.

Sec. 7. **And be it further enacted,** That said States of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposal of the public lands lying within them, nor levy any tax on the same whilst remaining the property of the United States: Provided, that the ordinance of the convention that formed the Constitution of Iowa, and which is appended to the said Constitution, shall not be deemed or taken to have any effect or validity, or to be recognized as in any manner obligatory upon the Government of the United States.

Approved, March 3, 1845, by President John Tyler.

ACT OF MARCH 3, 1845
(5 U. S. Stat. 788)

AN ACT supplemental to the Act for Admission of Florida and Iowa into the Union, and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in consideration of the concessions made by the State of Florida in respect to the public lands, there be granted to the said State eight entire sections of land for the purpose of fixing their seat of Government; also, section number sixteen in every township, or other lands equivalent thereto, for the use of the inhabitants of such township, for the support of public schools; also, two entire townships of land, in addition to the two townships already reserved, for the use of two seminaries of learning—one to be located east, and the other west of the Suwannee river; also, five per centum of the net proceeds of the sale of lands within said State, which shall be hereafter sold by Congress, after deducting all expenses incident to the same; and which said net proceeds shall be applied by said State for the purposes of education.

Sec. 2. **And be it further enacted,** That all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said State of Florida, as elsewhere within the United States.

Sec. 3. **And be it further enacted,** That the said State shall compose one district, to be called the district of Florida. And a district court shall be held in said district, to consist of one judge who shall reside within the district to which he is appointed, and be called a district judge; and shall in all things have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district under an act entitled An act to establish the judicial courts of the United States, the said judge shall appoint a clerk at the place at which a court is holden within the district, who shall reside and keep the records of the court at the place of holding the same; and shall receive, for the services he may perform, the same fees to which the clerk of the Kentucky district is entitled for similar services.

Sec. 4. **And be it further enacted,** That the judge of the district of Florida shall hold extra sessions at any time when the public interest may, in his opinion, require the same.

Sec. 5. **And be it further enacted,** That the judge of the district of Florida shall hold one session annually at the following places, to wit: at Tallahassee, on the first Monday of January; at St. Augustine, on the first Monday of April; and at Key West, on the first Monday in August.

Sec. 6. **And be it further enacted,** That there shall be allowed to the judge aforesaid, an annual compensation of two thousand dollars, to commence from the date of his appointment, to be paid quarter-yearly at the treasury of the United States.

Sec. 7. **And be it further enacted,** That there shall be appointed in said district a person learned in the law, to act as attorney for the United States; who shall in addition to his stated fees, be paid by the United States, two hundred dollars, as a full compensation for all extra services.

Sec. 8. **And be it further enacted,** That a marshal shall be appointed in said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees as are prescribed to marshals in other districts; and shall moreover, be entitled to the sum of two hundred dollars annually as a compensation for all extra services. And that the salary of the district judges of the district courts of the districts of Ohio, Indiana, Illinois and Missouri, shall hereafter be, one thousand five hundred dollars per annum.

ACT OF MARCH 3, 1845
(5 U. S. Stat. 789)

This act is entitled "an act supplemental to the act for admission of the States of Iowa and Florida into the Union"; however, its provisions relate to Iowa only.

FLORIDA ASSENTS TO ADMISSION INTO THE UNION.

Chapter 14

AN ACT declaring the assent of the State of Florida to the Terms of admission into the confederacy and Union.

Section 1. Be it enacted by the Senate and House of Representatives in General Assembly convened, That the State of Florida hereby makes the declaration of its assent to the terms of admission of this State into the confederacy and Union of the United States and to the provisions of the acts of Congress respecting the public lands of the United States in this State agreeably to the 6th clause of the 17th article of the Constitution of this State.

Approved July 25, 1845.

CONSTITUTION OF 1838

CONSTITUTION, OR FORM OF GOVERNMENT, FOR THE PEOPLE OF FLORIDA, 1838.

We, the people of the Territory of Florida, by our Delegates in Convention, assembled at the city of St. Joseph, on Monday the 3d day of December, A. D. 1838, and of the Independence of the United States the sixty-third year, having and claiming the right of admission into the Union as one of the United States of America, consistent with the principles of the Federal Constitution, and by virtue of the Treaty of Amity, Settlement, and Limits between the United States of America and the King of Spain, ceding the Province of East and West Florida to the United States; in order to secure to ourselves and our posterity, the enjoyment of all the rights of life, liberty and property, and the pursuit of happiness, do mutually agree, each with the other to form our selves into a free and independent State, by the name of the State of Florida.

ARTICLE I.

Declaration of Rights.

That the great and essential principles of liberty and free government, may be recognized and established, we declare:

1. That all freemen, when they form a social compact, are equal; and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation; and of pursuing of their own happiness.

2. That all political power is inherent in the people, and all free governments are founded on their authority, and established for their benefit; and therefore they have at all times, an inalienable and indefeasible right, to alter or abolish their form of government, in such manner as they may deem expedient.

3. That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience; and that no preference shall ever be given by law, to any religious establishment, or mode of worship in this State.

4. That all elections shall be free and equal; and that no property qualification for eligibility to office, or for the right of suffrage, shall ever be required in this State.

5. That every citizen may freely speak, write and publish his sentiments, on all subjects; being responsible for the abuse of that liberty; and no law shall ever be passed to curtail, abridge, or restrain, the liberty of speech, or of the press.

6. That the right of trial by jury, shall for ever remain inviolate.

7. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable seizures and searches; and that no warrant to search any place, or to seize any person, or thing, shall issue without describing the place to be searched, and the person or thing to be seized, as nearly as may be, nor without probable cause, supported by oath, or affirmation.

8. That no freeman shall be taken, imprisoned, or disseized of his freehold, liberties, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the law of the land.

9. That all Courts shall be open, and every person for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law; and right, and justice, administered without sale, denial, or delay.

10. That in all criminal prosecutions, the accused hath a right to be heard, by himself, or council, or both; to demand the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and in all prosecutions by indictment, or presentment, a speedy and public trial, by an impartial jury of the County, or District, where the offence was commited; and shall not be compelled to give evidence against himself.

11. That all persons shall be bailable, by sufficient securities, unless in capital offences, where the proof is evident, or the presumption is strong; and the habeas corpus shall not be suspended, unless when in case of rebellion, or invasion, the public safety may require it.

12. That excessive bail shall in no case be required; nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted.

13. That no person shall for the same offence, be twice put in jeopardy of life, or limb.

14. That private property shall not be taken, or applied to public use; unless just compensation be made therefor.

15. That in all prosecutions and indictments for libel, the truth may be given in evidence; and if it shall appear to the jury, that the libel is true, and published with good motives, and for justifiable ends, the truth shall be a justification; and the jury shall be the judges of the law, and facts.

16. That no person, shall be put to answer any criminal charge, but by presentment, indictment, or impeachment.

17. That no conviction shall work corruption of blood, or forfeiture of estate.

18. That retrospective laws, punishing acts committed before the existence of such laws, and by them only declared penal, or criminal, are oppressive, unjust, and incompatible with liberty; wherefore, no **ex post facto** law shall ever be made.

19. That no law impairing the obligation of contracts shall ever be passed.

20. That the people have a right, in a peaceable manner, to assemble together to consult for the common good; and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

21. That free white men of this State, shall have a right to keep and to bear arms, for their common defence.

22. That no soldier in the time of peace, shall be quartered in any house, without the consent of the owner; nor in time of war, but in a manner prescribed by law.

23. That no standing army shall be kept up without the consent of the Legislature: and the military shall in all cases, and at all times, be in strict subordination to the civil power.

24. That perpetuities and monopolies, are contrary to the genius of a free State, and ought not to be allowed.

25. That no hereditary emoluments, privileges, or honors, shall ever be granted or conferred in this State.

26. That frequent recurrence to fundamental principles, is absolutely necessary, to preserve the blessings of liberty.

27. That to guard against transgressions upon the rights of the people; we declare that everything in this article, is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.

Distribution of the Powers of Government.

1. The powers of the Government of the State of Florida shall be divided into three distinct departments and each of them confided to a separate body of Magistracy, to wit: Those which are Legislative to one; those which are Executive to another; and those which are Judicial to another.

2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances expressly provided in this Constitution.

ARTICLE III.

Executive Department.

1. The Supreme Executive Power, shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Florida.

2. The Governor shall be elected for four years, by the qualified electors, at the time and place where they shall vote for the Representatives; and shall remain in office until a successor be chosen and qualified, and shall not be eligible to re-election until the expiration of four years thereafter.

3. No person shall be eligible to the office of Governor, unless he shall have attained the age of thirty years, shall have been a citizen of the United States ten years, or an inhabitant of Florida, at the time of the adoption of this Constitution, (being a citizen of the United States,) and shall have been a resident of Florida, at least five years next preceding the day of election.

4. The returns of every election for Governor, shall be sealed up and transmitted to the seat of Government, directed to the Speaker of the House of Representatives; who shall, during the first week of the session, open and publish them in the presence of both Houses of the General Assembly; and the person having the highest number of votes, shall be Governor; but if two or more shall be equal, and the highest in votes, one of them shall be chosen Governor, by the joint vote of the two Houses; and contested elections for Governor, shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.

5. He shall at stated times, receive a compensation for his services, which shall not be increased, or diminished, during the term for which he shall have been elected.

6. He shall be Commander-in-Chief of the Army and Navy of this State, and of the Militia thereof.

7. He may require information in writing, from the officers of the Executive Department, on any subject relating to the duties of their respective offices.

8. He may by Proclamation, on extraordinary occasions, convene the General Assembly at the Seat of Government or at a different place, if that shall have become dangerous from an enemy, or from disease; and in case of disagreement between the two Houses, with respect to the time of adjournment, he may adjourn them to such time, as he shall think proper, not beyond the day of the next meeting, designated by this Constitution.

9. He shall from time to time, give to the General Assembly, information of the State of the Government, and recommend to their consideration, such measures as he may deem expedient.

10. He shall take care that the laws be faithfully executed.

11. In all criminal and penal cases, (except of treason and impeachment,) after conviction, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law; and in case of treason, he shall have the power, by and with the advice of the Senate, to grant reprieves and pardons; and he may in the recess of the Senate, respite the sentence, until the end of the next session of the General Assembly.

12. There shall be a seal of the State, which shall be kept by the Governor, and used by

him officially, with such device as the Governor first elected, may direct, and the present seal of the Territory, shall be the seal of the State, until otherwise directed by the General Assembly.

13. All commissions shall be in the name, and by the authority of the State of Florida, be sealed with the State seal, and signed by the Governor and attested by the Secretary of State.

14. There shall be a Secretary of State appointed by joint vote of both Houses of the General Assembly, who shall continue in office during the term of four years; and he shall keep a fair register of the official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes, and vouchers, relative thereto, before the General Assembly, and shall perform such other duties as may be required of him by law.

15. Vacancies that happen in offices, the appointment to which, is vested in the General Assembly, or given to the Governor, with the advice and consent of the Senate, shall be filled by the Governor during the recess of the General Assembly, by granting commissions, which shall expire at the end of the next session.

16. Every bill, which shall have passed both Houses of the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; and if, after such reconsideration, a majority of the whole number elected to the House, shall agree to pass the bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered; and if approved by a majority of the whole number elected to that House, it shall become a law; but in such cases, the votes of both Houses shall be by yeas and nays, and the names of the members voting for, or against the bill, shall be entered on the journals of each House respectively; and if any bill shall not be returned by the Governor, within five 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 General Assembly by their adjournment, prevent its return, in which case, it shall not be a law.

17. Every order, resolution, or vote, to which the concurrence of both Houses may be necessary, except on questions of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, be re-passed by both Houses, according to the rules and limitations prescribed in case of a bill.

18. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the President of the Senate shall exercise all the power and authority appertaining to the office of Governor, during the term for which the Governor was elected; unless the General Assembly shall provide by law for the election of a Governor to fill such vacancy; or, till the Governor absent, or impeached, shall return, or be acquitted.

19. If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the House of Representatives, shall in like manner, administer the Government.

20. The President of the Senate, or Speaker of the House of Representatives, during the time he administers the Government, shall receive the same compensation, which the Governor would have received.

21. The Governor shall always reside, during the sessions of the General Assembly, at the place where their sessions are held, and at all other times wherever in their opinion, the public good may require.

22. No person shall hold the office of Governor, and any other office or commission, civil or military, either in this State, or under any State, or the United States, or any other power, at one and the same time except the President of the Senate, or the Speaker of the House of Representatives; when he shall hold the office, as aforesaid.

23. A State Treasurer, and Comptroller of public accounts, shall be elected by joint vote of both Houses of the General Assembly, at each regular session thereof.

ARTICLE IV.
Legislative Department.

1. The Legislative power of this State, shall be vested in two distinct branches, the one to be styled the Senate, the other the House of Representatives, and both together, "The General Assembly of the State of Florida," and the style of the laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened."

2. The members of the House of Representatives, shall be chosen by the qualified voters, and shall serve for the term of one year, from the day of the commencement of the General Election and no longer, and the sessions of the General Assembly, shall be annual, and commence on the fourth Monday in November in each year, or at such other time, as may be prescribed by law.[7]

3. The Representatives shall be chosen every year, on the first Monday in the month of October, until otherwise directed by law.[8]

4. No person shall be a Representative, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of the State, two years next preceding his elec-

[7]Amended, see p. 146, infra.
[8]Amended, see p. 146, infra.

tion, and the last year thereof a resident of the county, for which he shall be chosen, and shall have attained the age of twenty-one years.

5. The Senators shall be chosen by the qualified electors, for the term of two years, at the same time, in the same manner, and in the same places, where they vote for members of the House of Representatives; and no man shall be a Senator, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this State, two years next preceding his election, and the last year thereof, a resident of the District or County, for which he shall be chosen, and shall have attained the age of twenty-five years.[9]

6. The Senators after their first election, shall be divided by lot, into two classes, and the seats of the Senators of the first class, shall be vacated at the expiration of the first year, and of the second class, at the expiration of the second year, so that one-half thereof, as near as possible, may be chosen for ever thereafter, annually, for the term of two years.[10]

7. The House of Representatives, when assembled, shall choose a Speaker and its other officers, and the Senate, a President, and its other officers, and each House shall be judge of the qualifications, elections and returns of its members; but a contested election, shall be determined in such manner, as shall be directed by law.

8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may prescribe.

9. Each House may determine the rules of its own proceedings, punish its members for disorderly behaviour, and with the consent of two-thirds, expel a member, but not a second time for the same cause.

10. Each House during the session, may punish by imprisonment, any person not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings, provided such imprisonment shall not extend beyond the end of the session.

11. Each House shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, and the yeas and nays, of the members of each House, shall be taken and entered upon the journals, upon the final passage of every bill, and may, by any two members, be required upon any other question, and any member of either House, shall have liberty to dissent from, or protest against, any act or resolution, which he may think injurious to the public, or any individual, and have the reasons of his dissent, entered on the journal.

12. Senators and Representatives, shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during the session of the General Assembly, and in going to, or returning from the same, allowing one day for every twenty miles, such member may reside from the place, at which the General Assembly is convened; and for any speech or debate in either House, they shall not be questioned in any other place.

13. The General Assembly shall make provisions by law; for filling vacancies, that may occur, in either House, by the death, resignation, (or otherwise) of any of its members.

14. The door of each House, shall be open, except on such occasions, as in the opinion of the House, the public safety may imperiously require secrecy.

15. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place, than that in which they may be sitting.

16. Bills may originate in either House of the General Assembly, and all bills passed by one House, may be discussed, amended, or rejected by the other; but no bill shall have the force of law, until on three several days, it be read in each House, and free discussion be allowed thereon, unless of cases of urgency, four-fifths of the House, in which the same shall be depending, may deem it expedient to dispense with the rule; and every bill having passed both Houses, shall be signed by the Speaker, and the President of their respective Houses.

17. Each member of the General Assembly, shall receive from the public Treasury, such compensation for his services, as may be fixed by law, but no increase of compensation shall take effect, during the term, for which the Representatives were elected, when such law passed.

18. The number of members of the House of Representatives shall never exceed sixty.

ARTICLE V.

Judicial Department.

1. The Judicial power of this State, both as to matters of law, and equity, shall be vested in a Supreme Court, Courts of Chancery, Circuit Courts, and Justices of the Peace: provided the General Assembly, may also vest such criminal jurisdiction, as may be deemed necessary in Corporation courts; but such jurisdiction shall not extend to capital offences.

2. The Supreme Court, except in cases otherwise directed in this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time, be prescribed by law: provided, that the said court shall always have power to issue writs

[9]Amended, see p. 146, infra.

[10]Amended, see p. 146, infra.

of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs, as may be necessary to give it a general superintendence and control of all other Courts.

3. For the term of five years from the election of the Judges of the Circuit Courts, and thereafter, until the General Assembly shall otherwise provide, the powers of the Supreme Court shall be vested in and its duties performed by the Judges of the several Circuit Courts within this State, and they, or a majority of them, shall hold such sessions of the Supreme Court, and at such times as may be directed by law.

4. The Supreme Court when organized, shall be holden at such times and places, as may be provided by law.

5. The State shall be divided into at least four convenient circuits, and until other circuits shall be provided for by the General Assembly, the arrangement of the circuits shall be the Western, Middle, Eastern and Southern circuits, and for each circuit there shall be appointed a judge, who shall after his appointment, reside in the circuit for which he has been appointed, and shall at stated times, receive for his services, a salary of not less than two thousand dollars per annum, which shall not be diminished during the continuance of such judge in office; but the judges shall receive no fees, or perquisites of office, nor hold any other office of profit under the State, the United States, or any other power.

6. The Circuit Courts shall have original jurisdiction in all matters, civil and criminal, within this State, not otherwise excepted in this Constitution.

7. A Circuit Court shall be held in such counties, and at such times, and places therein, as may be prescribed by law, and the Judges of the several Circuit Courts, may hold courts for each other, and shall do so when directed by law.

8. The General Assembly shall have power to establish and organize a separate court or courts of original equity jurisdiction; but until such court or courts shall be established, and organized, the circuit courts shall exercise such jurisdiction.

9. The General Assembly shall provide by law, for the appointment in each county, of an officer to take probate of wills, to grant letters testamentary, of administration and guardianship; to attend to the settlement of the estates of decedents, and of minors, and to discharge the duties usually pertaining to courts of ordinary, subject to the direction and supervision of the courts of chancery, as may be provided by law.

10. A competent number of Justices of the Peace shall be, from time to time, appointed or elected in and for each county, in such mode, and for such term of office, as the General Assembly may direct, and shall possess such jurisdiction as may be prescribed by law; and in cases tried before a Justice of the Peace, the right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

11. Justices of the Supreme Court, Chancellors, and Judges of the Circuit Courts, shall be elected by the concurrent vote of a majority of both Houses of the General Assembly.[11]

12. The Judges of the Circuit Courts, shall at the first session of the General Assembly to be holden under this Constitution, be elected for the term of five years, and shall hold their office for that term unless sooner removed under the provisions made in this Constitution, for removal of Judges, by address or impeachment; and at the expiration of five years, the Justices of the Supreme Court, and the Judges of the Circuit Courts, shall be elected for the term of and during their good behavior; and for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall remove any of them, on the address of two-thirds of each House of the General Assembly; provided however, the cause or causes shall be stated at length in such address, and entered on the journals of each House; and provided further, that the cause or causes, shall be notified to the Judge so intended to be removed, and he shall be admitted to a hearing, in his own defense, before any vote for such address shall pass; and in such cases, the vote shall be taken by yeas and nays, and entered on the journals of each House respectively.[12]

13. The clerk of the Supreme Court, and the clerks of the Courts of Chancery, shall be elected by the General Assembly; and the clerks of the Circuit Courts shall be elected by the qualified electors, in such mode as may be prescribed by law.

14. The Justices of the Supreme Court, Chancellors, and Judges of the Circuit Courts, shall, by virtue of their office, be conservators of the peace, throughout the State; and justices of the peace in their respective counties.

15. The style of all process shall be, "the State of Florida," and all criminal prosecutions shall be carried on, in the name of the State of Florida, and all indictments shall conclude, "against the peace and dignity of the same."

16. There shall be an Attorney General for the State, who shall reside at the seat of Government. It shall be his duty to attend all sessions of the General Assembly, and, upon the passage of any act, to draft and submit, to the General Assembly, at the same session, all necessary forms of proceeding under such laws, which, when approved, shall be published therewith, and he shall perform such other duties, as may be prescribed by law. He shall be elected by joint vote of the two Houses of the General Assembly, and shall hold his of-

[11]Amended, see p. 147, infra.
[12]Amended, see p. 147, infra.

fice for four years; but may be removed by the Governor, on the address of two-thirds of the two Houses of the General Assembly; and shall receive for his services, a compensation to be fixed by law.

17. There shall be one Solicitor for each circuit, who shall reside therein, to be elected by the joint vote of the General Assembly, who shall hold his office for the term of four years; and shall receive for his services, a compensation to be fixed by law.[13]

18. No Justice of the Supreme Court, shall sit as judge, or take part in the appellate court on the trial or hearing of any case which shall have been decided by him in the court below.

19. The General Assembly shall have power to establish in each county, a board of Commissioners, for the regulation of the county business therein.

20. No duty not Judicial, shall be imposed by law, upon the Justices of the Supreme Court, Chancellors, or the judges of the Circuit courts of this State.

ARTICLE VI.

The Right of Suffrage and Qualifications of Officers; Civil Officers; and Impeachments, and Removals from Office.

1. Every free white male person of the age of twenty-one years and upwards, and who shall be at the time of offering to vote, a citizen of the United States; and who shall have resided, and had his habitation, domicil, home, and place of permanent abode in Florida, for two years next preceding the election at which he shall offer to vote; and who shall have at such time, and for six months immediately preceding said time, shall have had his habitation, domicile, home, and place of permanent abode in the county, in which he may offer to vote, and who shall be enrolled in the Militia thereof, (unless by law exempted from serving in the Militia) shall be deemed a qualified elector, at all elections under this Constitution, and none others; except in elections by general ticket in the State or District prescribed by law, in which cases the elector must have been a resident of the State two years next preceding the election, and six months, within the election district in which he offers to vote: provided that no soldier, seaman, or marine in the regular Army or Navy of the United States, unless he be a qualified elector of the State, previous to his enlistment as such soldier, seaman, or marine in the regular Army or Navy of the United States, or of the Revenue Service, shall be considered a resident of the State, in consequence of being stationed within the same.[14]

2. The General Assembly, shall at its first session, provide for the registration of all the qualified electors in each county; and thereafter from time to time, of all who may become such qualified electors.

3. No President, Director, Cashier, or other officer of any Banking company in this State, shall be eligible to the office of Governor, Senator or Representative to the General Assembly of this State, so long as he shall be such President, Director, Cashier, or other officer, nor until the lapse of twelve months from the time, at which he shall have ceased to be such President, Director, Cashier or other officer.

4. The General Assembly shall have power to exclude from every office of honor, trust or profit, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime.

5. No person shall be capable of holding, or of being elected to any post of honor, profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the Government of this State, who shall hereafter fight a duel, or send, or except a challenge to fight a duel, the probable issue of which may be the death of the challenger, or challenged, or who shall be a second to either party, or who shall in any manner aid, or assist in such duel, or shall be knowingly the bearer of such challenge, or acceptance, whether the same occur, or be committed in or out of the State.

6. No person who may hereafter be a collector, or holder of public money, shall have a seat in either House of the General Assembly, or be eligible to any office of trust or profit under this State until he shall have accounted for and paid into the Treasury, all sums for which he may be accountable.

7. No Governor, Member of Congress, or of the General Assembly of this State, shall receive a fee, be engaged as counsel, agent or attorney, in any civil case or claim against this State, or to which this State shall be a party, during the time he shall remain in office.

8. No Governor, Justice of the Supreme Court, Chancellor, or Judge of this State, shall be eligible to election or appointment, to any other and different station, or office, or post of honor, or emolument under this State, or to the station or Senator or Representative in Congress of the United States from this State, until one year, after he shall have ceased to be such Governor, Justice, Chancellor, or Judge.

9. No Senator or Representative, shall, during the term for which he shall have been elected, be appointed to any civil office of profit, under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

10. No Minister of the Gospel, shall be eligible to the office of Governor, Senator, or Member of the House of Representatives of this State.

11. Members of the General Assembly, and all officers, Civil and Military, before they enter upon the execution of their respective

[13] Amended, see p. 148, infra.
[14] Amended, see p. 148, infra.

offices, shall take the following oath or affirmation: I, do swear (or affirm,) that I am duly qualified, according to the Constitution of this State, to exercise the office, to which I have been elected, (or appointed) and will, to the best of my abilities, discharge the duties thereof, and preserve, protect, and defend the Constitution of this State, and of the United States.

12. Every person shall be disqualified from serving as Governor, Senator, Representative, or from holding any other office of honor, or of profit in this State, for the term for which he shall have been elected, who shall have been convicted of having given, or offered any bribe to procure his election.

13. Laws shall be made by the General Assembly, to exclude from office, and from suffrage, those who shall have been or may thereafter be convicted of bribery, purgery, forgery, or other high crime, or misdemeanor; and the privilege of suffrage shall be supported by laws, regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper practices.

14. All civil offices of the State at large, shall reside within the State, and all District or county officers within their respective Districts, or counties, and shall keep their respective offices at such places therein, as may be required by law.

15. It shall be the duty of the General Assembly to regulate by law, in what cases, and what deduction from the salaries of public officers, shall be made, for neglect of duty in their official capacity.

16. Returns of elections for members of Congress, and the General Assembly, shall be made to the Secretary of State, in manner to be prescribed by law.

17. In all elections by the General Assembly, the vote shall be viva voce, and in all elections by the people, the vote shall be by ballot.

18. No member of Congress, or person holding, or exercising any office of profit under the United States, or under any foreign power, shall be eligible as a member of the General Assembly of this State, or hold or exercise any office of profit, under the State; and no person in this State shall ever hold two offices of profit, at the same time, except the office of Justice of the Peace, notary public, constable, and militia offices.

19. The General Assembly shall by law provide, for the appointment, or election, and the removal from office, of all officers civil and military, in this State, not provided for in this Constitution.

20. The power of impeachment shall be vested in the House of Representatives.

21. All impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be upon oath, or affirmation; and no person shall be convicted, without the concurrence of two-thirds of the members present.

22. The Governor and all civil officers, shall be liable to impeachment for any misdemeanor in office: but judgment in such cases, shall not extend further than to the removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the parties shall nevertheless be liable to indictment, trial, and punishment according to law.

ARTICLE VII.
Militia.

Section 1. All militia officers shall be elected by the persons subject to military duty within the bounds of their several companies, battalions, regiments, brigades, and divisions, under such rules and regulations as the general assembly may, from time to time, direct and establish.

Sec. 2. The Governor shall appoint all the officers of the executive staff, except the adjutant-general and paymaster-general, who shall be appointed by the governor, by and with the advice and consent of the senate. The major-generals and brigadier-generals, and commanding officers of regiments, shall appoint such staff officers as may be prescribed by law; Provided, no person, shall be eligible to any staff appointment unless he hold a commission in the line.

ARTICLE VIII.
Taxation and Revenue.

Section 1. The general assembly shall devise and adopt a system of revenue, having regard to an equal and uniform mode of taxation, to be general throughout the State.

Sec. 2. No other or greater amount of tax or revenue shall at any time be levied than may be required for the necessary expenses of government.

Sec. 3. No money shall be drawn from the treasury but in consequence of an appropriation by law; and a regular statement of the receipts and the expenditures of all public moneys shall be published and promulgated annually with the laws of the general assembly.

Sec. 4. The general assembly shall have power to authorize the several counties and incorporated towns in this State to impose taxes for county and corporation purposes respectively; and all property shall be taxed upon the principles established in regard to State taxation.

ARTICLE IX.
Census and Apportionment of Representation.

Section 1. The general assembly shall, in the year 1845, and every tenth year thereafter, cause an enumeration to be made of all the inhabitants of the State, and to the whole number of free white inhabitants shall be added three-fifths of the number of slaves; and they shall then proceed to apportion the representation equally among the different counties, according to such enumeration, giving, however,

one representative to every county, and increasing the number of representatives, on a uniform ratio of population, according to the foregoing basis; and which ratio shall not be changed until a new census shall have been taken.

Sec. 2. The general assembly shall also, after every such enumeration, proceed to fix by law the number of senators which shall constitute the senate of the State of Florida, and which shall never be less than one-fourth nor more than one-half of the whole number of the house of representatives; and they shall lay off the State into the same number of senatorial districts, as nearly equal in the number of inhabitants as may be, according to the ratio of representation established in the preceding section; each of which districts shall be entitled to one senator.

Sec. 3. When any senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district, and no county shall be divided in forming a district.

Sec. 4. No new county shall be entitled to separate representation until its population equal the ratio of representation then existing; nor shall any county be reduced in population, by division, below the existing ratio.

Sec. 5. Until the apportionment of representation by the general assembly, as directed in the foregoing section, the several counties shall be entitled to the following representatives, viz: Escambia, three; Walton, one; Washington, one; Jackson, three; Franklin, two; Calhoun, two, Gadsden, four; Leon, six, Jefferson, three; Madison, one; Hamilton, one; Columbia, two; Alachua, two; Duval, two, Nassau, one; Saint John's, three; Mosquito, one; Dade, one; Monroe, one; Hillsborough, one; and, until the apportionment of senators under the census as aforesaid, there shall be sixteen senatorial districts in this State, which shall be as follows:

The county of Escambia shall compose the first district.

The counties of Walton and Washington shall compose the second district.

The county of Jackson shall compose the third district.

The county of Calhoun shall compose the fourth district.

The county of Franklin shall compose the fifth district.

The county of Gadsden shall compose the sixth district.

The county of Leon shall compose the seventh district.

The county of Jefferson shall compose the eighth district.

The county of Madison shall compose the ninth district.

The county of Hamilton shall compose the tenth district.

The county of Columbia shall compose the eleventh district.

The county of Alachua shall compose the twelfth district.

The county of Duval shall compose the thirteenth district.

The county of Nassau shall compose the fourteenth district.

The counties of Saint John's and Mosquito shall compose the fifteenth district.

The counties of Dade, Monroe, and Hillsborough shall compose the sixteenth district.

And each senatorial district shall elect one senator, and the seventh district shall be entitled to two.

ARTICLE X.

Education.

Section 1. The proceeds of all lands that have been, or may hereafter be, granted by the United States for the use of schools and a seminary or seminaries of learning, shall be and remain a perpetual fund, the interest of which, together with all moneys derived from any other source applicable to the same object, shall be inviolably appropriated to the use of schools and seminaries of learning, respectively, and to no other purpose.

Sec. 2. The general assembly shall take such measures as may be necessary to preserve from waste or damage all land so granted and appropriated to the purposes of education.

ARTICLE XI.

Public Domain and Internal Improvements.

Section 1. It shall be the duty of the general assembly to provide for the prevention of waste and damage of the public lands now possessed, or that may hereafter be ceded to the Territory or State of Florida; and it may pass laws, for the sale of any part or portion thereof, and, in such case, provide for the safety, security, and appropriation of the proceeds.

Sec. 2. A liberal system of internal improvements, being essential to the development of the resources of the country, shall be encouraged by the government of this State; and it shall be the duty of the general assembly, as soon as practicable, to ascertain, by law, proper objects of improvement, in relation to roads,, canals, and navigable streams, and to provide for a suitable application such funds as may be appropriated for such improvements.

ARTICLE XII.

Boundaries.

Section 1. The jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which, by the treaty of amity, settlement, and limits, between the United States and His Catholic Majesty, on the 22d day of February, A. D. 1819, were ceded to the United States.

ARTICLE XIII.
Banks and Other Corporations.

Section 1. The general assembly shall pass a general law for the incorporation of all such churches, and religious or other societies, as may accept thereof; but no special act of incorporation thereof shall be passed.

Sec. 2. The general assembly shall pass no act of incorporation, or make any alteration therein, unless with the assent of at least two-thirds of each house, and unless public notice in one or more newspapers in the State shall have been given for at least three months immediately preceding the session at which the same may be applied for.

Sec. 3. No banking corporation shall be created, or continue, which is composed of a less number than twenty individuals, a majority of whom, at least, shall be residents of the State; and no other corporation shall be created, or continue, composed of a less number than ten, of whom at least five shall be residents of this State.

Sec. 4. No bank-charter, or any act of incorporation granting exclusive privileges, shall be granted for a longer period than twenty years; and no bank-charter shall ever be extended or renewed.

Sec. 5. The charters of banks granted by the general assembly shall restrict such banks to the business of exchange, discount, and deposit; and they shall not speculate or deal in real estate, or the stock of other corporations or associations, or in merchandise or chattels, or be concerned in insurance, manufacturing, exportation, or importation, except of bullion or specie; shall not act as trustee in any wise, nor shall they own real estate or chattels, except such as shall be necessary for their actual use in the transaction of business, or which may be pledged as further security, or received towards or in satisfaction of previously-contracted debts, or purchased at legal sales to satisfy such debts; of which they shall be required to make sale within two years after the acquisition thereof.

Sec. 6. The capital stock of any bank shall not be less than one hundred thousand dollars, and shall be created only by the actual payment of specie therein; and no bank shall borrow money to create or add to its capital or to conduct its business, and no loans shall be made on stock.

Sec. 7. All liabilities of such banks shall be payable in specie, and the aggregate of the liabilities and issues of a bank shall at no time exceed double the amount of its capital stock paid in.[15]

Sec. 8. No bank shall make a note or security of any kind for a smaller sum than five dollars; and the general assembly may increase such restriction to twenty dollars.

Sec. 9. No dividends of profits exceeding ten per centum per annum on the capital stock paid in shall be made, but all profits over ten per centum per annum shall be set apart and retained as a safety fund.

Sec. 10. Stockholders in a bank, when an act of forfeiture of its charter is committed, or when it is dissolved or expires, shall be individually and severally liable for the payment of all its debts, in proportion to the stock owned by each.

Sec. 11. Banks shall be open to inspection, under such regulations as may be prescribed by law; and it shall be the duty of the governor to appoint a person or persons, not connected in any manner with any bank in the State, to examine at least once a year into their state and condition; and the officers of every bank shall make quarterly returns to the governor of its state and conditions, and the names of the stockholders, and shares held by each.

Sec. 12. Non-user for the space of one year, or any act of a corporation, or those having the control and management thereof, or intrusted therewith, inconsistent with or in violation of the provisions of this constitution, or of its charter, shall cause its forfeiture; and the general assembly shall, by general law, provide a summary process for the sequestration of its effects and assets, the appointment of officers to settle its affairs; and no forfeited charter shall be restored. The foregoing provisions shall not be construed to prevent the general assembly from imposing other restrictions and provisions in the creation of corporations.

Sec. 13. The general assembly shall not pledge the faith and credit of the State to raise funds in aid of any corporation whatsoever.

Sec. 14. The general assembly shall, at its first session, have power to regulate, restrain, and control all associations claiming to exercise corporate privileges in the State, so as to guard, protect, and secure the interests of the people of the State, not violating vested rights or impairing the obligation of contacts.

ARTICLE XIV.
Amendments and Revision of the Constitution.

Section 1. No convention of the people shall be called unless by the concurrence of two-thirds of each house of the general assembly.

Sec. 2. No part of this constitution shall be altered unless a bill to alter the same shall have been read three times in the house of representatives and three times in the senate, and agreed to by two-thirds of each house of the general assembly; neither shall any alteration take place until the bill so agreed to be published six months previous to a new election for members to the house of representatives; and if the alteration proposed by the general assembly shall be agreed to, at their first session, by two-thirds of each house of the general assembly, after the same shall have been read three times on three several days in each house, then, and not otherwise, the same shall become a part of the constitution.

1838

[15] Amended, see p. 148, infra.

ARTICLE XV.
The Seat of Government.

Section 1. The seat of government of the State of Florida shall be and remain permanent at the city of Tallahassee, for the term and time of five years from and after the end of the first session of the general assembly to be holden under this constitution; and, after the expiration of the said five years, the general assembly shall have power to remove the seat of government from Tallahassee, and fix the same at any other point; Provided, that the general assembly shall, immediately after the expiration of ten years from the end of the said first session thereof, fix permanently the seat of government.

ARTICLE XVI.
General Provisions.

Section 1. The general assembly shall have no power to pass laws for the emancipation of slaves.

Sec. 2. They shall have no power to prevent emigrants to this State from bringing with them such persons as may be deemed slaves by the laws of any one of the United States: Provided, they shall have power to enact laws to prevent the introduction of any slaves who may have committed crimes in other States.

Sec. 3. The general assembly shall have power to pass laws to prevent free negroes, mulattoes, and other persons of color, from immigrating to this State, or from being discharged from on board any vessel in any of the ports of Florida.

Sec. 4. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his confession in open court.

Sec. 5. Divorces from the bonds of matrimony shall not be allowed but by the judgment of a court, as shall be prescribed by law.

Sec. 6. The general assembly shall declare by law what parts of the common law and what parts of the civil law, not inconsistent with this Constitution, shall be in force in this State.

Sec. 7. The oaths of officers, directed to be taken under this constitution, may be administered by any judge or justice of the peace of the Territory or State of Florida, until otherwise prescribed by law.

ARTICLE XVII.
Schedule and Ordinance.

In order that no inconvenience may arise from the organization and establishment of the State government, it is declared:

Section 1. That all laws or parts of laws now in force, or which may be hereafter passed by the governor and legislative council of the Territory of Florida, not repugnant to the provisions of this constitution, shall continue in force until, by operation of their provisions or limitations, the same shall cease to be in force, or until the general assembly of this State shall alter or repeal the same; and all writs, actions, prosecutions, judgments, and contracts shall be and continue unimpaired; and all process which has heretofore issued, or which may be issued prior to the last day of the first session of the general assembly of this State, shall be as valid as if issued in the name of the State; and nothing in this constitution shall impair the obligation of contracts, or violate vested rights, either of individuals, or of associations claiming to exercise corporate privileges in this State.

Sec. 2. All fines, penalties, forfeitures, obligations, and escheats accruing to the Territory of Florida shall accrue to the use of the State of Florida.

Sec. 3. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the State; and all bonds executed to the governor of the Territory of Florida or to any other officer, in his official capacity, shall pass over to the governor or other proper State authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly; and all criminal prosecutions and penal actions which have arisen, or which may arise before the organization of the judicial department under this constitution, and which shall then be depending, may be prosecuted to judgment and execution in the name of the State.

Sec. 4. All officers, civil and military, now holding their offices and appointments in the Territory under the authority of the United States, or under the authority of the Territory, shall continue to hold and exercise their respective offices and appointments until superseded under this constitution; and all actions at law or suits in chancery, or any proceeding pending, or which may be pending, in any court of the Territory of Florida, may be commenced in or transferred to such court of the State as may have jurisdiction of the subject-matter thereof.

Sec. 5. This constitution shall be submitted to the people for ratification at the election for delegate on the first Monday of May next. Each qualified voter shall express his assent or dissent to the constitution by directing the managers of said election to write opposite to his name on the poll-book either the word "Constitution" or "No constitution." And in case the time of election for delegate be changed to any other day than the first Monday of May next, then the judges or clerks of the county courts respectively shall appoint managers to hold an election on the said first Monday of May, for ratification of the constitution; and said managers shall conduct said election in the manner provided by the laws of the Territory respecting elections, and make returns of the result of such vote forthwith, by depositing the original poll-book in the

clerk's office of their counties, respectively, and by transmitting a certificate of the result to the president of the convention, who shall forthwith make proclamation of the same; and in case the constitution be ratified by the people, and immediately after official information shall have been received that Congress have approved the constitution, and provided for the admission of Florida, the president of this convention shall issue writs of election to the proper officers, in the different counties, enjoining them to cause an election to be held for governor, Representative in Congress, and members of the general assembly in each of their respective counties. The election shall be held on the first Monday after the lapse of sixty days following the day of the date of the President's proclamation, and shall take place on the same day throughout the State. The said election shall be conducted according to the then existing election laws of the Territory of Florida; Provided, however, That in case of the absence or disability of the president of the convention to cause the said election to be carried into effect, the secretary of this convention shall discharge the duties hereby imposed upon the president; and, in case of the absence or disability of the secretary, a committee consisting of five, to wit, Leigh Read, George T. Ward, James D. Westcott, jr., Thomas Brown, and Leslie A. Thompson, or a majority of them, shall discharge the duties herein imposed on the secretary of the convention; and the members of the general assembly so elected shall assemble on the fourth Monday thereafter at the seat of government. The governor, Representative in Congress, and members of the general assembly shall enter upon the duties of their respective offices immediately after their election under the provisions of this Constitution, and shall continue in office in the same manner, and during the same period, they would have done had they been elected on the first Monday in October.

Sec. 6. The General Assembly shall have power, by the votes of two-thirds of both houses, to accede to such propositions as may be made by the Congress of the United States upon the admission of the State of Florida into the national confederacy and Union, if they shall be deemed reasonable and just, and to make declaration of such assent by law; and such declaration, when made, shall be binding upon the people and the State of Florida as a compact; and the governor of the State of Florida shall notify the President of the United States of the acts of the general assembly relating thereto; and in case of declining to accede to such propositions, or any part thereof, the general assembly shall instruct the Senators and Representatives of the State of Florida in Congress to procure such modification or alteration thereof as may be deemed reasonable and just, and assent thereto, subject to the ratification of the general assembly by law aforesaid.

Sec. 7. The courts of this State shall never entertain jurisdiction of any grants of land in the Floridas made by the King of Spain, or by his authority, subsequent to the twenty-fourth day of January, eighteen hundred and eighteen; nor shall the said courts receive as evidence, in any case, certain grants said to have been made by the said King of Spain in favor of the Duke of Alagon, the Count Punon Rostro, and Don Pedro de Vargas, or any title derived from either of said grants, unless with the express assent of the Congress of the United States.

Done in convention, held in pursuance of an act of the governor and legislative council of the Territory of Florida, entitled "An act to call a convention for the purpose of organizing a State government," passed 30th day of January, 1838, and approved 2d February, eighteen hundred and thirty-eight.

In witness whereof, the undersigned, the President of said Convention and Delegates, representing the people of Florida, do hereunto sign our names, this the eleventh day of January, Anno Domini, eighteen hundred and thirty-nine, and of the Independence of the United States of America, the sixty-third year; and the Secretary of said Convention, doth countersign the same.[16]

ROBERT RAYMOND REID, *President.*

Walker Anderson,	E. Carrington Cabell,
John L. McKinnon,	J. McCants,
Daniel G. McLean,	John C. McGehee,
Stephen J. Roche,	Joseph B. Watts,
E. Robbins,	William B. Hooker,
Cosam Emir Bartlett.	Wilson Brooks,
Thomas Baltzell,	George E. McClellan,
Saml. C. Bellamy,	John F. Webb,
Alfred L. Woodward,	I. Garrison,
Richard H. Long,	E. K. White,
R. C. Allen,	A. W. Crichton,
Banks Meacham,	Oliver Wood,
John W. Malone,	Wm. Haddock,
George T. Ward,	Jose Simeon Sanchez,
W. Wyatt,	Edwin T. Jenckes,
James D. Westcott, Jr.,	D. Levy,
Leigh Read,	W. H. Williams,
A. Bellamy,	William Marvin,
John N. Partridge,	J. B. Browne,
William Bunce,	Edmund Bird,

JOSHUA KNOWLES, *Secretary of the Convention.*

[16] After the constitution was signed, "It was moved and concurred in, that those members who are absent, be permitted to affix their names to the Constitution, on application to the Secretary." The following persons appear to have signed the constitution after the adjournment of the convention, to wit: Thomas M. Blount, Thomas Brown, James G. Cooper, William P. Duval, Richard Fitzpatrick, Samuel T. Garey, John M. G. Hunter, Richard J. Mays, Jackson Morton, Samuel Parkhill, A. G. Semmes, Samuel B. Stephens, John Taylor, L. A. Thompson and Benjamin D. Wright.

MEMBERS OF THE CONSTITUTIONAL CONVENTION OF 1838-9

ROBERT RAYMOND REID, President

JOSHUA KNOWLES, Secretary

Allen, Richard C.
Anderson, Walker
Baltzell, Thomas
Bartlett, Cosam Emir
Bellamy, Abraham
Bellamy, Samuel C.
Bird, Edmund
Blount, Thomas M.
Brooks, Wilson
Browne, Joseph B.
Brown, Thomas
Bunce, William
Cabell, Edward Carrington
Cooper, James G.
Crichton, A. W.
Duval, William P.
Fitzpatrick, Richard
Garey, Samuel T.
Garrison, Issaac
Haddock, William
Hooker, William B.
Hunter, John M. G.
Jenckes, Edwin T.
Levy, David[11]
Long, Richard H.
McCants, Joseph
McClellan, Geo. E.
McGehee, John C.
McKinnon, John L.
McLean, Daniel G.
Malone, John W.
Marvin, William
Mays, Richard J.
Meacham, Banks
Morton, Jackson
Parkhill, Samuel
Partridge, John N.
Read, Leigh
Robbins, E.
Roche, Stephen J.
Sanchez, Jose Simeon
Semmes, A. G.
Stephens, Samuel B.
Taylor, John
Thompson, Leslie A.
Ward, George T.
Watts, Joseph B.
Webb, John F.
Westcott, James D. Jr.
White, E. K.
Williams, William H.
Wood, Oliver
Woodward, Alford L.
Wright, Benjamin D.
Wyatt, William

[11]David Levy's name was changed to David Levy Eulee, by chapter 62, acts 1845.

AMENDMENTS TO THE CONSTITUTION OF 1838

ARTICLE IV — CLAUSES 2, 3, 5, 6.

An Act to Amend the Constitution of this State so as to make the Sessions of the General Assembly Biennial Instead of Annual.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the second Clause of the fourth Article of the Constitution of this State be so amended as to read as follows, viz: 2nd. The members of the House of Representatives shall be chosen by the qualified voters, and shall serve for the term of two years from and after the day of the first election under the amended Constitution, and no longer; and the sessions of the General Assembly shall be biennial, and commence on the fourth Monday in November in each and every second year, or at such other times as may be prescribed by law.

Sec. 2. Be it further enacted, That the third Clause of the fourth Article of the Constitution be amended so that the same shall read as follows: 3d. That the Representatives shall be chosen on the first Monday in the month of October in each and every second year, from and after the first election under this amended Constitution, or on such other day as may be directed by law.

Sec. 3. Be it further enacted, That the fifth clause of the aforesaid article be so amended as to read as follows, viz: The Senators shall be chosen by the qualified electors for the term of four years, at the same time, in the same manner, and in the same place where they vote for members of the House of Representatives, and no person shall be a Senator unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this State for two years next preceding his election, and the last year a resident of the District or County for which he shall be chosen, and shall have attained the age of twenty-five years.

Sec. 4. Be it further enacted, That the sixth clause of the aforesaid article be so amended as to read as follows, viz: The classification of Senators, as made at the first session of the General Assembly held in the year 1845, shall continue unchanged; one-half of whom, as nearly as possible, shall be chosen forever hereafter biennially for the term of four years: Provided, however, and it is hereby declared, that the term of office of that class of Senators unexpired at the first election under the amended Constitution, shall extend to, and expire on the first Monday in October, eighteen hundred and fifty.

Sec. 5. Be it further enacted, That the first election for Assemblymen, under this amended Constitution, shall take place on the first Monday in October, eighteen hundred and forty-eight; and the first session of the General Assembly, under this amended Constitution, shall commence on the fourth Monday in November, in the year eighteen hundred and forty-eight.

Second General Assembly.—Passed the Senate, by constitutional majority, December 22, 1846. Passed the House of Representatives, by constitutional majority, December 29, 1846.

Third General Assembly.—Passed the Senate by the constitutional majority, December 21, 1847. Passed the House of Representatives by the constitutional majority, December 23, 1847.

ARTICLE V—CLAUSES 11 AND 12.

An Act to Amend the Eleventh Clause of the Fifth Article of the Constitution of this State; and also to Amend An Act Amendatory of the Twelfth Clause of the Fifth Article of the Constitution of this State, and Adopted by the Third and Fourth General Assemblies, So As to Give the Election of the Judges to the People. (1852.)

Section 1. Be it enacted by the Senate and House of Representatives of the State of Flor-

ida in General Assembly convened, That the Eleventh Clause of the Fifth Article of the Constitution of this State, and also an act entitled, "An Act to amend the Twelfth Clause of the Fifth Article of the Constitution of this State, so that the Judges of the Circuit Courts shall hold their offices for the term of eight years, instead of during good behavior," be, and the same are hereby so amended as to read as follows, viz: That on the first Monday in October, in the year one thousand eight hundred and fifty-three, and on the first Monday in October, every six years thereafter, there shall be elected by the qualified electors of each of the respective Judicial Circuits of this State, one Judge of the Circuit Court, who shall reside in the Circuit for which he may be elected, and continue in office for the term of six years from and after the first day of January next succeeding his election, unless sooner removed under the provisions made in this Constitution for the removal of Judges by address or impeachment: And for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall remove any of them on the address of two-thirds of the General Assembly: Provided, however, That the cause, or causes, shall be stated at length in such address, and entered on the Journals of each House: And provided, further, That the cause, or causes, shall be notified to the Judge so intended to be removed; and he shall be admitted to a hearing in his own defence, before any vote for such removal shall pass; and in such cases, the vote shall be taken by yeas and nays, and entered on the Journals of each House, respectively.

Sec. 2. Be it further enacted, That said election shall be conducted, and the returns thereof made, in the manner now prescribed or which may here after be prescribed by law, for the election of member to Congress; and it shall be the duty of the Governor to issue a commission, under the seal of the State, to the person receiving the highest number of votes in the Judicial District in which the election is had.

Sec. 3. Be it further enacted, That whenever the General Assembly shall create a separate Supreme Court, or Chancery Court, under the provisions of this Constitution, the Judges thereof shall be elected in the manner provided in the first section of this act, and shall hold their offices for the same term, and be subject to all the provisions of said first section: Provided, however, That the Judges of the Supreme shall be elected by general ticket; and the Judges of the Chancery Court shall be elected by general ticket, or by Districts, as the Legislature may direct.

Sec. 4. Be it further enacted, That should a vacancy occur in either the Supreme, Chancery, or Circuit Court, by death, resignation, removal, or otherwise, it shall be the duty of the Governor to issue a writ of election to fill such vacancy, and he shall give at least sixty days' notice thereof by proclamation, and the Judge so elected to fill such vacancy shall continue in office from the time he qualifies under his commission, which shall be issued immediately after the final canvass of the votes by which his election is determined: Provided, however, That should it become necessary to fill any such vacancy before an election can be held under the provisions of this Constitution, the Governor shall have the power to fill such vacancy by appointment, and the person so appointed shall hold his office from the date of his commission until his successor shall, be duly elected and qualified.

Sec. 5. Be it further enacted, That the second section of said act to amend the twelfth clause of the Constitution of this State, and adopted by the third and fourth General Assemblies as aforesaid, be and the same is hereby abolished; but it is hereby provided that the General Assembly shall, by the concurrent vote of the two Houses thereof, at its next regular session, elect some person to fill the vacancy which will occur by expiration of the term of office of that Judge who may draw the two-year term, under the provisions of said second section, which is hereinabove declared to be abolished.

Fifth General Assembly.—Passed the Senate by the Constitutional majority, December 13, 1850. Passed the House of Representatives, by the Constitutional majority, December 23, 1850.

Sixth General Assembly.—Passed the Senate by the Constitutional majority, December 20, 1852. Passed the House of Representatives by the Constitutional majority, January 1, 1853.

ARTICLE V — CLAUSE 12.

AN ACT to amend the Twelfth Clause of the Fifth Article of the Constitution of this State, so that the Judges of the Circuit Courts shall hold their offices for a term of eight years, instead of during good behavior.

SECTION I. Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the twelfth clause of the fifth article of the Constitution of this State be so amended as to read as follows, viz: That, at the expiration of the present term of office of the Judges of the Circuit Courts, with the exceptions hereinafter mentioned, the Justices of the Supreme Courts and the Judges of the Circuit Courts shall be elected for a term of eight years, and shall hold their offices for that term, unless sooner removed under the provisions made in this Constitution for the removal of Judges, by address or impeachment: and for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall remove any of them, on the address of two-thirds of the General Assembly: Provided, however, That the cause or causes shall be stated at length in such address, and entered on the journals of each house: And provided, further, That the

cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such removal shall pass; and in such cases, the vote shall be taken by yeas and nays, and entered on the journals of each house respectively.

Sec. 2. Be it further enacted, That the Judges first appointed under this amended Constitution shall be divided by lot into four classes,—the first class shall hold his or their office or offices for the term of two years, the second for the term of four years, the third for the term of six years, the fourth for the term of eight years.

Third General Assembly.—Passed the Senate by the constitutional majority December 22, 1847. Passed the House of Representatives, by the constitutional majority, January 6, 1848.

Fourth General Assembly.—Passed the House of Representatives, by the constitutional majority, December 8, 1848. Passed the Senate, by the constitutional majority, December 12, 1848.

ARTICLE V — CLAUSE 17.

An Act to Amend the Seventeenth Clause of the Fifth Article of the Constitution of this State.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the seventeenth Clause of the fifth Article of the Constitution of this State be and the same is hereby so amended as to read as follows, to-wit: "There shall be one Solicitor for each Circuit, who shall reside therein, and shall be elected by the qualified voters of such Circuit, on the first Monday in October in the year one thousand eight hundred and fifty-three, and every four years thereafter, or at such times as the General Assembly may by law prescribe, and shall receive for his services a compensation to be fixed by law.

Sec. 2. Be it further enacted, That such elections shall be held and conducted, and the returns thereof made, in the same manner as is now prescribed by law, or may hereafter be prescribed by law, for the election of member to Congress from this State.

Fifth General Assembly.—Passed the Senate by the Constitutional majority, December 31, 1850. Passed the House of Representatives by the Constitutional majority, January 8, 1851.

Sixth General Assembly.—Passed the Senate by the Constitutional majority, December 20, 1852. Passed the House of Representatives by the Constitutional majority, January 1, 1853.

ARTICLE VI — CLAUSE 1.

AN ACT so to amend the Constitution of this State as to extend to all free white male inhabitants, being citizens of the United States, who shall have resided within this State, one year, the elective franchise.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the first clause of the sixth article of the Constitution be so amended as follows, viz: Every free white male person of the age of twenty-one years and upwards, and who shall be at the time of offering to vote, a citizen of the United States, and who shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida for one year next preceding the election at which he shall offer to vote, and who shall, at such time, and for six months immediately preceding said time, have had his habitation, domicile, home and place of permanent abode in the county in which he may offer to vote, shall be deemed a qualified voter at all elections under this Constitution, and none others, except in elections by general ticket in the State or District prescribed law, in which cases the elector must have been a resident of the State one year next preceding the election, and six months within the election district in which he offers to vote: Provided, That no soldier, seaman or marine in the Regular Army or Navy of the United States, unless he were a qualified elector of this State previous to his enlistment as such soldier, seaman or marine in the Regular Army or Navy of the United States, unless he were a qualified elector of this State previous to his enlistment as such soldier, seaman or marine in the Regular Army or Navy of the United States, or of the revenue service, shall be considered a resident of the State in consequence of being stationed within the same.

Second General Assembly.—Passed Senate by constitutional majority, December 1, 1846. Passed House of Representatives by constitutional majority, December 16, 1846.

Third General Assembly.—Passed Senate by constitutional majority, December 21, 1847. Passed House of Representatives by constitutional majority, December 23, 1847.

ARTICLE XIII — CLAUSE 7.

AN ACT to amend the 7th section of the 13th article of the Constitution of this State.

Section 1. **Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened,** That the 7th section of the 13th article of the Constitution of this State be so amended as to read, all liabilities of such Banks shall be payable in specie, and the aggregate of the liabilities and issues of a Bank (exclusive of deposits) shall at no time exceed double the amount of its capital stock paid in.

(10th General Assembly. Passed the Senate by the constitutional majority February 4th, 1861. Passed the House of Representatives by the constitutional majority February 7th, 1861.)

ARTICLE IV — CLAUSES 1 TO 7.

AN ACT to amend the amended Constitution of the State of Florida in relation to the sessions of the General Assembly.

Section 1. **Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened,** That the members of the House of Representatives shall be chosen by the qualified voters, and shall serve for the term of two years from and after the day of the first election under the amended Constitution and no longer; and the sessions of the General Assembly shall be annual, and commence on the 3d Monday of November in each year, or at such other times as may be prescribed by law.

Sec. 2. **Be it further enacted,** That the Representatives shall be chosen on the 1st Monday in October in each and every second year from and after the first election under the amended Constitution, or on such other day as may be directed by law.

Sec. 3. **Be it further enacted,** That the Senators shall be chosen by the qualified electors for the term of four years at the same time, in the same manner, and in the same places where they vote for members of the House of Representatives, and no person shall be a Senator unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this State for two years next preceding his election, and the last year thereof a resident of the district or county for which he shall be chosen, and shall have attained the age of twenty-five years.

Sec. 4. **Be it further enacted,** That the classification of Senators made at the first session of the General Assembly, held in the year 1845, shall continue unchanged, one-half of whom, as nearly as possible, shall be chosen forever hereafter biennially for the term of four years: **Provided, however,** and it is hereby declared, that the term of office of that class of Senators unexpired at the first election under the amended Constitution, shall extend to and expire on the first Monday in October, eighteen hundred and sixty-two.

Sec. 5. **Be it further enacted,** That the first election for Assemblymen under this Constitution shall take place on the first Monday in October, eighteen hundred and sixty, and the first session of the General Assembly under this amended Constitution shall commence on the third Monday in November in the year eighteen hundred and sixty-one.

Sec. 6. **Be it further enacted,** That the sessions of the General Assembly shall not extend over thirty days in duration, unless a constitutional majority of the members shall deem it expedient. No member shall receive pay from the State for his services after the expiration of thirty days continuously from the commencement of the session.

Sec. 7. **Be it further enacted,** That the act entitled an act to amend the Constitution of this State so as to make the sessions of the General Assembly biennial instead of annual, be and the same is hereby abrogated and annulled, so far as the same is inconsistent with the provisions of this act.

(Tenth General Assembly. Passed the Senate by the Constitutional majority February 4th, 1861. Passed the House of Representatives by the Constitutional majority February 7th, 1861.)

CONSTITUTION OF 1861.

ACT CALLING A CONVENTION.

AN ACT to provide for calling a Convention of the People of the State of Florida

Section 1. **Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened,** That a Convention of the People of the State of Florida is hereby ordained to be assembled in the city of Tallahassee, on Thursday, the third day of January, Anno Domini one thousand eight hundred and sixty-one, for the purpose of taking into consideration the dangers incident to the position of this State in the Federal Union, established by the Constitution of the United States of America, and the measures which may be necessary and proper for providing against the same, and to amend the Constitution of the State of Florida, so far as the same, in the judgment of said Convention, may be necessary, and thereupon to take care that the Commonwealth of Florida shall suffer no detriment.

Sec. 2. **Be it further enacted,** That an election for members of the said Convention shall be held at the several election precincts in this State, on Saturday, the twenty-second day of December, Anno Domini one thousand eight hundred and sixty, and said election shall be governed by the same rules, and returns shall be made in the same manner prescribed by law for elections for members of the General Assembly of this State.

Sec. 3. **Be it further enacted,** That each Senatorial District in this State shall be entitled to elect one member to said Convention; each county entitled to separate representation in the lower House of the General Assembly shall be entitled to elect the same number of members to the said Convention to which said county is entitled in the House of Representatives of the General Assembly; and where two or more counties together constitute one representative District in the General Assembly, then said counties shall together be entitled to elect the same number of members to the said Convention to which they are entitled in the House of Representatives of the General As-

sembly. The members of the said Convention shall be entitled to the same pay and mileage allowed to the members of the General Assembly, and all citizens of the State of Florida entitled to the right of suffrage shall be eligible to the said Convention.

Sec. 4. **Be it further enacted,** That should any vacancy occur in the said Convention, it shall be the duty of the several Judges of Probate of the county or representative District from which said vacancy did occur to order an election to fill said vacancy, giving five days notice thereof.

Sec. 5. **Be it further enacted,** That a majority of said Convention shall be a quorum to do business. They may employ such officers and incur such expenses as may in their opinion be necessary, which expenses shall, upon the certificate of the President of the said Convention, be audited by the Comptroller of Public Accounts and paid by the Treasurer; and the ordinances of said Convention shall be the supreme law of the State of Florida, anything elsewhere to the contrary notwithstanding.

Sec. 6. **Be it further enacted,** That the Governor of this State shall issue his proclamation to have this act carried into effect, and shall have the said proclamation published in every newspaper printed in this State, and give such further notice as will, in his opinion, insure the greatest publicity.

(Passed the Senate November 28, 1860. Passed the House of Representatives November 29, 1860. Approved by the Governor November 30, 1860. Chapter 1094, laws of Florida, acts of 1860.)

CONVENTION OF 1861.

Pursuant to chapter 1094, acts 1860, calling a convention and providing for the election of delegates, a convention, beginning on Thursday, January 3, 1861, was held in Tallahassee, which passed an Ordinance of Secession, January 10, 1861; and amended the constitution of 1838 by inserting the words "Confederate States" in place of "United States."

CONSTITUTION OR FORM OF GOVERNMENT FOR THE PEOPLE OF FLORIDA, AS REVISED AND AMENDED.

AT a Convention of the People Begun and Holden at the City of Tallahassee, on the Third Day of January, A. D. 1861.

ORDINANCE OF SECESSION[18]

We, the People of the State of Florida, in Convention assembled, do solemnly ordain, publish and declare, that the State of Florida hereby withdraws herself from the Confederacy of States existing under the name of the United States of America, and from the existing government of said States; and that all political connection between her and the government of said States ought to be and the same is hereby totally annulled and said Union of States dissolved, and the State of Florida is hereby declared a sovereign and independent Nation; and that all ordinances heretofore adopted, in so far as they create or recognize said Union, are rescinded, and all laws or parts of laws in force in this State, in so far as they recognize or assent to said Union, be and they are hereby repealed.

Done in open Convention, January 10th, 1861.

ARTICLE I.
Declaration of Rights.

That the great and essential principles of liberty and free government may be recognized and established, we declare:

1. That all freemen, when they form a social compact, are equal, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing, and protecting property and reputation; and of pursuing their own happiness.

2. That all political power is inherent in the people, and all free governments are founded on their authority, and established for their benefit, and therefore, they have at all times an inalienable and indefeasable right to alter or abolish their form of government, in such manner as they may deem expedient.

3. That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship in this State.

4. That all elections shall be free and equal; and that no property qualification for eligibility to office, or for the right of suffrage shall ever be required in this State.

5. That every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty; and no law shall ever be passed to curtail, abridge, or restrain the liberty of speech or of the press.

6. That the right of trial by jury shall forever remain inviolate.

7. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches; and that no warrant to search any place, or to seize any person or thing shall issue without describing the place to be searched, and the person or thing to be seized, as nearly as may be, not without probable cause, supported by oath or affirmation.

8. That no freeman shall be taken, imprisoned or disseized of his freehold, liberties, or outlawed or exiled, or in any manner de-

[18] Repealed October 28, 1865, see p. 174 infra.

stroyed or deprived of his life, liberty, or property, but by the law of the land.

9. That all Courts shall be open, and every person, for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law; and right and justice administered without sale, denial or delay.

10. That in all criminal prosecutions, the accused hath a right to be heard by himself or counsel, or both; to demand the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and in all prosecutions by indictment or presentment, a speedy and public trial by an impartial jury of the county or district where the offence was committed; and shall not be compelled to give evidence against himself.

11. That all persons shall be bailable, by sufficient securities, unless in capital offences, where the proof is evident, or the presumption is strong; and the privilege of habeas corpus shall not be suspended unless, when, in case of rebellion or invasion, the public safety may require it.

12. That excessive bail shall in no case be required; nor shall excessive fines be imposed; nor shall cruel or unusual punishment be inflicted.

13. That no person shall, for the same offence, be twice put in jeopardy of life or limb.

14. That private property shall not be taken or applied to public use, unless just compensation be made therefor.

15. That in all prosecutions and indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the libel is true, and published with good motives and for justifiable ends, the truth shall be a justification; and the jury shall be the judges of the law and facts.

16. That no person shall be put to answer any criminal charge but by presentment, indictment or impeachment.

17. That no conviction shall work corruption of blood or forfeiture of estate.

18. That retrospective laws, punishing acts committed before the existence of such laws, and by them only declared penal or criminal, are oppressive, unjust, and incompatible with liberty; wherefore, no ex post facto law shall ever be made.

19. That no law impairing the obligation of contracts shall ever be passed.

20. That the people have a right in a peaceable manner to assemble together to consult for the common good; and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance.

21. That the free white men of this State shall have the right to keep and to bear arms for their common defence.

22. That no soldier in time of peace shall be quartered in any house without the consent of the owner; nor in time of war but in a manner prescribed by law.

23. That no standing army shall be kept up without the consent of the Legislature; and the military shall, in all cases and at all times, be in strict subordination to the civil power.

24. That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

25. That no hereditary emoluments, privileges or honors shall ever be granted or conferred in this State.

26. That frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

27. That to guard against transgressions upon the rights of the people, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.
Distribution of the Powers of Government.

1. The powers of the government of the State of Florida shall be divided into three distinct departments, and each of them confided to a separate body of magistracy, to wit: those which are legislative to one; those which are Executive to another; and those which are Judicial to another.

2. No person or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except in the instances expressly provided for in this Constitution.

ARTICLE III.
Executive Department.

1. The Supreme Executive power shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Florida.

2. The Governor shall be elected for two years, by the qualified electors, at the time and place where they shall vote for Representatives, and shall remain in office until a successor be chosen and qualified. The first election for Governor shall be held on the first Monday in October, 1865.

3. No person shall be eligible to the office of Governor unless he shall have attained the age of thirty years, and shall have been a citizen of Florida at least five years next preceding the day of election.

4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the General Assembly, and the person having the highest number of votes shall be Governor, but if two or more shall be equal and highest in votes, one

of them shall be chosen Governor by the joint vote of the two houses; and contested elections for Governor shall be determined by both houses of the General Assembly, in such manner as shall be prescribed by law.

5. He shall at stated times receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

6. He shall be Commander-in-Chief of the army and navy of this State, and of the militia thereof.

7. He may require information in writing from the officers of the Executive Department on any subject relating to the duties of their respective offices.

8. He may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of Government, or at a different place, if that shall have become dangerous from an enemy, or from disease; and in case of disagreement between the two houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next meeting designated by this constitution.

9. He shall, from time to time, give to the General Assembly information of the state of the Government, and recommend to their consideration such measures as he may deem expedient.

10. He shall take care that the laws be faithfully executed.

11. In all criminal and penal cases, (except of treason and impeachment) after conviction, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law; and in cases of treason he shall have power, by and with the advice and consent of the Senate, to grant reprieves and pardons, and he may, in the recess of the Senate, respite the sentence until the end of the next session of the General Assembly.

12. There shall be a seal of the State, which shall be kept by the Governor, and used by him officially.

13. All commissions shall be in the name and by the authority of the State of Florida, be sealed with the State seal and signed by the Governor, and attested by the Secretary of State.

14. There shall be a Secretary of State appointed by joint vote of both houses of the General Assembly, who shall continue in office during the term of two years; and he shall keep a fair register of the official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the General Assembly, and shall perform such other duties as may be required of him by law.

15. Vacancies that happen in offices, the appointment to which is vested in the General Assembly, or given to the Governor, with the advice and consent of the Senate, shall be filled by the Governor during the recess of the General Assembly, by granting commissions, which shall expire at the end of the next session.

16. Every bill which shall have passed both houses of the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; and if after such reconsideration two-thirds of the whole number elected to that House shall agree to pass the bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of the whole number elected to that House, it shall become a law; but in such cases, the votes of both Houses shall be by yeas and nays, and the names of the members voting for or against the bill, shall be entered on the journals of each House, respectively; and if any bill shall not be returned by the Governor within five 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 General Assembly, by their adjournment, prevent its return, in which case it shall not be a law.

17. Every order, resolution or vote, to which concurrence of both Houses may be necessary, except on questions of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, be re-passed by both Houses, according to the rules and limitations prescribed in case of a bill.

18. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the President of the Senate shall exercise all the power and authority appertaining to the office of Governor, during the term for which the Governor was elected unless the General Assembly shall provide by law for the election of a Governor to fill such vacancy; or, until the Governor absent, or impeached, shall return or be acquitted.

19. If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign, die or be absent from the State, the Speaker of the House of Representatives shall in like manner administer the Government.

20. The President of the Senate or Speaker of the House of Representatives, during the time he administers the government, shall receive the same compensation which the Governor would have received.

21. It shall be the duty of the General Assembly to provide for the purchase or erection of a suitable building for the residence of the Governor; and the Governor shall reside at the seat of government. But whenever by reason of danger from an enemy or from disease the Governor may deem the capital unsafe, he may by proclamation fix the seat of government at

some secure place within the State, until such danger cease.

22. No person shall hold the office of Governor and any other office or commission, civil or military, either in this State, or under the Confederate States, or any other power, at one and the same time, except the President of the Senate, or the Speaker of the House of Representatives, when he shall hold the office as aforesaid.

23. A State Treasurer and Comptroller of public Accounts shall be elected every two years by joint vote of both Houses of the General Assembly.

ARTICLE IV.

Legislative Department.

1. The Legislative power of this State shall be vested in two distinct branches, the one to be styled the Senate, the other the House of Representatives, and both together the "General Assembly of the State of Florida," and the style of all the laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened."

2. The members of the House of Representatives shall be chosen by the qualified voters, and shall serve for the term of two years from and after the day of the first election under this amended Constitution, and no longer; and the sessions of the General Assembly shall be annual, and commence on the third Monday in November in each year, or at such other times as may be prescribed by law.

3. The Representatives shall be chosen on the first Monday in October each and every second year, from and after the first election under this amended Constitution, or on such other day as may be directed by law.

4. The first election for Assemblymen under this Constitution, shall take place on the first Monday in October, eighteen hundred and sixty-two; and the first session of the General Assembly, under this amended Constitution, shall commence on the third Monday in November, in the year eighteen hundred and sixty-two.

5. No person shall be a Representative unless he be a white man, a citizen of the Confederate States of America, and shall have been an inhabitant of the State two years next preceding his election, and the last year thereof a resident of the county for which he shall be chosen and shall have attained the age of twenty-one years.

6. The Senators shall be chosen by the qualified electors for the term of four years, at the same time, in the same manner, and in the same places where they vote for members of the House of Representatives; and no man shall be a Senator unless he be a white man, a citizen of the Confederate States, and shall have been an inhabitant of this State two years next preceding his election, and the last year thereof a resident of the district or county for which he shall be chosen, and shall have attained the age of twenty-five years.

7. The House of Representatives, when assembled, shall choose a Speaker and its other officers, and each House shall be judge of the qualifications, elections and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent members, in such manner and under such penalties as each House may prescribe.

9. Each House may determine the rules of its own proceedings, punish its members for disorderly behavior, and, with the consent of two-thirds, expel a member, but not a second time for the same cause.

10. Each House, during the session, may punish by imprisonment any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its processings, provided such imprisonment shall not extend beyond the end of the session.

11. Each House shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, and the yeas and nays of the members of each House shall be taken and entered upon the journals upon the final passage of every bill, and may, by any two members, be required upon any other question; and any member of either House shall have liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journal.

12. Senators and Representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the General Assembly, and in going to or returning from the same, allowing one day for every twenty miles such member may reside from the place at which the General Assembly is convened; and for any speech or debate in either House they shall not be questioned in any other place.

13. The General Assembly shall make provision by law for filling vacancies that may occur in either House by the death, resignation (or otherwise) of any of its members.

14. The doors of each House shall be open, except on such occasions as in the opinion of the House the public safety may imperiously require secrecy.

15. Neither House, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either House of the General Asssembly, and all bills passed by one House may be discussed, amended or rejected by the other; but no bill shall have the force of law until on three several days it be

read in each House and free discussion be allowed thereon, unless, in cases of urgency, four-fifths of the House in which the same shall be depending, may deem it expedient to dispense with the rule; and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

17. Each member of the General Assembly shall receive from the public treasury such compensation for his services as may be fixed by law, but no increase of compensation shall take effect during the term for which the Representatives were elected when such law was passed.

18. The number of members of the House of Representatives shall never exceed sixty.

19. The sessions of the General Assembly shall not extend in duration over thirty days, unless it be deemed expedient by a concurrent majority of two-thirds of the members of each House, and no member shall receive pay from the State for his services after the expiration of sixty days continuously from the commencement of the session.

20. The General Assembly may by law authorize the Circuit Court to grant licenses for building tollbridges and to establish ferries, and to regulate the tolls of both, to construct dams across streams not navigable, to ascertain and declare what streams are navigable; but no special law for such purpose shall be made.

21. The General Assembly shall pass a general law prescribing the manner in which names of persons may be changed, but no special law for such purpose shall be passed; and no law shall be made allowing married women or minors to contract or to manage their estates, or to legitimate bastards.

22. The General Assembly shall have power to tax the lands and slaves of non-residents higher than the like property of residents.

23. The public lands accruing to the State in consequence of the dissolution of the late Union between Florida and the United States, shall be applied exclusively to the payment of the debt and necessary expenses of the State, and no law shall be passed granting such lands for any other purpose.

24. The General Assembly shall pass a general law for the incorporation of towns, religious, literary, scientific, benevolent, military and other associations, not commercial, industrial or financial, but no special act incorporating any such associations, shall be passed.

25. No act incorporating any railroad, banking, insurance, commercial, industrial, or financial corporation, shall be introduced into the General Assembly, unless the person or persons applying for such incorporation shall have deposited with the Treasurer the sum of one hundred dollars as a bonus to the State.

26. Officers shall be removed from office for incapacity, misconduct, or neglect of duty; and where no special mode of trial is provided by the Constitution, the General Assembly shall pass a law providing the mode in which such trials shall be had, which shall be before a jury and in the Circuit Court.

27. The General Assembly shall have power to create special tribunals for the trial of offences committed by slaves, free negroes and mulattoes; and until the General Assembly otherwise provides, there is hereby created a Court in each county which shall consist of two Justices of the Peace, and twelve citizens, being qualified Jurors of the county, who shall have power to try all cases of felony committed in their county by slaves, free negroes and mulattoes. A majority of said Court may pronounce judgment, and all trials before it shall be had upon the statement of the offence in the warrant of arrest, and without presentment or indictment by a Grand Jury. The Sheriff of the county shall act as the ministerial officer of said Court, and the citizens who, with the Justices, are to compose the same, shall be selected by said Justices and summoned to attend by the Sheriff; and appeals from the judgment of said Court shall be had to the Circuit Court of the county upon an order made by the Judge thereof, upon an inspection of the record of the trial, full minutes of which shall be made by the said Justices, and such appeal, when allowed, shall operate as a supersedeas of the judgment.

ARTICLE V.
Judicial Department.

1. The judicial power of this State both as to matters of law and equity, shall be vested in a Supreme Court, Courts of Chancery, Circuit Courts and Justices of the Peace, provided the General Assembly may also vest such criminal jurisdiction as may be deemed necessary in corporation Courts; but such jurisdiction shall not extend to capital offences.

2. The Supreme Court, except in cases otherwise directed in this Constitution, shall have appelate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law, provided that the said Court shall always have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control of all other Courts.

3. The Supreme Court, when organized, shall be holden at such times and places as may be provided by law.

4. The State shall be divided into convenient Circuits; and for each Circuit there shall be a Judge, who shall, after his election or appointment, reside in the Circuit for which he has been elected or appointed, and shall at stated times receive for his services a salary of not less than two thousand dollars per annum, which shall not be diminished during the continuance of such judge in office; but the judges shall receive no fees or perquisites of office, nor hold any other office of profit

under the State, the Confederate States, or any other power.

5. The Circuit Courts shall have original jurisdiction in all matters, civil and criminal, within this State, not otherwise excepted in this Constitution.

6. A Circuit Court shall be held in such counties and at such times and places therein as may be prescribed by law, and the judges of the several Circuit Courts may hold courts for each other, and shall do so when directed by law.

7. The General Assembly shall have power to establish and organize a separate Court or Courts of original Equity jurisdiction; but until such Court or Courts shall be established and organized, the Circuit Courts shall exercise such jurisdiction.

8. The General Assembly shall provide by law for the appointment in each County of an officer to take probate of wills, to grant letters testamentary, of administration and guardianship, to attend to the settlement of the estates of decedents, and of minors, and to discharge duties usually appertaining to courts of ordinary, subject to the direction and supervision of the Courts of Chancery, as may be provided by law.

9. A competent number of Justices of the Peace shall be, from time to time, appointed or elected, in and for each County, in such mode and for such term of office as the General Assembly may direct, and shall possess such jurisdiction as may be prescribed by law; and in cases tried before a Justice of the Peace, the right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

10. Judges of the Supreme Court, Chancellors, and Judges of the Circuit Court, shall be appointed by the Governor, by and with the advice and consent of two-thirds of the Senate, when in session, and hold office for the term of six years from the date of their appointment, unless sooner removed under the provisions made in this Constitution for the removal of Judges by address or impeachment: and for wilful neglect of duty or other reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall remove any of them on the address of two-thirds of the General Assembly: Provided, however, That the cause or causes shall be stated at length in such address, and entered on the journals of each House: And provided further, That the cause or causes shall be notified to the Judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such removal shall pass, and in such cases the vote shall be taken by yeas and nays and entered on the journals of each House respectively.

11. Whenever the General Assembly shall create a separate Chancery Court, under the provisions of this Constitution, the Judges thereof shall be elected in the manner provided in the 10th clause of this article, and shall hold their offices for the same term, and be subject to all the provisions of said clause.

12. The Clerk of the Supreme Court, and the Clerks of the Courts of Chancery shall be appointed by the Judges of their respective Courts; and the Clerks of the Circuit Court shall be elected by the qualified electors, in such mode as may be prescribed by law.

13. The Justices of the Supreme Court, Chancellors and Judges of the Circuit Courts, shall, by virtue of their offices, be conservators of the peace throughout the State, and Justices of the Peace in their respective counties.

14. The style of all process shall be "The State of Florida," and all criminal prosecutions shall be carried on in the name of the State of Florida, and all indictments shall conclude, "against the peace and dignity of the same."

15. There shall be an Attorney General for the State, who shall reside at the seat of Government. It shall be his duty to attend all sessions of the General Assembly, and upon the passage of any act, to draft and submit to the General Assembly, at the same session, all necessary forms of proceedings under such laws, which, when approved, shall be published therewith; and he shall perform such other duties as may be prescribed by law. He shall be selected by joint vote of the two Houses of the General Assembly, and shall hold his office for two years, but may be removed by the Governor on the address of two-thirds of the two Houses of the General Assembly, and shall receive for his services a compensation to be fixed by law.

16. There shall be one Solicitor for each Circuit, who shall reside therein and shall be elected by the qualified voters of such Circuit, on the first Monday in October in the year one thousand eight hundred and sixty-one, and every four years thereafter, or at such time the General Assembly may by law prescribe, and he shall receive for his services a compensation to be fixed by law.

17. No Justice of the Supreme Court shall sit as Judge or take part in the Appellate Court on the trial or hearing of any case which shall have been decided by him in the Court below.

18. The General Assembly shall have power to establish in each county a Board of Commissioners for the regulation of the county business therein.

19. No duty, not judicial, shall be imposed by law upon the Justices of the Supreme Court, Chancellors, or the Judges of the Circuit Courts, of the State.

ARTICLE VI.

The Right of Suffrage and Qualifications of Officers: Civil Officers and Impeachments and Removals from Office.

1. Every free white male person of the age of twenty-one years and upwards and who shall be at the time of offering to vote, a citizen of the Confederate States, and who shall have resided and had his habitation domicil, home and place of permanent abode in Florida for

one year next preceding the election at which he shall offer to vote, and who shall have at such time and for six months immediately preceding said time, shall have had his habitation, domicil, home and place of permanent abode in the county in which he may offer to vote, and shall have paid all taxes due by him at least five days before the day of election, shall be deemed a qualified elector at all elections under this Constitution, and none others shall be, except in elections by general ticket in the State or District prescribed by law, in which case the elector must have been a resident of the State one year next preceding the election, and six months within the election district in which he offers to vote: Provided, That no person in the regular army or navy of the Confederate States, unless he be a qualified elector of the State previous to his entry in the regular army or navy of the Confederate States, or of the revenue service, shall be considered a resident of the State in consequence of being stationed within the same.

2. The General Assembly shall have power to exclude from every office of honor, trust or profit within the State, and from the right of suffrage, all persons convicted of bribery, perjury or other infamous crime.

3. No person shall be capable of holding or being elected to any post of honor, profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of this State, who shall hereafter fight a duel or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be a second to either party, or who shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance, whether the same occur or be committed in or out of the State; but the legal disability shall not accrue until after trial and conviction, according to due form of law.

4. No person who may hereafter be a collector or holder of public moneys shall have a seat in either House of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the treasury all sums for which he may be accountable.

5. No Governor, member of Congress or of the General Assembly of this State, shall receive a fee, be engaged as counsel, agent or attorney in any civil case or claim against this State, or to which this State shall be a party, during the time he shall remain in office.

6. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

7. Members of the General Assembly and all officers, civil or military, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: I do swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the office to which I have been elected (or appointed,) and will, to the best of my abilities discharge the duties thereof, and preserve, protect and defend the Constitution of this State, and of the Confederate States of America.

8. Every person shall be disqualified from serving as Governor, Senator, Representative, or from holding any other office of honor or profit in this State, for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe to procure his election.

9. Laws shall be made by the General Assembly to exclude from office and from suffrage those who shall have been or may hereafter be convicted of bribery, perjury, forgery, or other high crime or misdemeanor; and the privilege of suffrage shall be supported by laws regulating elections and prohibiting under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper practices.

10. All civil officers of the State at large shall reside within the State, and all district or county officers within their respective districts or counties, and shall keep their respective offices at such places therein as may be required by law.

11. It shall be the duty of the General Assembly to regulate by law in what cases, and what deduction from the salaries of public officers shall be made for neglect of duty in their official capacity.

12. Returns of elections for members of Congress and the General Assembly, shall be made to the Secretary of State, in manner to be prescribed by law.

13. In all elections by the General Assembly the vote shall be viva voce, and in all elections by the people the vote shall be by ballot.

14. No member of Congress or person holding or exercising any office of profit under the Confederate States, or under any foreign power, shall be eligible as a member of the General Assembly of this State, or hold or exercise any office of profit under the State; and no person in this State shall ever hold two offices of profit at the same time, except the office of Justice of the Peace, Notary Public, Constable and Militia offices.

15. The General Assembly shall, by law, provide for the appointment or election and removal from office of all officers, civil and military, in this State, not provided for in this Constitution.

16. The power of impeachment shall be vested in the House of Representatives.

17. All impeachments shall be tried by the Senate, and, when sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

18. The Governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust or profit under this State: but the parties shall nevertheless be liable to indictment, trial and punishment, according to law.

ARTICLE VII.
Militia.

1. All militia officers shall be elected or appointed under such rules and regulations as the General Assembly may from time to time direct and establish.

2. All offences against the militia laws shall be tried by Court Martial or before a court and jury, as the General Assembly may direct.

3. No commission shall be vacated except by sentence of Court Martial.

ARTICLE VIII.
Taxation and Revenue.

1. The General Assembly shall devise and adopt a system of revenue, having regard to an equal and uniform mode of taxation to be general throughout the State.

2. No other or greater amount of tax or revenue shall at any time be levied, than may be required for the necessary expenses of government.

3. No money shall be drawn from the Treasury but in consequence of an appropriation by law, and a regular statement of the receipts and the expenditures of all public monies shall be published and promulgated annually with the laws of the General Assembly.

4. The General Assembly shall have power to authorize the several counties and incorporated towns in this State to impose taxes for county and corporation purposes, respectively, and all property shall be taxed upon the principles established in regard to State taxation.

ARTICLE IX.
Census and Apportionment of Representation.

1. The General Assembly shall, in the year one thousand eight hundred and sixty-five, and every tenth year thereafter, cause an enumeration to be made of all the inhabitants of the State, and to the whole number of free white inhabitants shall be added three-fifths of the number of slaves, and they shall then proceed to apportion the representation equally among the different counties, according to such enumeration, giving, however, one representative to every county, and increasing the number of representatives on a uniform ratio of population, according to the foregoing basis, and which ratio shall not be changed until a new census shall have been taken.

2. The General Assembly shall also, after every such enumeration, proceed to fix by law the number of Senators which shall constitute the Senate of the State of Florida, and which shall never be less than one-fourth, nor more than one-half of the whole number of the House of Representatives; and they shall lay off the State into the same number of senatorial districts, as nearly equal in the number of inhabitants as may be, according to the ratio of representation established in the preceding section, each of which districts shall be entitled to one Senator.

3. When any senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district, and no county shall be divided in forming a district.

4. No county now organized shall be divided into new counties so as to reduce the inhabitants of either below the ratio of representation.

ARTICLE X.
Education.

1. The proceeds of all lands that have been granted by the United States for the use of Schools and a Seminary or Seminaries of Learning, shall be and remain a perpetual fund, the interest of which, together with all moneys derived from any other source, applicable to the same object, shall be inviolably appropriated to the use of Schools and Seminaries of Learning respectively, and to no other purpose.

2. The General Assembly shall take such measures as may be necessary to preserve, from waste or damage, all land so granted and appropriated to the purpose of Education.

ARTICLE XI.

Public Domain and Internal Improvements.

1. It shall be the duty of the General Assembly to provide for the prevention of waste and damage of the public lands, now possessed or that may hereafter be ceded to the State of Florida, and it may pass laws for the sale of any part or portion thereof, and in such case provide for the safety, security and appropriation of the proceeds.

2. A liberal system of Internal Improvements being essential to the development of the resources of the country, shall be encouraged by the government of this State; and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law proper objects of improvement in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be apportioned for such improvements.

ARTICLE XII.

Boundaries.

1. The jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which, by the treaty of amity, settlement and limits between the United States and his Catholic Majesty, on the 22d day of February, A. D. 1819, were ceded to the United States.

ARTICLE XIII.
Banks and Other Corporations.

1. The General Assembly shall pass no act of incorporation or make any alteration therein unless with the assent of at least two-thirds of each house, and unless public notice, in one or more newspapers in the State, shall have been given, for at least three months immediately preceding the session at which the same may be applied for.

2. No banking corporation shall be created or continue, which is composed of a less number than twenty individuals, a majority of whom at least shall be residents of the State; and no other corporation shall be created or continue composed of a less number than ten, of whom at least five shall be residents of this State.

3. No bank charter or any act of incorporation granting exclusive privileges, shall be granted for a longer period than twenty years.

4. The charters of banks granted by the General Assembly shall restrict such banks to the business of exchange, discount and deposit; and they shall not speculate or deal in real estate or the stock of other corporations or associations, or in any merchandise or chattels, or be concerned in insurance, manufacturing, exportation or importation, except of bullion or specie; shall not act as trustee in anywise, nor shall they own real estate or chattels, except such as shall be necessary for their actual use in the transaction of business, or which may be pledged as further security or received towards or in satisfaction of previously contracted debts, or purchased at legal sales to satisfy such debts, of which they shall be required to make sale within two years after the acquisition thereof.

5. The capital stock of any bank shall not be less than one hundred thousand dollars, and shall be created only by the actual payment of specie therein; and no bank shall borrow money to create or add to its capital or to conduct its business, and no loans shall be made on stock.

6. All liabilities of such banks shall be payable in specie. The aggregate of the liabilities and issues of a bank, exclusive of deposits, shall at no time exceed double the amount of its capital stock paid in.

7. No dividends of profits exceeding ten per centum per annum on the capital stock paid in shall be made, but all profits over ten per centum per annum shall be set apart and retained as a safety fund.

8. Stockholders in a bank, when an act of forfeiture of its charter is committed, or when it is dissolved or expires, shall be individually and severally liable for the payment of all its debts, in proportion to the stock owned by each.

9. Banks shall be open to inspection, under such regulations as may be prescribed by law, and it shall be the duty of the Governor to appoint a person or persons, not connected in any manner with any bank in the State, to examine at least once a year into their state and condition; and the officers of every bank shall make quarterly returns to the Governor of its state and condition, and the names of the stockholders and shares held by each.

10. Non user for the space of one year, or any act of a corporation, or those having the control or management thereof, or intrusted therewith, inconsistent with or in violation of the provisions of this constitution, or of its charter, shall cause its forfeiture, and the General Assembly shall by general law provide a summary process for the sequestration of its effects and assets, the appointment of officers to settle its affairs, and no forfeited charter shall be restored. The foregoing provisions shall not be construed to prevent the General Assembly from imposing other restrictions and provisions in the creation of corporations.

11. The General Assembly shall not pledge the faith and credit of the State to raise funds in aid of any corporation whatever.

ARTICLE XIV.
Amendments and Revisions of the Constitution.

1. No part of this Constitution shall be altered except by a Convention duly elected.

2. No Convention of the people shall be called unless by the concurrence of two-thirds of all the members of each House of the General Assembly, made known by the passing of a bill which shall be read three times on three several days in each House.

3. Whenever a Convention shall be called, proclamation of an election for delegates shall be made by the Governor at least thirty days before the day of election. Every County and Senatorial District shall be entitled to as many delegates as it has representatives in the Assembly. The same qualifications shall be required in delegates and in electors that are required in members of Assembly and voters for the same respectively, and the elections for delegates to a Convention, and the returns of such elections, shall be held and made in the manner prescribed by law for regulating elections for members of Assembly, but the Convention shall judge of the qualifications of its members.

ARTICLE XV.
General Provisions.

1. The General Assembly shall have no power to pass laws for the emancipation of slaves.

2. The General Assembly shall have power to pass laws to prevent free negroes, mulattoes, and other persons of color from immigrating to this State, or from being discharged from on board any vessel in any of the ports of Florida.

3. Treason against the State shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless

on the testimony of two witnesses to the same overt act, or his confession in open court.

4. Divorces from the bonds of matrimony shall not be allowed but by the judgment of a court, as shall be prescribed by law.

5. The General Assembly shall declare by law what parts of the common law, and what parts of the civil law, not inconsistent with this Constitution, shall be in force in this State.

6. The oaths of officers directed to be taken under this Constitution, may be administered by any Judge or Justice of the Peace of the State of Florida, until otherwise prescribed by law.

7. The courts of this State shall never entertain jurisdiction of any grants of land, in the Floridas, made by the King of Spain, or by his authority, subsequent to the twenty-fourth day of January, eighteen hundred and eighteen, nor shall the said Courts receive as evidence, in any case, certain grants said to have been made by the said King of Spain in favor of the Duke of Alagon, the Count Punon Rostro, and Don Pedro de Vargas, or any title derived from either of said Grants.

Done in Convention, of the People of Florida, on the 27th day of April, one thousand eight hundred and sixty-one, at the Capitol, at Tallahassee.

JOHN C. McGEHEE, President.

DELEGATES TO CONSTITUTIONAL CONVENTION OF 1861

JOHN C. McGEHEE, President
WM. S. HARRIS, Secretary

Alderman, S. S.
Allison, A. K.
Anderson, J. Patton
Baker, S. J.
Baker, J. L. G.
Barrington, E. P.
Beard, John
Bethel, Winer
Chandler, Jas. H.
Collier, Joseph A.
Coon, Isaac S.
Cooper, Jas. G.
Daniel, J. M.
Davis, W. G. M.
Dawkins, Jas. B.
Devall, J. O.
Dilworth, W. S.
Finegan, Joseph
Folsom, L. A.
Gary, S. M. G.
Gettis, James
Glazier, Ezekiel
Golden, R. R.
Gregory, Wm. S.
Helvenston, George
Hendricks, T. J.
Henry, Thos. Y.
Hunter, Green H.
Irwin, F. B.
Jones, John W.
Kirksey, James
Ladd, Daniel
Lamar, Thompson B.
Lamb, John J.
Lea, A. J.
Leigh, David G.
Lewis, David
Love, E. C.
McCaskill, A. L.
McGahagin, W.
McIntosh, McQueen
McLean, D. D.
McNealy, Adam
Mays, R. G.
Morrison, John
Morton, Jackson
Newmans, Jas. A.
Nicholson, A. W.
Owens, Jas. B.
Palmer, Thos. M.
Parkhill, Geo. W.
Pelot, John C.
Pinkney, Wm.
Rutland, Isaac N.
Sanderson, J. P.
Saxon, B. W.
Sever, Wm. H.
Spencer, S. W.
Simpson, E. E.
Solana, Matthew
Stephens, Samuel B.
Taylor, Jos. M.
Thomas, Joseph
Tift, Asa F.
Turman, Simon
Ward, Geo. T.
Woodruff, Wm. W.
Wright, S. H.
Yates, W. B.

Note—George T. Ward, McQueen McIntosh, J. Patton Anderson, Thompson B. Lamar, William S. Dilworth and J. B. Dawkins resigned after the first session of the convention, and as their successors Robert H. Gamble, Samuel Benezet, James Y. Jones, Alvin May, Calvin Davis and M. S. Perry were elected members of the Convention of 1861-1862.

CONSTITUTION OF 1865.

To meet the governmental requirements after the Civil War, the President of the United States, by proclamation dated July 13, 1865, appointed a provisional governor for Florida with authority to direct the establishment of a state government and constitution in Florida. This proclamation was in words and figures as follows:

PROCLAMATION OF THE PRESIDENT, APPOINTING WM. MARVIN, PROVISIONAL GOVERNOR OF THE STATE OF FLORIDA.

By the President of the United States of America:

A Proclamation

Whereas the 4th section of the 4th Article of the Constitution of the United States declares that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion and domestic violence; and whereas the President of the United States is, by the Constitution, made Commander-in-Chief of the Army and Navy, as well as Chief Civil Executive Officer of the United States, and is bound by solemn oath faithfully to execute the office of President of the United States, and to take care that the laws be faithfully executed; and whereas the rebellion, which has been waged by a portion of the people of the United States against the properly constituted authorities of the government thereof, in the most violent and revolting form, but whose organized and armed forces have now been almost entirely overcome, has in its revolutionary progress, deprived the people of the State of Florida of all civil government; and whereas it becomes necessary and proper to carry out and enforce the obligations of the United

States to the people of Florida, in securing them in the enjoyment of a republican form of government:

Now, therefore, in obedience to the high and solemn duties imposed upon me by the Constitution of the United States, and for the purpose of enabling the loyal people of said State to organize a State government, whereby justice may be established, domestic tranquility insured, and loyal citizens protected in all their rights of life, liberty, and property, I, ANDREW JOHNSON, President of the United States, and Commander-in-Chief of the Army and Navy of the United States, do hereby appoint WM. MARVIN, Provisional Governor of the State of Florida, whose duty it shall be, at the earliest practicable period, to prescribe such rules and regulations as may be necessary and proper for convening a Convention, composed of delegates to be chosen by that portion of the people of said State who are loyal to the United States, and no others, for the purpose of altering or amending the Constitution thereof; and with authority to exercise, within the limit of said State, all the powers necessary and proper to enable such loyal people of the State of Florida to restore said State to its constitutional relations to the Federal government, and to present such a republican form of State government as will entitle the State to the guarantee of the United States therefor, and its people to protection by the United States against invasion, insurrection, and domestic violence: PROVIDED, That, in any election that may be hereafter held for choosing delegates to any State Convention as aforesaid, no person shall be qualified as an elector, or shall be eligible as a member of such Convention, unless he shall have previously taken and subscribed the oath of amnesty, as set forth in the President's Proclamation of May 29, A. D. 1865, and is a voter qualified as prescribed by the Constitution and laws of the State of Florida in force immediately before the 10th day of January, A. D. 1861, the date of the so-called ordinance of secession; and the said Convention, when convened, or the Legislature that may be thereafter assembled, will prescribe the qualification of electors and the eligibility of persons to hold office under the Constitution and laws of the State, a power the people of the several States composing the Federal Union have rightfully exercised from the origin of the government to the present time.

And I do hereby direct—

FIRST. That the Military Commander of the Department, and all officers and persons in the Military and Naval service, aid and assist the said Provisional Governor in carrying into effect this Proclamation, and they are enjoined to abstain from, in any way, hindering, impeding, or discouraging the loyal people from the organization of a State government as herein authorized.

SECOND. That the Secretary of State proceed to put in force all laws of the United States, the administration whereof belongs to the State Department, applicable to the geographical limits aforesaid.

THIRD. That the Secretary of the Treasury proceed to nominate, for appointment, assessors of taxes and collectors of customs and internal revenue, and such other officers of the Treasury Department as are authorized by law, and put in execution the revenue laws of the United States within the geographical limits aforesaid. In making appointments, the preference shall be given to qualified loyal persons residing within the districts where their respective duties are to be performed. But if suitable residents of the districts shall not be found, then persons residing in other States or districts shall be appointed.

FOURTH. That the Postmaster General proceed to establish post offices and post routes, and put into execution the postal laws of the United States within the said State, giving to loyal residents the preference of appointment, but if suitable residents are not found, then to appoint agents, &c., from other States.

FIFTH. That the District Judge for the Judicial District in which Florida is included proceed to hold Courts within said State, in accordance with the provisions of the Act of Congress. The Attorney General will instruct the proper officers to libel, and bring to judgment, confiscation, and sale, property subject to confiscation, and enforce the administration of justice within said State, in all matters within the cognizance and jurisdiction of the federal courts.

SIXTH. That the Secretary of the Navy take possession of all public property belonging to the Navy Department, within said geographical limits, and put in operation all Acts of Congress in relation to naval affairs having application to the said State.

SEVENTH. That the Secretary of the Interior put in force the laws relating to the Interior Department applicable to the geographical limits aforesaid.

In testimony whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this 13th day of July, in the year of our Lord, (L.S.) one thousand eight hundred and sixty-five, and of the Independence of the United States the ninetieth

ANDREW JOHNSON.

By the President:

WILLIAM H. SEWARD,

Secretary of State.

PROCLAMATIONS OF THE PROVISIONAL GOVERNOR OF FLORIDA.

Proclamation of William Marvin, Provisional Governor, for the Election of Delegates to a Convention, &C.

WHEREAS, by the Proclamation of Andrew Johnson, President of the United States, dated 13th of July, A. D. 1865, I have been appointed Provisional Governor of the State of Florida, with instructions to prescribe, at the earliest practicable period, such rules and regulations as may be necessary and proper for convening a convention of the people, composed of delegates to be chosen by that portion of the people who are loyal to the United States, and no others; and also, with all the power, necessary and proper, to enable such loyal people, of said State, to restore it to its constitutional relation to the Federal Government, and to present such a republican form of government as will entitle the State to the guarantee of the United States therefor, and its people to the protection of the United States against invasion, insurrection, and domestic violence.

Now, therefore, I, William Marvin, Provisional Governor of the State of Florida, as aforesaid, do, by virtue of the power in me vested, as aforesaid, proclaim and declare:

FIRST. That an election for delegates to a convention will be held on Tuesday, the 10th day of October, A. D. 1865, at the different precincts at which elections are directed and authorized by law to be held for members of the Legislature.

SECOND. That the thirty-nine counties of this State shall be authorized and entitled to elect delegates to the said convention severally as follows, to-wit:

Escambia two, Santa Rosa two, Walton two, Holmes one, Washington one, Jackson three, Calhoun one, Franklin one, Liberty one, Gadsden three, Wakulla one, Leon four, Jefferson three, Madison two, Taylor one, Lafayette one, Hamilton two, Suwannee one, Columbia two, Baker one, Bradford one, Nassau one, St. Johns one, Duval one, Clay one, Putnam one, Alachua two, Marion two, Levy one, Hernando one, Hillsborough one, Manatee one, Polk one, Orange one, Volusia one, Brevard one, Sumter one, Monroe one, and Dade one.

THIRD. Every free white male person of the age of twenty-one years and upwards, and who shall be, at the time of offering to vote be, a citizen of the United States, and who shall have resided and had his home in this State for one year next preceding the election and for six months in the county in which he may offer to vote, and who shall have taken and subscribed the oath of amnesty, as set forth in the President's Proclamation of Amnesty, of the 29th day of May, 1865, and if he comes within the exceptions contained in said proclamation, shall have taken said oath, and have been specially pardoned by the President, shall be entitled to vote in the county where he resides, and shall be eligible as a member of said convention, and none others. Where the person offering to vote comes within the exceptions contained in the amnesty proclamation, and shall have taken the amnesty oath, and shall have made application to the President for a special pardon, through the Provisional Governor, and shall have been recommended by him for such pardon, the Inspectors or Judges of the election may, in most instances, properly presume that such pardon has been granted, though, owing to the want of mail facilities, it may not have been received by the party at the time of the election.

Free white soldiers, seamen and marines in the army or navy of the United States, who were qualified, by their residence, to vote in said State, at the time of their respective enlistments, and who shall have taken and subscribed the amnesty oath, shall be entitled to vote in the county where they respectively reside. But no soldier, seaman or marine, not a resident in the State, at the time of his enlistment, shall be allowed to vote.

FOURTH. The amnesty oath may be taken and subscribed before any commissioned officer—civil, military or naval—in the service of the United States, or any civil or military officer of a loyal State or Territory, who, by the laws thereof, is qualified to administer oaths. The officer administering the oath is authorized and required, on request, to give to the person taking it, certified copies thereof. It is administered to all persons, applying at the different military posts in this State, without fee. The taking of the oath does not, of itself, operate as a pardon in cases where the party is excepted from the general amnesty and needs a special pardon.

FIFTH. That the Judges of Probate, in the several counties, provided they shall have respectfully taken the amnesty oath, or in case of inability or absence of the Judge in any county, or his neglect or refusal to act, then the Clerk of the Circuit Court, provided he shall have taken the amnesty oath, shall distribute the poll-books and appoint, for the different election precincts in their respective counties, three Inspectors or Judges of the election, who shall have taken the amnesty oath, to hold said election, who shall conduct the same, as near as may be, in conformity with the laws of this State, as they existed prior to January 10th, 1861. The Inspectors of the different precincts shall, as soon as possible after the election, count the votes and make and sign a certificate of the result of the election at said precinct, and one of them, to be determined by lot, if not otherwise agreed upon, shall convey and deliver, without unnecessary delay, the said certificate, the poll-book and ballots, to the Judge of Probate of the county, or to the Clerk of the Circuit Court,

whichever of them may have appointed said Inspectors. The Judge or Clerk receiving said certificate, poll-books and ballots, shall thereupon, without unnecessary delay, call to his assistance two respectable inhabitants, having the qualification of voters, and shall publicly count the votes and compare them with the poll-books. They shall make and sign certificates of the result of the election in their county, and furnish to each person elected one of said certificates. The Judge or Clerk shall also transmit by mail, prepaying the postage, properly enveloped, and addressed to the Provisional Governor, at Tallahassee, one of said certificates, together with the ballots and poll-books of the several precincts; or he shall convey the said certificate, poll-books and ballots, properly enveloped and addressed, as aforesaid, to the nearest military post, and deliver the same to the commander to be forwarded to this office.

In counties in which there is neither a qualified Judge of Probate, nor a qualified Clerk of the Circuit Court, or in which they may neglect or refuse to act, the qualified voters are hereby authorized to assemble at the county site, and in Dade county, at Indian Key, and elect the judges of the election, who shall have taken the amnesty oath, hold the election, count the votes, and give to the person elected a certificate of his election. One of them, to be agreed on or determined by lot, shall also send by mail, or convey to the nearest military post, as aforesaid, a duplicate certificate of the election, and the poll-books and ballots, to be forwarded to this office, as aforesaid.

No person shall act as an Inspector or Judge of the election who shall not have previously taken the amnesty oath, and no other oath shall be exacted of said Judges or Inspectors, but their personal honor will be considered as pledged for the faithful and honest performance of their duties.

SIXTH. The commander of the military department of the State has, in the absence of mail facilities, generously ordered the officers and soldiers under his command to aid and assist in the distribution of the poll-books and this proclamation, and in receiving the returns of the election and forwarding them to this office.

SEVENTH. That the delegates, who shall be elected, as aforesaid, shall assemble in Convention, at the city of Tallahassee, at twelve o'clock, on Wednesday, the 25th day of October, A. D. 1865, and elect a President and other necessary officers, and proceed to the discharge of their duties. The Convention will be the judge of the election of their respective members.

The commander of the military department of the State has issued a general order directing, that a United States transport steamer shall leave Key West on Wednesday, the 18th of October, and touch at Tampa, Manatee and Cedar Keys, on her way to St. Marks; and that another steamer shall leave Pensacola, on Saturday, the 21st, bound for the same port, touching at Apalachicola; and another shall leave Enterprise, on the St. Johns river, on Friday, the 20th, bound to Jacksonville, touching at the different points on the river; and another shall leave Fernandina on Friday, the 20th, and St. Augustine, on Saturday, the 21st, bound to Jacksonville. These steamers will convey the delegates elected, free of charge, except for their lodging and meals.

EIGHTH. A Constitution, republican in form, having been made, altered or amended, and adapted to the new order of things, the Convention will provide, by a schedule, for the election of a Governor and General Assembly, and for the reorganization of a permanent State Government.

NINTH. By the operations and results of the war, slavery has ceased to exist in this State. It cannot be revived. Every voter for delegates to the Convention, in taking the amnesty oath, takes a solemn oath to support the freedom of the former slave. The freedom intended is, the full, ample and complete freedom of a citizen of the United States. This does not necessarily include the privilege of voting; but it does include the idea of full constitutional guarantees of future possession and quiet enjoyment. The question of his voting is an open question—a proper subject for discussion—and is to be decided as a question of sound policy by the convention to be called.

TENTH. Upon the establishment of a republican form of State government, under a Constitution which guarantees and secures liberty to all the inhabitants alike, without distinction of color, there will no longer exist any impediment in the way of restoring the State to its proper constitutional relations to the government of the United States, whereby its people will be entitled to protection by the United States against invasion, insurrection, and domestic violence.

Given at Tallahassee, Florida, this 23d day of August, A. D. 1865.

WILLIAM MARVIN,
Provisional Governor.

Samuel J. Douglas,
Private Secretary.

Supplementary proclamation by Wm. Marvin, Provisional Governor of the State of Florida.

Considering, that the Amnesty oath, prescribed by the President's Proclamation of May 29, 1865, need not necessarily be subscribed and taken before a Commissioned Officer—Civil, Military or Naval—in the service of the United States: or before a Civil or military officer of a loyal State or Territory, in order to qualify a person to become a voter for delegates to the State Convention, although it must be subscribed and taken before such

officer in order to obtain the benefits of amnesty and pardon; and considering, that the President has invested me with authority to prescribe such rules and regulations, as may be necessary and proper, for convening a Convention composed of delegates to be chosen by that portion of the people of this State as are loyal to the United States, and no others; and has declared that no person shall be qualified as an elector, or shall be eligible as a member of such Convention unless he shall have previously taken and subscribed such oath of amnesty, without declaring before whom the oath for this purpose shall be taken:

Now, therefore, in order to render every facility to the well-disposed persons of this State, who are loyal to the United States, to qualify themselves to be voters for delegates to the Convention—

I, WILLIAM MARVIN, Provisional Governor, do issue this proclamation, supplementary to my proclamation, dated the 23d of August, 1865; and do ordain and proclaim, that the Inspectors or Judges of election for the different precincts in this State, shall have authority, and they are hereby authorized and required, to administer the said oath to the persons who may offer to take the same. And I do order and direct, that they shall not allow, under any pretence whatever, any person to vote at said election for delegates, unless he shall have first taken and subscribed the said oath before them; or shall, at the time of offering to vote, exhibit to them a certified copy of the oath taken by him before a Commissioned officer, Civil or Military, in the service of the United States, or before a Civil or Military officer of a loyal State or Territory. And I do further order, that the oath administered by them, with the original signatures of the subscribers thereunto, shall be returned by them with the certificate of election and pollbooks, and forwarded by the Judge of Probate or Clerk to the Provisional Governor, at Tallahassee, in the manner pointed out in my proclamation dated the 23d day of August, 1865.

This proclamation and the oath to be administered will be forwarded to the Judges of Probate or the Clerks of the Circuit Court, who are hereby directed to deliver the same to the Judges or Inspectors of the election.

Given at Tallahassee, the 11th day of September, 1865.

WM. MARVIN,
Provisional Governor.

Sam'l. J. Douglas, Private Secretary.

CONVENTION OF 1865.

Pursuant to the proclamations quoted above, a convention was held in Tallahassee, which convention, on October 28, 1865, annulled the Ordinance of Secession of January 10, 1861, and adopted a constitution, which became effective November 7, 1865 without being submitted to the people for ratification.

CONSTITUTION OR FORM OF GOVERNMENT FOR THE PEOPLE OF FLORIDA, 1865.

We, the People of the State of Florida, by our delegates in Convention assembled, in the city of Tallahassee, on the 25th day of October, in the year of our Lord 1865, and of the Independence of the United States the 90th year, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty and property, and the pursuit of happiness, do mutually agree, each with the other, to form the following Constitution and form of Government in and for the said State.

ARTICLE 1.
Declaration of Rights.

That the great and essential principles of liberty and free government may be recognized and established, we declare:

1. That all freemen, when they form a government, have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

2. That all political power is inherent in the people, and all free governments are founded on their authority, and established for their benefit; and therefore they have at all times an inalienable and indefeasible right to alter or abolish their form of government in such manner as they may deem expedient.

3. That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience, and that no preference shall ever be given by law to any religious establishment or mode of worship in this State.

4. That no property qualification for eligibility to office, or for the right of suffrage, shall ever be required in this State.

5. That every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty; and no law shall be passed to curtail, abridge or restrain the liberty of speech or of the press.

6. That the right of trial by jury shall forever remain inviolate.

7. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable seizures and searches; and that no warrant to search any place, or to seize any person or thing, shall issue without describing

the place to be searched, and the person or thing to be seized, as nearly as may be, nor without proable cause, supported by oath or affirmation.

8. That no freeman shall be taken, imprisoned, nor disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the law of the land.

9. That courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law; and right and justice administered without sale, denial or delay.

10. That in all criminal prosecutions, the accused hath a right to be heard by himself or counsel, or both; to demand the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and in all prosecutions by indictment or presentment, a speedy and public trial by an impartial jury of the county or district where the offence was committed; and shall not be compelled to give evidence against himself.

11. That all persons shall be bailable by sufficient securities, unless in capital offences, where the proof is evident, or the presumption is strong; and the habeas corpus act shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it.

12. That excessive bail shall in no case be required; nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted.

13. That no person shall, for the same offence, be twice put in jeopardy of life and limb.

14. That private property shall not be taken or applied to public use, unless just compensation be first made therefor.

15. That in all prosecutions and indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the libel is true, and published with good motives, and for justifiable ends, the truth, shall be a justification; and the jury shall be the judges of the law and facts.

16. That no person shall be put to answer any criminal charge, but by presentment, indictment or impeachment, except in such cases as the Legislature shall otherwise provide; but the Legislature shall pass no law whereby any person shall be required to answer any criminal charge involving the life of the accused, except upon indictment or presentment by a Grand Jury.

17. That no conviction shall work corruption of blood or forfeiture of estate.

18. That retrospective laws punishing acts committed before the exhistence of such laws, and by them only declared penal or criminal, are oppressive, unjust and incompatible with liberty; wherefore no ex post facto law shall ever be made.

19. That no law impairing the obligation of contracts shall be passed.

20. That the people shall have a right, in a peaceable manner, to assemble together to consult for the common good; and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address or remonstrance.

21. That no soldier in time of peace shall be quartered in any house without the consent of the owner; nor in time of war but in a manner prescribed by law.

22. That no standing army shall be kept up without the consent of the Legislature; and the military shall be in strict subordination to the civil power.

23. That perpetuities and monopolies are contrary to the genius of free people, and ought not to be allowed.

24. That no hereditary emoluments, privileges, or honors, shall be granted or conferred in this State.

25. That a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

26. That, to guard against transgressions upon the rights of the people, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE 2.
Distribution of the Powers of Government.

1. The powers of the government of the State of Florida shall be divided into three distinct departments, and each of them confided to separate body of Magistracy, to-wit: those which are Legislative to one; those which are Executive to another; and those which are Judicial to another.

2. No person or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except in the instance expressly provided in this Constitution.

ARTICLE 3.
Executive Department.

1. The Supreme Executive power shall be vested in a Chief Magistrate, who shall be styled Governor of the State of Florida.

2. The Governor shall be elected for four years, by the qualified electors, at the time and place they shall vote for representatives, and shall remain in office until a successor shall be chosen and qualified.

3. No person shall be eligible to the office of Governor unless he shall have attained the age of thirty years, shall have been a citizen of the United States ten years, and shall have been a resident of Florida at least five years next preceding his election.

4. There shall be elected at the same time, for the same term and with like qualifications as the Governor, a Lieutenant Governor, who shall be ex-officio President of the Senate, but shall have no vote except in cases of a tie, and during the session of the General Assembly, he shall receive such compensation as shall be allowed to a Senator.

5. The returns of every election for Governor and Lieutenant Governor, shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session next after their election, open and publish them in the presence of both Houses of the General Assembly; and the persons having the highest number of votes for the respective offices shall be Governor and Lieutenant Governor; but if two or more should be equal and highest in votes for the office of Governor, one of them shall be chosen Governor by the joint vote of the two Houses; and in like manner, if two or more shall be equal and highest in votes for the office of Lieutenant Governor, one of them shall be chosen Lieutenant Governor, by the joint vote of the two Houses. And contested elections for Governor and Lieutenant Governor shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.

6. The Governor shall at stated times receive a compensation for his services, which shall not be increased nor diminished during the term for which he shall have been elected; but such compensation shall never be less than three thousand dollars per annum.

7. He shall be the Commander-in-Chief of the Army and Navy of this State, and of the Militia thereof.

8. He may require information in writing from the officers of the Executive Department, on any subject relating to the duties of their respective offices.

9. He may by proclamation, on extraordinary occasions, convene the General Assembly at the Seat of Government, or at a different place, if that shall have become dangerous from an enemy or from disease; and in case of disagreement between the two Houses, with respect to the time of adjournment, he may adjourn them to such time as he may think proper, not beyond the day of the next meeting designated by the Constitution.

10. He shall, from time to time, give to the General Assembly information of the state of the Government, and recommend to their consideration such measures as he may deem expedient.

11. He shall take care that the laws be faithfully executed.

12. In all criminal and penal cases, (except impeachment) after conviction, he shall have power to grant reprieves and pardons, and remit fines and forfeitures under such rules and regulations as shall be prescribed by law.

13. The State Seal last heretofore used, (until altered by the General Assembly,) shall continue to be the Great Seal of the State, and shall be kept by the Governor for the time being, and used by him officially.

14. All commissions shall be in the name and by the authority of the State of Florida, be sealed with the State Seal, and signed by the Governor and attested by the Secretary of State.

15. There shall be a Secretary of State elected by the qualified electors of the State at the same time, and who shall continue in office for the same term of years as the Governor of the State; and he shall keep a fair register of the official acts and proceedings of the Governor, and shall when required lay the same, and all papers, minutes and vouchers relative thereto, before the General Assembly, and shall perform such other duties as may be required of him by law.

16. Vacancies that happen in offices, the appointment to which is vested in the General Assembly, or given to the Governor, with the advice and consent of the Senate, shall be filled by the Governor during the recess of the General Assembly, by granting commissions which shall expire at the end of the next session.

17. Every bill which shall have passed both Houses of the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; and if, after such reconsideration, two-thirds of the whole number voting shall agree to pass the bill, it shall be sent with the objections to the other House, by which it shall be reconsidered; and if approved by two-thirds of the whole number voting, it shall become a law; but in such cases the votes of both Houses shall be by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journals of each House respectively; and if any bill shall not be returned by the Governor within five 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 General Assembly by their adjournment prevent its return, in which case it shall not be a law.

18. Every order, resolution or vote to which the concurrence of both Houses may be necessary, (except on questions of adjournment,) shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, be repassed by both Houses, according to the rules and limitations prescribed in case of a bill.

19. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the Lieutenant Governor shall exercise

all the power and authority appertaining to the office of Governor until the Governor absent, or impeached, shall return, or be acquitted, or until the Governor next regularly elected shall be duly qualified, as the case may be; and for the time the Lieutenant Governor shall occupy the office of Governor, he shall receive the same compensation as shall be allowed by law to the regularly elected Governor.

20. In case of the impeachment of both the Governor and the Lieutenant Governor, their removal from office, death, refusal to qualify, resignation, or absence from the State, the Speaker of the House of Representatives shall in like manner administer the Government, unless the General Assembly shall otherwise provide; and for the time he shall occupy the office of Governor, he shall receive the same compensation as shall be allowed by law to the Governor.

21. It shall be the duty of the General Assembly to provide for the purchase or erection of a suitable building for the residence of the Governor, and the Governor shall reside at the seat of government; but whenever, by reason of danger from an enemy, or from disease, the Governor may deem the Capital unsafe, he may, by proclamation, fix the seat of government at some secure place within the State, until such danger shall cease.

22. No person shall hold the office of Governor and any other office or commission, civil or military, either in this State or under any State, or the United States, or any other power, at one and the same time, except the Lieutenant Governor or the Speaker of the House of Representatives, when he shall hold the office as aforesaid.

23. A State Treasurer and Comptroller of Public Accounts shall be elected by the qualified electors of the State at the same time, and who shall continue in office for the same term of years as the Governor of the State, and until their successors shall have been duly commissioned and qualified.

ARTICLE 4.
Legislative Department.

1. The Legislative power of this State shall be vested in two distinct branches, the one to be styled the Senate, the other the House of Representatives, and both together "The General Assembly of the State of Florida," and the style of the laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened."

2. The members of the House of Representatives shall be chosen by the qualified voters, and shall serve for the term of two years from the day of the general election, and no longer; and the sessions of the General Assembly shall be annual, and commence on the second Wednesday in November in each year.

3. The Representatives shall be chosen every two years on the first Monday in the month of October, until otherwise directed by law.

4. No person shall be a Representative unless he be a white man, a citizen of the United States, and shall have been an inhabitant of the State two years next preceding his election, and the last year thereof a resident of the County for which he shall be chosen, and shall have attained the age of twenty-one years.

5. The Senators shall be chosen by the qualified electors for the term of two years, at the same time, in the same manner, and in the same places where they vote for members of the House of Representatives; and no man shall be a Senator unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this State two years next preceding his election, and the last year thereof a resident of the District or County for which he shall be chosen, and shall have attained the age of twenty-five years.

6. The House of Representatives, when assembled, shall choose a Speaker and its other officers, and the Senate, its other officers, and in the absence of the Lieutenant Governor, a President pro tempore, and each House shall be judge of the qualifications, elections, and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

7. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House may prescribe.

8. Each House may determine the rules of its own proceedings, punish its members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same cause.

9. Each House, during the session, may punish by imprisonment, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings, provided, such imprisonment shall not extend beyond the end of the session.

10. Each House shall keep a Journal of its proceedings, and cause the same to be published immediately after its adjournment; and the yeas and nays of the members of each House shall be taken and entered upon the Journals upon the final passage of every bill, and may, by any two members, be required upon any other question; and any member of either House shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public, or an individual, and have the reasons of his dissent entered on the journal.

11. Senators and Representatives shall in all cases except, treason, felony, or breach of the peace, be privileged from arrest during the session of the General Assembly, and in going

to, or returning from the same, allowing one day for every twenty miles such member may reside from the place at which the General Assembly is convened, and for any speech or debate in either House they shall not be questioned in any other place.

12. The General Assembly shall make provision by law, for filling vacancies that may occur in either House, by the death, resignation, (or otherwise) of any of its members.

13. The doors of each House shall be open when in legislative session, except on such occasions as, in the opinion of the House, the public safety may imperiously require secrecy.

14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

15. Bills may originate in either House of the General Assembly; and all bills passed by one House may be discussed, amended, or rejected by the other; but no bill shall have the force of law, until on three several days it be read in each House and free discussion be allowed thereon, unless in cases of urgency, four-fifths of the House in which the same shall be depending, may deem it expedient to dispense with the rule; and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

16. Each Member of the General Assembly shall receive from the public Treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the term for which the Representatives were elected, when such law passed.

17. The sessions of the General Assembly shall not extend in duration over thirty days, unless it be deemed expedient by a concurrent majority of two-thirds of the members of each House; and no member shall receive pay from the State for his services after the expiration of sixty days continuously from the commencement of the session.

18. The General Assembly shall by law authorize the Circuit Court to grant licenses for building Toll-Bridges, and to establish Ferries, and to regulate the tolls of both; to construct dams across streams not navigable; to ascertain and declare what streams are navigable; but no special law for such purpose shall be made.

19. The General Assembly shall pass a general law prescribing the manner in which the names of persons may be changed, but no special law for such purpose shall be passed; and no law shall be made allowing minors to contract, or manage their estates.

20. The General Assembly shall pass a general law for the incorporation of Towns, Religious, Literary, Scientific, Benevolent, Military and other Associations, not Commercial, Industrial or Financial; but no special act incorporating any such association shall be passed.

21. No act incorporating any Railroad, Banking, Insurance, Commercial or Financial corporation shall be introduced into the General Assembly, unless the person or persons applying for such corporation shall have deposited with the Treasurer the sum of one hundred dollars as a bonus to the State.

22. Officers shall be removed from office for incapacity, misconduct or neglect of duty, in such manner as may be provided by law, when no mode of trial or removal is provided in this Constitution.

ARTICLE 5.

Judicial Department.

1. The Judicial power of this State, both as to matters of law and equity, shall be vested in a Supreme Court, Courts of Chancery, Circuit Courts, and Justices of the Peace, provided the General Assembly may also vest such civil or criminal jurisdiction as may be necessary in Corporation Courts, and such other courts as the General Assembly may establish; but such jurisdiction shall not extend to capital cases.

2. The Supreme Court, except in cases otherwise directed in this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law, provided that the said court shall always have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other original and remedial writs as may be necessary to give it a general superintendence, and control of all other courts.

3. The Supreme Court shall be holden at such times and places as may be prescribed by law; and two Judges of the Circuit Court may be added to the Supreme Court, when in session, at the discretion of the Legislature; and the court so composed shall constitute the Supreme Court of the State, when the Legislature shall so direct.

4. The State shall be divided into convenient Circuits; and for each Circuit there shall be a Judge, who shall, after his election or appointment, reside in the Circuit for which he has been elected or appointed; and shall, as well as Justices of the Supreme Court, receive for his services a salary of not less than twenty-five hundred dollars per annum, which shall not be diminished during his continuance in office; but the Judges shall receive no fees, perquisites of office, nor hold any other office of profit under the State, the United States, or any other power.

5. The Circuit Courts shall have original jurisdiction in all matters, civil and criminal, not otherwise excepted in this Constitution.

6. A Circuit Court shall be held in such counties and at such times and places therein, as may be prescribed by law; and the Judges of the several Circuit Courts may hold courts for each other, either for the entire Circuit

or for a portion thereof, and they shall do so when required, by order of the Governor or Chief Justice of the Supreme Court; and they may exercise jurisdiction in cases of writs of habeas corpus in any Judicial Circuit in which the Judge may happen to be at the time the case arises.

7. The General Assembly shall have power to establish and organize a separate court or courts of original equity jurisdiction; but until such court or courts shall be established and organized, the Circuit Courts shall exercise such jurisdiction.

8. There shall be elected in each county of this State, by the qualified voters, an officer to be styled the Judge of Probate, to take probate of wills, to grant letters testamentary, of administration and guardianship to attend to the settlement of the estates of decedents and minors, and to discharge the duties usually appertaining to Courts of Ordinary, and such other duties as may be required by law; subject to the direction and supervision of the Circuit Courts, as may be provided by law.

9. A competent number of Justices of the Peace shall be from time to time elected in and for each county, in such mode and for such term of office as the General Assembly may direct, and shall possess such jurisdiction as may be prescribed by law; and in cases tried before a Justice of the Peace, the right of appeal shall be secured under such rules and regulations as may be prescribed by law.

10. There shall be appointed by the Governor, by and with the advice and consent of the Senate, a Chief Justice and two Associate Justices of the Supreme Court of this State, who shall reside in this State, and hold their office for the term of six years from their appointment and confirmation, unless sooner removed under the provisions of this Constitution, for the removal of Judges by address or impeachment; and for willful neglect of duty or other reasonable cause, which shall not be sufficient ground for impeachment, the Governor shall remove any of them on the address of two-thirds of the General Assembly: Provided, however, That the cause or causes shall be notified to the Judge so intended to be removed; and he shall be admitted to a hearing in his own defence, before any vote for such removal shall pass, and in such case, the vote shall be taken by yeas and nays, and entered on the journal of each House respectively, and in case of the appointment to fill a vacancy in said offices, the person so appointed shall only hold office for the unexpired term of his predecessor.

11. There shall be elected, at the time and places prescribed by law, by the qualified electors of each of the respective Judicial Circuits of this State, one Judge of the Circuit Court, who shall reside in the Circuit for which he may be elected, and the said Circuit Judges shall continue in office for the term of six years from the date of their respective elections, unless sooner removed, under the provisions in this Constitution for the removal of Judges by address or impeachment; and for willful neglect of duty, or other reasonable cause, which shall not be sufficient for impeachment, the Governor shall remove any of them, on the address of two-thirds of the General Assembly: Provided, however, That the cause or causes shall be stated at length in such address and entered on the journal of each House: And Provided Further, That the cause or causes shall be notified to such Judge so intended to be removed, and he shall be admitted to a hearing in his own defence before any vote or votes for such removal shall pass; and in such cases the vote shall be taken by yeas and nays and entered on the journals of each House respectively.

12. The appointment of Chief Justice and Associate Justices of the Supreme Court shall be made every sixth year after their first appointment, and the election of Judges of the Circuit Court, and Judges or Chancellors of the Chancery Court, when established, shall be held in every sixth year after their first elections at the same time and place as the election for members of the General Assembly.

13. That whenever the General Assembly shall create a Chancery Court, under the provisions of this Constitution, the Judges thereof shall be elected in the manner provided in the last two sections of this article, and shall hold their offices and be subject to all the provisions of said sections: Provided, however, That the said Judges shall be elected by general ticket or by districts, as the General Assembly may direct.

14. That should a vacancy occur either in the Chancery or Circuit Courts, by death, removal, resignation or otherwise, it shall be the duty of the Governor to issue a writ of election to fill such vacancy, and he shall give at least sixty days notice thereof by proclamation: and the Judge so elected to fill said vacancy shall continue in office from the time he qualifies under his commission, until the expiration of the term of his predecessor: Provided, however, That should it become necessary to fill any such vacancy before an election can be held under the provisions of this Constitution, the Governor shall have power to fill such vacancy by appointment, and the person so appointed shall hold his office from the date of his commission until his successor shall be duly elected and qualified.

15. The Clerks of the Circuit Courts of the several Circuits of this State, shall be elected by the qualified voters in their several counties at such times and places as are now or may be provided by law: Provided, however, That the Chief Justice of the Supreme Court and the Chancellors of the Court of Chancery, when such courts shall be established, shall have the power to appoint the Clerks of their respective courts.

16. The Justices of the Supreme Court,

Chancellors and Judges of the Circuit Courts, shall, by virtue of their offices, be conservators of the peace throughout the State.

17. The style of all process shall be "The State of Florida," and all criminal prosecutions shall be carried on in the name of the State, and all indictments shall conclude, "against the peace and dignity of the same."

18. There shall be an Attorney General for the State, who shall reside at the seat of government, and he shall perform such duties as may be prescribed by law; he shall be elected by the qualified voters of the State, at the same time and in the same manner that the Comptroller, Secretary of State and Treasurer are elected, and his term of office shall be the same; but he may be removed by the Governor, on the address of a majority of the two Houses of the General Assembly, and shall receive for his services a compensation to be fixed by law.

19. There shall be one Solicitor for each Circuit, who shall reside therein, to be elected by the qualified electors of the Circuit, who shall hold his office for the term of four years, and shall receive for his services a compensation to be fixed by law.

20. No Justice of the Supreme Court shall sit as a Justice, or take part in the Appellate Court on the trial or hearing of any case which shall have been decided by him in the Court below.

21. The General Assembly shall have power to establish in each county a Board of Commissioners, for the regulation of the county business therein.

22. No duty not judicial shall be imposed by law upon the Justices of the Supreme Court, the Chancellors or the Judges of the Circuit Courts of this State, except in cases otherwise provided for in this Constitution.

ARTICLE 6.

The Right of Suffrage and Qualifications of Officers, Civil Officers, and Impeachments, and Removals from Office.

1. Every free white male person of the age of twenty-one years and upwards, and who shall be, at the time of offering to vote, a citizen of the United States, and who shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida, for one year next preceding the election at which he shall offer to vote, and who shall, at such time and for six months immediately preceding said time, have had his habitation, domicile, and place of permanent abode in the county in which he may offer to vote, shall be deemed a qualified elector at all elections under the Constitution, and none others; except in elections by general ticket in the State or District prescribed by law, in which cases the elector must have been a resident of the State one year next preceding the election, and six months within the elective district in which he offers to vote: Provided, That no officer, soldier, seaman or marine, in the regular army or navy of the United States, or any other person in the employ or pay of the United States, unless he be a qualified elector of the State previous to his appointment or enlistment, as such officer, soldier, seaman or marine, in the regular army or navy of the United States, or of the revenue service, shall be considered a resident of the State in consequence of being stationed within the same.

2. The General Assembly shall have power to exclude from every office of honor, trust, or profit within the State, and from the right of suffrage, all persons convicted of bribery, perjury or other infamous crime.

3. No person shall be capable of holding or being elected to any post of honor, profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of this State, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be a second to either party, or who shall, in any manner, aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance, whether the same occur or be committed in or out of the State; but the legal disability shall not accrue until after trial and conviction, according to due form of law.

4. No person who may hereafter be a collector or holder of public monies shall have a seat in either House of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the Treasury all sums for which he may be accountable.

5. No Governor, member of Congress, or of the General Assembly of this State, shall receive a fee, be engaged as counsel, agent or attorney, in any civil case or claim against this State, or to which this State shall be a party, during the time he shall remain in office.

6. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

7. Members of the General Assembly, and all officers, civil or military, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: "I do swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the office to which I have been elected, (or appointed) and will, to the best of my abilities, discharge the duties thereof and preserve, protect and defend the Constitution of this State and of the United States of America."

8. Every person shall be disqualified from serving as Governor, Senator, Representative,

or from holding any other office of honor or profit in this State, for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe to procure his election.

9. Laws shall be made by the General Assembly to exclude from office, and from suffrage, those who shall have been, or may hereafter be convicted of bribery, perjury, forgery, or other high crime or misdemeanor; and the privilege of suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper practices.

10. All civil officers of the State at large shall reside within the State, and all district or county officers within their respective districts or counties, and shall keep their respective offices at such places therein as may be required by law.

11. It shall be the duty of the General Assembly to regulate by law in what cases and what deduction from the salaries of public officers shall be made, for any neglect of duty in their official capacity.

12. Returns of elections for members of Congress and the General Assembly shall be made to the Secretary of State, in a manner to be prescribed by law.

13. In all elections by the General Assembly the vote shall be viva voce, and in all elections by the people the vote shall be by ballot.

14. No member of Congress or person holding or exercising any office of profit under the United States, or under any foreign power, shall be eligible as a member of the General Assembly of this State, or hold or exercise any office of profit under the State; and no person in this State shall ever hold two offices of profit at the same time, except the office of Justice of the Peace, Notary Public, Constable, and Militia offices, except by special act of the Legislature; but the Legislature shall never unite in the same person two offices, the duties of which are incompatible.

15. The General Assembly shall, by law, provide for the appointment or election and removal from office of all officers civil and military, in this State, not provided for in this Constitution.

16. The power of impeachment shall be vested in the House of Representatives.

17. All impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

18. The Governor and all civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust or profit under this State; but the parties nevertheless shall be liable to indictment, trial and punishment according to law.

ARTICLE 7.
Militia.

1. All Militia officers shall be elected or appointed, under such rules and regulations as the General Assembly may from time to time direct and establish.

2. All offences against the Militia laws shall be tried by Court Martial, or before a court and jury, as the General Assembly may direct.

3. No commission shall be vacated except by sentence of a Court Martial.

ARTICLE 8.
Taxation and Revenue.

1. The General Assembly shall devise and adopt a system of revenue, having regard to an equal and uniform mode of taxation, throughout the State.

2. No other or greater amount of tax or revenue shall at any time be levied, than may be required for the necessary expenses of the Government.

3. No money shall be drawn from the Treasury but in consequence of an appropriation by law, and a regular statement of the receipts and expenditures of all public monies shall be published and promulgated annually with the laws of the General Assembly.

4. The General Assembly shall have power to authorize the several counties and incorporated towns in this State to impose taxes for county and corporation purposes, respectively, and all property shall be taxed upon the principles established in regard to State taxation.

5. The General Assembly shall have power to authorize the levying of a capitation tax.

ARTICLE 9.
Census and Apportionment of Representation.

1. The General Assembly shall, in the year one thousand eight hundred and sixty-seven, and in the year one thousand eight hundred and seventy-five and every tenth year thereafter, cause an enumeration to be made of all the inhabitants of the State; and to the whole number of white inhabitants shall be added three-fifths of the number of colored people; and they shall then proceed to apportion the representation equally among the different counties, according to such enumeration, giving, however, one representative to every county, and increasing the number of representatives on a uniform ratio of population, according to the foregoing basis, and which ratio shall not be changed until a new census shall have been taken.

2. The General Assembly shall also, after every such enumeration, proceed to fix by law the number of Senators which shall constitute the Senate of the State of Florida, and which shall never be less than one-fourth nor more than one-half of the whole number of the House of Representatives; and they shall lay off the

State into the same number of Senatorial Districts, as nearly equal in the number of inhabitants as may be, according to the ratio of representation established in the preceding section, each of which districts shall be entitled to one Senator.

3. When any Senatorial District shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district, and no county shall be divided in forming a district.

4. No county now organized shall be divided into new counties, so as to reduce the inhabitants of either below the ratio of representation.

5. The several counties of this State shall be entitled to the following Representatives, viz: Escambia, three, Santa Rosa, two, Walton two, Holmes one, Washington one, Calhoun one, Franklin one, Jackson four, Gadsden three, Leon four, Wakulla one, Liberty one, Jefferson three, Madison two, Hamilton two, Lafayette one, Taylor one, Suwannee one, Columbia two, Baker one, Bradford one, Alachua two, Nassau one, Duval two, Clay one, St. Johns one, Putnam one, Marion two, Sumter one, Orange one, Volusia one, Brevard one, Levy one, Hernando one, Hillsborough one, Manatee one, Monroe one, Dade one, and Polk one. There shall be twenty-nine Senatorial Districts in this State, which shall be as follows: The county of Escambia shall compose the First District; the county of Santa Rosa shall compose the Second District; the county of Walton shall compose the Third District; the counties of Washington and Holmes shall compose the Fourth District; the county of Franklin shall compose the Fifth District; the county of Calhoun shall compose the Sixth District; the county of Jackson shall compose the Seventh District; the county of Gadsden shall compose the Eighth District; the county of Liberty shall compose the Ninth District; the county of Leon shall compose the Tenth District; the county of Wakulla shall compose the Eleventh District; the county of Jefferson shall compose the Twelfth District; the county of Madison shall compose the Thirteenth District; the county of Hamilton shall compose the Fourteenth District; the counties of Lafayette and Taylor shall compose the Fifteenth District; the county of Columbia shall compose the Sixteenth District; the county of Suwannee shall compose the Seventeenth District; the counties of Baker and Bradford shall compose the Eighteenth District; the county of Alachua shall compose the Nineteenth District; the county of Nassau shall compose the Twentieth District; the counties of Duval and Clay shall compose the Twenty-first District; the counties of St. Johns and Putnam shall compose the Twenty-second District; the county of Marion shall compose the Twenty-third District; the county of Sumter shall compose the Twenty-fourth District; the counties of Orange and Volusia shall compose the Twenty-fifth District; the counties of Levy and Hernando shall compose the Twenty-sixth District; the counties of Hillsborough and Manatee shall compose the Twenty-seventh District; the counties of Polk and Brevard shall compose the Twenty-eighth District; and the counties of Monroe and Dade shall compose the Twenty-ninth District; and each Senatorial District shall be entitled to one Senator.

ARTICLE 10.
Education.

1. The proceeds of all lands for the use of Schools and a Seminary or Seminaries of Learning shall be and remain a perpetual fund, the interest of which, together with all monies accrued from any other source, applicable to the same object, shall be inviolably appropriated to the use of Schools and Seminaries of Learning, respectively, and to no other purpose.

2. The general Assembly shall take such measures as may be necessary to preserve from waste or damage all lands so granted and appropriated for the purpose of Education.

ARTICLE 11.
Public Domain and Internal Improvement.

1. It shall be the duty of the General Assembly to provide for the prevention of waste and damage of the public lands, that may hereafter be ceded to the State of Florida, and it may pass laws for the sale of any part or portion thereof; and, in such cases, provide for the safety, security and appropriation of the proceeds, but in no wise to affect the purposes for which said lands have heretofore been appropriated.

2. A liberal system of Internal Improvement being essential to the development of the resources of the State, shall be encouraged by the government of this State; and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law proper objects for the extension of Internal Improvements, in relation to roads, canals and navigable streams, and to provide for a suitable application of such funds as may have been, or may hereafter be appropriated by said General Assembly for such improvements.

3. That the General Assembly may at any time cede to the United States Government a sufficient parcel or fraction of land for the purpose of coast defence and other national purposes.

ARTICLE 12.
Boundaries.

1. The boundary of the State of Florida shall be as follows: commencing at the mouth of the river Perdido, from thence up the middle of said river to where it intersects the southern boundary line of the State of Alabama, on the thirty-first degree of North latitude; then due East to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; from thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic Ocean; thence southwardly to the Gulf

of Florida and Gulf of Mexico; thence northwardly and westwardly, including all islands within five leagues of the shore, to the beginning.

ARTICLE 13.
Banks and Other Corporations.

1. The General Assembly shall pass no act of incorporation, nor make any alteration in one, unless with the assent of at least two-thirds of each House, and unless public notice in one or more newspapers of the State shall have been given for at least three months immediately preceding the session at which the same may be applied for.

2. No bank charter, nor any act of incorporation granting exclusive privileges, shall be granted for a longer period than twenty years.

3. Banks chartered by the General Assembly shall be restricted to the business of exchange, discount and deposit, and they shall not deal in real estate, nor merchandise, nor chattels, except as security for loans or discounts, or for debts due to such bank; nor shall they be concerned in insurance, manufacturing, exportation, or importation, except of bullion, or specie; nor shall they own real estate or chattels, except such as shall be necessary for their actual use in the transaction of business, or which may be received in payment of previously contracted debts, or purchased at legal sales to satisfy such debts, of which they shall be required to make sale within three years after the acquisition thereof.

4. The capital stock of any bank shall not be less than one hundred thousand dollars, to be paid in suitable installments, and shall be created only by the payment of specie therein.

5. All liabilities of such banks shall be payable in specie, and the circulation of no bank shall exceed three dollars for one of capital actually paid in.

6. No dividends or profits exceeding ten per centum per annum on the capital stock paid in shall be made; but all profits over ten per centum per annum shall be set apart and retained as a safety fund.

7. Stockholders in a bank, when an act of forfeiture is committed, or when it is dissolved or has expired, shall be individually and severally liable for the redemption of the outstanding circulation, in proportion to the stock owned by each, and no transfer of stock shall exonerate such stockholder from this liability, unless such transfer was made at least two years previous to said forfeiture, dissolution or expiration.

8. Banks shall be open to inspection under such regulations as may be prescribed by law, and it shall be the duty of the Governor to appoint a person or persons not connected in any manner with any bank in the State, to examine at least once a year into their state and condition; and the officers of every bank shall make quarterly returns under oath, to the Governor, of its state and condition, and the names of the stockholders, and shares held by each.

9. Non user for the space of one year, or any act of a corporation, or of those having control or management thereof, or intrusted therewith, inconsistent with, or in violation of the provisions of this Constitution, or of its charter, shall cause its forfeiture, and the General Assembly shall by general law provide a summary process for the sequestration of its effects and assets, and the appointment of officers to settle its affairs, and no forfeited charter shall be restored.

10. The General Assembly shall not pledge the faith and credit of the State to raise funds in the aid of any corporation whatever.

ARTICLE 14.
Amendments and Revisions of the Constitution.

1. No part of this Constitution shall be altered except by a Convention duly elected.

2. No convention of the people shall be called unless by the concurrence of two thirds of all the members of each House of the General Assembly, made known by the passing of a bill, which shall be read three times on three several days in each House.

3. Whenever a Convention shall be called, proclamation of an election for Delegates shall be made by the Governor at least thirty days before the day of election. Every County and Senatorial District shall be entitled to as many Delegates as it has representatives in the General Assembly. The same qualifications shall be required in Delegates, and in Electors, that are required in members of the General Assembly, and voters for the same respectively, and the elections for Delegates to a Convention and the returns of such election, shall be held and made in the manner prescribed by law for regulating elections for members of the General Assembly, but the Convention shall judge of the qualifications of its members.

ARTICLE 15.
Seat of Government.

The Seat of Government shall be and remain permanent at the City of Tallahassee, until otherwise provided for by the action of a Convention of the people of the State.

ARTICLE 16.
General Provisions.

1. Whereas, slavery has been destroyed in this State by the Government of the United States; therefore, neither slavery nor involuntary servitude shall in future exist in this State, except as a punishment for crimes, whereof the party shall have been convicted by the courts of the State, and all the inhabitants of the State, without distinction of color, are free, and shall enjoy the rights of person and property without distinction of color.

2. In all criminal proceedings founded upon injury to a colored person, and in all cases affecting the rights and remedies of colored persons, no person shall be incompetent to testi-

fy as a witness on account of color; in all other cases, the testimony of colored persons shall be excluded, unless made competent by future legislation. The jury shall judge of the credibility of the testimony.

3. The Jurors of this State shall be white men, possessed of such qualifications as may be prescribed by law.

4. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his confession in open court.

5. Divorces from the bonds of matrimony shall not be allowed but by the judgment of a court, as shall be prescribed by law.

6. The General Assembly shall declare by law what parts of the common law, and what parts of the civil law, not inconsistent with the Constitution, shall be in force in this State.

7. The oaths of officers directed to be taken under this Constitution, may be administered by any judge, or justice of the peace, in the State of Florida, until otherwise provided by law.

ARTICLE 17.
Schedule and Ordinance.

1. All laws of the State passed during and since the tenth session of the Legislature thereof, in 1860, not repugnant to the Constitution of this State, or of the United States, shall be valid; all writs, actions, prosecutions, judgments and decrees, of the courts of the State, all executions and sales made thereunder, and all acts, orders and proceedings of the Judges of Probate, and of Executors, Administrators, Guardians and Trustees, provided they were in conformity to the laws then in force, and not fraudulent, shall be as valid as if made under the usual and ordinary legislation of the country, provided that the same be not repugnant to the Constitution of the State and of the United States.

2. All fines, penalties, forfeitures, obligations and escheats, heretofore accruing to the State of Florida, and not made unlawful by the Constitution or laws of the United States, shall continue to accrue to the use of the State.

3. All recognizances heretofore taken shall remain valid, and all bonds executed to the Governor of the State of Florida, either before or since the first day of January, 1861, or to any other officer of the State in his official capacity, shall be of full force and virtue for the uses therein respectively expressed, and may be sued for and recovered accordingly; and all criminal prosecutions and penal actions which have arisen may be prosecuted to judgment and execution in the name of the State.

4. The Provisional Governor of this State is hereby requested to authorize the civil officers of this State who were discharging the duties of their offices prior to, or during the month of May, A. D. 1865, to resume the exercise of the functions of their respective offices, and to make such other appointments to office as may be necessary or proper to reorganize or re-establish the civil government of this State; and all actions at law, or suits in chancery, or any proceeding pending in any of the courts of this State, prior to, or during the said month of May, A. D. 1865, and either before or subsequent to the 10th day of January, A. D. 1861, shall continue in all respects valid, and may be prosecuted to judgment and decree; and all judgments and decrees rendered in civil cases in any of the courts in this State during the period of time last above specified, and not repugnant to the constitution of the United States, are hereby declared of full force, validity and effect.

5. The Provisional Governor of the State is hereby requested and authorized, at as early a day as practicable, to issue writs of election to the proper officers in the different counties in this State, and make proclamation for an election for Governor, Lieutenant Governor, Secretary of State, Treasurer, Comptroller of Public Accounts, Attorney General, Circuit Judges, Judge of Probate, Sheriffs, Clerks of Circuit Courts, Solicitors, Representative in Congress, Senators and Representatives of the General Assembly, County Commissioners, Coroners, Justices of the Peace, County Surveyors, and all other officers provided for by this Constitution. The said election shall be held on the 29th day of November, A. D. 1865. The said election shall be conducted according to the existing laws of the State of Florida, and shall take place on the same day throughout the State, the returns to be made according to law. The members of the General Assembly so elected shall assemble on the 3d Monday in December, A. D. 1865. The Governor, Lieutenant Governor, Secretary of State, Treasurer, Comptroller of Public Accounts, Attorney General, Circuit Judges, Judges of Probate, Sheriffs, Clerks of Circuit Courts, Solicitors, Representative in Congress, Senators and Representatives of the General Assembly, County Commissioners, Coroners, Justices of the Peace, County Surveyors and all other officers provided for by this Constitution, shall enter upon the duties of their respective offices immediately after their election, and shall continue in office in the same manner and during the same period they would have done had they been elected on the first Monday in October, A. D. 1865. The Representative in Congress shall continue in office in the same manner and during the same period he would have done, had he been elected on the first Monday in October, A. D. 1865.

6. The Statutes of Limitation shall not be pleaded upon any claim in the hands of any person whomsoever, not sued upon when such claim was not barred by the Statutes of Limitation on the 10th day of January, A. D. 1861.

7. No law of this State providing that claims or demands against the estates of de-

cedents, shall be barred if not presented within two years, shall be considered as being in force within this State between the 10th day of January, 1861, and the 28th day of October, 1865.

Done in open Convention. In witness whereof the undersigned, the President of said Convention, and Delegates present representing the people of Florida, do hereby sign our names, this the seventh day of November, Anno Domini, Eighteen Hundred and Sixty-five, and of the Independence of the United States of America the ninetieth year, and the Secretary of said Convention doth countersign the same.

E. D. Tracy, President.
A. J. Peeler, Secretary.

MEMBERS OF THE CONSTITUTIONAL CONVENTION OF 1865.

E. D. TRACY, President
A. J. PEELER, Secretary

Baltzell, Thomas
Bell, Alexander
Bird, Wm. Capers
Bush, A. H.
Callaway, F. B.
Cooper, W. B.
Coulter, W. R.
Davidson, R. H. M.
Duncan, W. J. J.
Forman, Arthur J.
Gettis, James
Green, Jas. D.
Hendry, Francis A.
Hines, W. Jas.
Hogue, D. P.
Holden, J. W. H.
Johnston, Jas. F. P.
Kelly, Wm. W. J.
Landrum, J. M.
Lassiter, Jesse B.
Leslie, Felix
Livingston, Dan'l G.
Long, Thos. T.
Love, James
Maghee, James T.
Maxwell, G. Troup
May, Asa
McClellan, John
Mickler, James A., Jr.
Niblack, S. L.
Overstreet, Silas T.
Owens, James G.
Richard, John C.
Richards, Jackson N.
Richardson, A.
Scott, W. Wash.
Simmons, Moses
Spencer, S.
Taylor, J. L.
Walker, G. K.
Whidden, Wiley W.
Whitehurst, D. W.
Wiggins, James
Williams, S. N.
Wilson, Wm.
Wright, B. D.

ORDINANCES ADOPTED BY THE CONVENTION OF 1865.

Ordinances.
(No. 1.)

An Ordinance to Annul the Ordinance of Secession.

Whereas, the People of the State of Florida are desirous, in good faith, to restore the State to her former peaceful relations with the United States: therefore,

Be it ordained by the People of the State of Florida in Convention assembled, That the ordinance adopted by the Convention of the People on the 10th day of January, A. D. 1861, known as the secession ordinance, be and the same is hereby annulled.

Done in open Convention, October 28th, 1865.

(No. 3.)

An Ordinance to Repeal Certain Ordinances and Acts Therein Mentioned, and for Other Purposes.

Sec. 1. Be it ordained by the People of the State of Florida in Convention assembled, That all ordinances and resolutions heretofore passed by any Convention of the people of this State, and all acts and resolutions of the General Assembly of this State, conflicting or inconsistent with the Constitution of the United States and of the State of Florida, and in derogation of the existence or position of this State as one of the United States of America, be, and the same are hereby repealed.

Sec. 2. That all lawful and regular acts of the several Executive, Judicial and Ministerial officers of this State, since the 10th day of January, A. D. 1861 be and the same are hereby declared to be in all respects regular, valid and justifiable.

Sec. 3. That it shall be the duty of the General Assembly to make provision whereby persons who held offices under the United States in this State, on or before the 10th day of January, A. D. 1861, may be reimbursed or held without damage for monies, or other property in their possession, belonging to the Government of the United States, and which were by them turned over or paid to the Treasury or Government of the State.

Sec. 4. That all marriages to which there was no legal impediment, solemnized in this State, since the 10th day of January, A. D. 1861, by an ordained minister of the gospel, Justice of the Peace, judicial officer of this State, Notary Public, or commissioned officer in the army or navy of the United States, shall be, and the same are hereby declared to be legal and binding, to all intents and purposes whatsoever.

Done in open convention, Nov. 4, 1865.

(No. 6.)

An Ordinance in Relation to the State Treasury Notes.

Be it ordained by the People of the State of Florida in Convention assembled, That all State Treasury Notes issued, and all other liabilities contracted by the State of Florida, on or after the 10th day of January, A. D. 1861, to the 25th day of October, A. D. 1865, except such liabilities as may be due to the Seminary and School funds, and such other liabilities as are provided for by this Constitution, be and are declared void, and the General Assembly shall have no power to provide for the payment of the same or any part thereof.

Done in open Convention, Nov. 6, 1865.

(No. 7.)

An Ordinance in Relation to State Liabilities.

Be it ordained by the People of the State of Florida in Convention assembled, That the ordinance in relation to State Liabilities and Treasury Notes, shall not be constructed to invalidate, impair or make void any bona fide contract or liability of the State of Florida, incurred or undertaken prior to the date of the ordinance of secession: Provided, That this ordinance shall not apply to any claims which have heretofore been declared fraudulent or have been rejected by the State.

Done in open Convention, Nov. 7, 1865.

(No. 8.)

An Ordinance in Reference to Contracts Made During the Late War.

Sec. 1. Be it ordained by the People of the State of Florida in Convention assembled, That in all proceedings in the courts of this State founded upon a contract or contracts made and entered into during the late war between the United States and the late Confederate States, the courts are hereby authorized to admit testimony as to the value of the property or consideration contemplated by the parties to said contracts, and to instruct the jury to find accordingly, provided that the defendant shall allege by plea under oath, and prove to the satisfaction of the Jury, that the currency contemplated in the payment of said contract or contracts, was Confederate or State Treasury notes, or upon what basis the consideration, or the value of the property or its use, which was estimated at the time of the formation of said contract or contracts.

Sec. 2. Be it further ordained, That Executors, Administrators, Trustees, and Guardians, are hereby authorized by and with the approval of the Probate Court to compromise with persons against whom they hold notes or claims made during the war aforesaid, upon the basis of the real value of the property or consideration for which said notes were given, or upon which said claims were founded.

Done in open Convention, Nov. 7, 1865.

CONSTITUTION OF 1868.

The President's plan for restoring the state to its status in the American Union was not satisfactory to the congress as then constituted which, in effect disregarding the President's proclamation under which the state government was reestablished in 1865 and under which the state constitution of 1865 was established, by an act passed, over the President's veto, on March 2, 1867, placed Florida in a military district with other southern states and required the federal military authorities to order an election of delegates to a convention to frame a new constitution and state government.

FEDERAL ACT PROVIDING FOR MILITARY CONTROL AND FOR A CONVENTION.

Act of March 2, 1867

(14 U. S. Stat. 428)

An Act to Provide for the More Efficient Government of the Rebel States.

WHEREAS no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

Sec. 2. **And be it further enacted,** That it shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

Sec. 3. **And be it further enacted,** That it shall be the duty of each officer assigned as aforesaid, to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals; and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this act, shall be null and void.

Sec. 4. **And be it further enacted,** That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment

shall be inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions: PROVIDED, That no sentence of death under the provisions of this act shall be carried into effect without the approval of the President.

Sec. 5. **And be it further enacted,** That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such constitutions shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: PROVIDED, That no such person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

Sec. 6. **And be it further enacted,** That, until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote, under the provisions of the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third article of said constitutional amendment.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

LA FAYETTE S. FOSTER,
President of the Senate, pro tempore.

In the House of Representatives,)
March 2, 1867.)

The President of the United States having returned to the House of Representatives, in which it originated, the bill entitled "An act to provide for the more efficient government of the rebel States," with his objections thereto, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same; and

Resolved, That the said bill do pass, two thirds of the House of Representatives agreeing to pass the same.

Attest:

EDWD. McPHERSON,
Clerk of H. R. U. S.

In Senate of the United States,)
March 2, 1867.)

The Senate having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act to provide for the more efficient government of the rebel States," returned to the House of Representatives by the President of the United States, with his objections, and sent by the House of Representatives to the Senate, with the message of the President returning the bill:

Resolved, That the bill do pass, two thirds of the Senate agreeing to pass the same.

Attest:

J. W. FORNEY,
Secretary of the Senate.

CONVENTION OF 1868

Pursuant to military orders, promulgated and issued under the authority of the above act of March 2, 1867, the state was divided into 19 election districts for the purpose of electing delegates to the constitutional convention to be held pursuant to the said act. An election was held, during the three days beginning November 14, 1867, under military control, for the purpose of electing the delegates. At the election, held as aforesaid, 46 delegates were elected to the convention. The following shows the districts and the counties comprising them, the names of the persons elected as delegates, and the names of the members of the convention after certain of the elected delegates were unseated and others replaced them:

Districts and counties comprising them	*Persons elected as delegates*	*Persons sitting as members*
First—Escambia and Santa Rosa	George W. Walker George J. Alden Lyman W. Rowley	J. W. Butler George J. Alden Lyman W. Rowley
Second—Walton and Holmes	John L. Campbell	John L. Campbell
Third—Washington, Calhoun and Jackson	W. J. Purman L. C. Armistead Emanuel Fortune Homer Bryan	W. J. Purman L. C. Armistead Emanuel Fortune Homer Bryan
Fourth—Gadsden	W. U. Saunder D. Richards Fred Hill	M. L. Stearns J. E. A. Davidson Frederick Hill
Fifth—Liberty and Franklin	J. W. Childs	J. W. Childs
Sixth—Leon and Wakulla	T. W. Osborn Joseph E. Oates C. H. Pearce John Wyatt Green Davidson O. B. Armstrong	T. W. Osborn Joseph E. Oates Richard Wells John Wyatt Green Davidson O. B. Armstrong
Seventh—Jefferson	J. W. Powell A. G. Bass Robert Meacham Anthony Mills	J. W. Powell A. G. Bass Robert Meacham Anthony Mills
Eighth—Madison	Roland T. Rambauer Major Johnson William R. Cone	Roland T. Rambauer Major Johnson William R. Cone
Ninth—Hamilton and Suwannee	Thomas Urquhart Andrew Shuler	Thomas Urquhart Andrew Shuler
Tenth—Taylor and Lafayette	J. N. Krimminger	J. N. Krimminger
Eleventh—Alachua	Wm. K. Cessna Josiah T. Walls Horatio Jenkins, Jr.	Wm. K. Cessna Josiah T. Walls Horatio Jenkins, Jr.
Twelfth—Columbia and Baker	S. B. Conover Auburn Erwin	S. B. Conover Auburn Erwin
Thirteenth—Bradford and Clay	B. McRae	B. McRae
Fourteenth—Nassau, Duval and St. Johns	N. C. Dennett J. C. Gibbs William Bradwell Liberty Billings	N. C. Dennett J. C. Gibbs William Bradwell O. B. Hart
Fifteenth—Putnam, Levy and Marion	J. H. Goss A. Chandler W. Rogers E. D. Howse	J. H. Goss A. Chandler W. Rogers E. D. Howse
Sixteenth—Sumter and Hernando	Sam J. Pearce	Sam J. Pearce
Seventeenth—Hillsborough, Polk and Manatee	C. R. Mobley	C. R. Mobley
Eighteenth—Volusia, Orange, Broward and Dade	David Mizell	David Mizell
Nineteenth—Monroe	E. L. Ware	E. L. Ware

Soon after the delegates met in Tallahassee, Florida, on Monday, January 20, 1868, bitter antagonism arose among the delegates and divided them into factions, none of which could command the presence of a quorum. One minority faction proceeded to Monticello, Florida, attempted to organize, and returned to Tallahassee, where it obtained possession of the convention hall. This caused great confusion and the military authorities intervened to reorganize the discordant delegates. The reorganized convention with a federal military officer presiding, proceeded rapidly with its great responsibilities, and a constitution was drafted and approved February 25, 1868, and subsequently ratified by the people at an election held May 4, 1868.

CONSTITUTION OF THE STATE OF FLORIDA, ADOPTED FEBRUARY 25, 1868.

PREAMBLE.

We, the people of the State of Florida, grateful to Almighty God for our freedom, in order to secure its blessings and form a more perfect government, insuring domestic tranquility, maintaining public order, perpetuating liberty, and guaranteeing equal civil and political rights to all, do establish this Constitution.

DECLARATION OF RIGHTS.

Section 1. All men are by nature free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of its citizens, and they have the right to alter or amend the same whenever the public good may require it; but the paramount allegiance of every citizen is due to the Federal Government, and no power exists with the people of this State to dissolve its connection therewith.

Sec. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but in all civil cases a jury trial may be waived by the parties in the manner prescribed by law.

Sec. 4. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of the peace and safety of the State.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended unless when, in case of invasion or rebellion, the public safety may require its suspension.

Sec. 6. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

Sec. 7. All persons shall be bailable by sufficient sureties, unless for capital offences when the proof is evident, or the presumption great.

Sec. 8. No person shall be tried for a capital or otherwise infamous crime, except in cases of impeachment, and in cases of the militia when in active service in time of war, or which the State may keep, with the consent of Congress, in time of peace, and in case of petit larceny, under the regulation of the Legislature, unless on presentment and indictment by a grand jury; and in any trial, by any court, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offence, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation.

Sec. 9. Every citizen may fully speak and write his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech or the press. In all criminal prosecutions and civil actions for libel the truth may be given in evidence to the jury, and if it shall appear that the matter charged as libellous is true, but was published for good motives, the party shall be acquitted or exonerated.

Sec. 10. The people shall have the right to assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress or grievance.

Sec. 11. All laws of a general nature shall have a uniform operation.

Sec. 12. The military shall be subordinate to the civil power.

Sec. 13. No soldier shall, in time of peace, be quartered in any house, except with the consent of the owner, nor in time of war, except in manner prescribed by law.

Sec. 14. Representation shall be apportioned according to population, as well as may be, but no county shall have more than four representatives, or less than one representative, in the Assembly.

Sec. 15. No person shall be imprisoned for debt, except in case of fraud.

Sec. 16. No bill of attainder, or ex post facto law, or law impairing the obligations of contracts, shall ever be passed.

Sec. 17. Foreigners who are or who may

hereafter become bona fide residents of the State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

Sec. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

Sec. 19. The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrants issued but in probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

Sec. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort; and no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

Sec. 21. This State shall ever remain a member of the American Union, the people thereof a part of the American nation, and any attempt from whatever source, or upon whatever pretence, to dissolve said Union, or to sever said nation, shall be resisted with the whole power of the State.

Sec. 22. The people shall have the right to bear arms in defence of themselves and of the lawful authority of the State.

Sec. 23. No preference can be given by law to any church, sect, or mode of worship.

Sec. 24. This enunciation of rights shall not be construed to impair or deny others retained by the people.

ARTICLE I.
Boundaries.

The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; then due east to the Chattahoochee river; then down the middle of said river to its confluence with the Flint river; from thence straight to the head of the St. Mary's river; then down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land, to a point west of the mouth of the Perdido river; thence to the place of beginning.

ARTICLE II.
Seat of Government.

The seat of government shall be and remain permanent at the city of Tallahassee, in the county of Leon, until otherwise located by a majority vote of the Legislature, and by a majority vote of the people.

ARTICLE III.
Distribution of Powers.

The powers of the government of the State of Florida shall be divided into three departments: Legislative, Executive, and Judicial; and no person properly belonging to one of the departments shall exercise any functions appertaining to either of the others, except in those cases expressly provided for by this Constitution.

ARTICLE IV.
Legislative Department.

Section 1. The legislative authority of this State shall be vested in a Senate and Assembly, which shall be designated "The Legislature of the State of Florida," and the sessions thereof shall be held at the seat of government of the State.

Sec. 2.[19] The sessions of the Legislature shall be annual, the first session on the second Monday of June, A. D. 1868, and thereafter on the first Tuesday after the first Monday of January, commencing in the year A. D. 1869. The Governor may, in the interim, convene the same in extra session by his proclamation.

Sec. 3. The members of the Assembly shall be chosen biennially, those of the first Legislature on the first Monday, Tuesday and Wednesday of May, A. D. 1868, and thereafter on the first Tuesday after the first Monday of November, commencing with the year A. D. 1870.

Sec. 4. Senators shall be chosen for the term of four years, at the same time and place as members of the Assembly; Provided, That the Senators elected at the first election from the senatorial districts designated by even numbers shall vacate their seats at the expiration of two years, and thereafter all senators shall be elected for the term of four years, so that one-half of the whole number shall be elected biennially.

Sec. 5. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent.

Sec. 6. Each house shall judge of the qualifications, elections, and returns of its own members; choose its own officers, except the President of the Senate; determine the rules of its proceedings, and may punish its members for disorderly conduct, and with the concurrence of two-thirds of all the members present expel a member.

Sec. 7. Either house, during the session, may punish by imprisonment any person not a member, who shall have been guilty of disorderly or contemptuous conduct in its presence; but such imprisonment shall not extend beyond the final adjournment of the session.

Sec. 8. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the presence of absent members in such manner and under such penalties as each house may prescribe.

[19] See amendment, p. 192 infra.

Sec. 9. Any person who shall be convicted of embezzlement or defalcation of the funds of the State, or of having given or offered a bribe to secure his election or appointment to office, or of having received a bribe to aid in the procurement of office any other person, shall be disqualified from holding any office of honor, profit, or trust in the State; and the Legislature shall, as soon as practicable, provide by law for the punishment of such embezzlement, defalcation, or bribery as a felony.

Sec. 10. Each house shall keep a journal of its own proceedings, which shall be published, and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the journal.

Sec. 11. The doors of each house shall be kept open during its session, except the Senate while sitting in executive session; and neither shall, without the consent of the other, adjourn for more than three days, or to any other town than that in which they may be holding their session.

Sec. 12. Any bill may originate in either house of the Legislature, and after being passed in one house, may be amended in the other.

Sec. 13. The enacting clause of every law shall be as follows: "The people of the State of Florida, represented in Senate and Assembly, do enact as follows."

Sec. 14. Each law enacted in the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title, and no law shall be amended or revised by reference to its title only; but in such case, the act as revised, or section as amended, shall be reenacted and published at length.

Sec. 15. Every bill shall be read by sections on three several days in each house, unless in case of emergency two-thirds of the house where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with; and the vote of the final passage of every bill, or joint resolution, shall be taken by yeas and nays, to be entered in the journal of each house, and a majority of the members present in each house shall be necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective houses, and by the secretary of the Senate and clerk of the Assembly.

Sec. 16. No money shall be drawn from the Treasury except by appropriation made by law, and accurate statements of the receipts and expenditures of the public money shall be attached to and published with the laws passed at every regular session of the Legislature.

Sec. 17. The Legislature shall not pass special or local laws in any of the following enumerated cases; that is to say—regulating the jurisdiction and duties of any class of officers, or for the punishment of crime or misdemeanor; regula [ting] the practices of courts of justices; providing for changing venue of civil and criminal cases; granting divorces; changing the names of persons; vacating roads, town plats, streets, alleys, and public squares; summoning and empannelling grand and petit juries, and providing for their compensation; regulating county, township, and municipal business; regulating the election of county, township, and municipal officers; for the assessment and collection of taxes, for State, county, and municipal purposes; providing for opening and conducting elections for State, county, and municipal officers, and designating the places of voting; providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities; regulating the fees of officers.

Sec. 18. In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

Sec. 19. Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating.

Sec. 20. Lotteries are hereby prohibited in this State.

Sec. 21. The Legislature shall establish a uniform system of county, township, and municipal government.

Sec. 22. The Legislature shall provide by general law for incorporating such municipal, educational, agricultural, mechanical, mining, and other useful companies or associations as may be deemed necessary.

Sec. 23. No person who is not a qualified elector of this State, or any person who shall have been convicted of bribery, forgery, perjury, larceny, or other high crime, unless restored to civil right, shall be permitted to serve on juries.

Sec. 24. Laws shall be passed regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

Sec. 25. Regular sessions of the Legislature may extend to sixty days, but any special session convened by the Governor shall not exceed twenty days.

Sec. 26. All property, both real and personal, of the wife, owned by her before marriage, or acquired afterward by gift, devise, descent or purchase, shall be her separate property, and not liable for the debts of her husband.

Sec. 27. The Legislature shall provide for the election by the people, or appointment by the Governor, of all State, county, or municipal officers not otherwise provided for by this Constitution, and fix by law their duties and compensation.

Sec. 28. Every bill which may have passed the Legislature shall, before becoming a law,

be presented to the Governor; if he approves it he shall sign it, but if not he shall return it with his objections to the house in which it originated, which house shall cause such objections to be entered upon its journal, and proceed to reconsider it; if, after such reconsideration, it shall pass both houses by a two-thirds vote of the members present, which vote shall be entered on the journal of each house, it shall become a law. If any bill shall not be returned within five days after it shall have been presented to the Governor, (Sundays excepted,) the same shall be a law, in like manner as if he had signed it. If the Legislature, by its final adjournment, prevent such action, such bill shall be a law, unless the Governor, within ten days next after the adjournment, shall file such bill with his objections thereto in the office of the Secretary of State, who shall lay the same before the Legislature at its next session, and if the same shall receive two-thirds of the votes present it shall become a law.

Sec. 29.[29] The Assembly shall have the sole power of impeachment, but a vote of two-thirds of all the members present shall be required to impeach any officer; and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the senators present.

The Chief Justice shall preside at all trials by impeachment, except in the trial of the Chief Justice, when the Lieutenant-Governor shall preside.

The Governor, Lieutenant-Governor, members of the Cabinet, justices of the Supreme Court, and judges of the circuit court, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment according to law. All other officers who shall have been appointed to office by the Governor, and by and with the consent of the Senate, may be removed from office upon the recommendation of the Governor and consent of the Senate, but they shall nevertheless be liable to indictment, trial and punishment according to law for any misdemeanor in office; all other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

Sec. 30. Laws making appropriation for the salaries of public officers, and other current expenses of the State, shall contain provisions on no other subject.

Sec. 31. The Legislature shall elect United States senators in the manner prescribed by the Congress of the United States and by this Constitution.

ARTICLE V.
Executive Department.

Section 1. The supreme executive power of the State shall be vested in a Chief Magistrate, who shall be styled the Governor of Florida.

Sec. 2. The Governor shall be elected by the qualified electors at the time and places of voting for the members of the Legislature, and shall hold his office for four years from the time of his installation; Provided, That the term of the first Governor elected under this Constitution shall expire at the opening of the regular session of the Legislature of A. D. 1873, and until his successor shall be qualified. He shall take the oath of office prescribed for all State officers.

Sec. 3. No person shall be eligible to the office of Governor who is not a qualified elector, and who has not been nine years a citizen of the United States, and three years a citizen of the State of Florida, next preceding the time of his election.

Sec. 4. The Governor shall be Commander-in-chief of the military forces of the State, except when they shall be called into the service of the United States.

Sec. 5. He shall transact all executive business with the officers of the government, civil and military, and may require information in writing from the officers of the administrative department upon any subject relating to the duties of their respective offices.

Sec. 6. He shall see that the laws are faithfully executed.

Sec. 7. When any office, from any cause, shall become vacant, and no mode is provided by this Constitution or by the laws of the State for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission, which shall expire at the next election.

Sec. 8. The Governor may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both houses, when organized, the purpose for which they have been convened, and the Legislature then shall transact no legislative business except that for which they are especially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session, except by the unanimous consent of both houses.

Sec. 9. He shall communicate by message to the Legislature at each regular session the condition of the State, and recommend such measures as he may deem expedient.

Sec. 10. In case of a disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper, provided it is not beyond the time fixed for the meeting of the next Legislature.

Sec. 11. The Governor shall have power to suspend the collection of fines and forfeitures, and grant reprieves for a period not exceeding sixty days, dating from the time of conviction, for all offences, except in cases of impeachment. Upon conviction for treason he shall have power to suspend the execution of sen-

[29]See amendment, p. 192 infra.

tence until the case shall be reported to the Legislature at its next session, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve; and if the Legislature shall fail or refuse to make final disposition of such case, the sentence shall be enforced at such time and place as the Governor may by his order direct. The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted or reprieved, pardon or commutation granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date, and the date of its remission, commutation, pardon, or reprieve.

Sec. 12. The Governor, Justices of the Supreme Court, and Attorney-General, or a major part of them, of whom the Governor shall be one, may, upon such conditions, and with such limitations and restrictions as they may deem proper, remit fines and forfeitures, commute punishment, and grant pardons after conviction, in all cases, except treason and impeachment, subject to such regulations as may be provided by law relative to the manner of applying for pardons.

Sec. 13. All grants and commissions shall be in the name, and under the authority of the State of Florida, sealed by the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Sec. 14.[21] A Lieutenant-Governor shall be elected at the same time and places, and in the same manner as the Governor, whose term of office and eligibility shall also be the same. He shall be the President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tem. of the State shall act as Governor until the office be filled or the disability cease.

Sec. 15.[22] In the case of the impeachment of the Governor, or his removal from office, death, inability to discharge his official duties, or resignation, the power and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease; but the Governor shall not, without the consent of the Legislature, be out of the State in time of war.

Sec. 16.[23] The Governor may at any time require the opinion of the justices of the Supreme Court as to the interpretation of any portion of this Constitution, or upon any point of law, and the Supreme Court shall render such opinion in writing.

Sec. 17. The Governor shall be assisted by a Cabinet of administrative officers, consisting of a Secretary of State, Attorney-General, Comptroller, Treasurer, Surveyor-General, Superintendent of Public Instruction, Adjutant-General, and Commissioner of Immigration. Such officers shall be appointed by the Governor and confirmed by the Senate, and shall hold their offices the same time as the Governor, or until their successors shall be qualified.

Sec. 18. The Governor shall, by and with the consent of the Senate, appoint all commissioned officers of the State militia.

Sec. 19. The Governor shall appoint, by and with the consent of the Senate, in each county an assessor of taxes and a collector of revenue, whose duties shall be prescribed by law, and who shall hold their offices for two years, and be subject to removal upon the recommendation of the Governor and consent of the Senate. The Governor shall appoint in each county a county treasurer, county surveyor, superintendent of common schools, and five county commissioners, each of whom shall hold his office for two years, and the duties of each shall be prescribed by law. Such officers shall be subject to removal by the Governor when in his judgment the public welfare will be advanced thereby; Provided, No officer shall be removed except for wilful neglect of duty, or a violation of the criminal laws of the State, or for incompetency.

Sec. 20. The Governor and Cabinet shall constitute a Board of Commissioners of State Institutions, which board shall have supervision of all matters connected therewith, in such manner as shall be prescribed by law.

Sec. 21. The Governor shall have power, in cases of insurrection or rebellion, to suspend the writ of habeas corpus within the State.

Sec. 22. (Added by amendment, see p. 193 infra.)

ARTICLE VI.
Judicial Department.

Section 1. The judicial power of the State shall be vested in a Supreme Court, circuit courts, county courts, and justices of the peace.

Sec. 2. The style of all process shall be, "The State of Florida," and all prosecutions shall be conducted in the name and by the authority of the same.

Sec. 3. The Supreme Court shall consist of a chief justice and two associate justices, who shall hold their offices for life or during good behavior. They shall be appointed by the Governor and confirmed by the Senate.

Sec. 4. The majority of the justices of the Supreme Court shall constitute a quorum for the transaction of all business. The Supreme Court shall hold three terms each year at the Supreme Court room at the seat of government. Such terms shall commence on the second Tuesday of October, January, and April respectively.

Sec. 5.[24] The Supreme Court shall have appellate jurisdiction in all cases in equity, also in all cases of law in which is involved the

[21] Amendment, see p. 193 infra.
[22] Abrogated, see p. 193 infra.
[23] Amended, see p. 193 infra.
[24] Amended, see p. 192 infra.

title to or right of possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand or the value of the property in controversy exceeds three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity; also in all questions of law alone; in all criminal cases in which the offence charged amounts to felony. The court shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have the power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court, or before any circuit court in the State, or before any judge of said courts.

Sec. 6. The Supreme Court shall appoint a clerk of the Supreme Court, who shall have his office at the Capitol, and shall be librarian of the Supreme Court library; he shall hold his office until his successor is appointed and qualified.

Sec. 7. There shall be seven circuit judges appointed by the Governor and confirmed by the Senate, who shall hold their office for eight years. The State shall be divided into seven judicial districts, the limits of which are defined in this Constitution, and one judge shall be assigned to each circuit. Such judge shall hold two terms of his court in each county within his circuit, each year, at such times and places as shall be prescribed by law. The chief justice may in his discretion order a temporary exchange of circuits by the respective judges, or any judge, to hold one or more terms in any other circuit than that to which he is assigned. The judge shall reside in the circuit to which he is assigned.

Sec. 8. The circuit courts in the several judicial circuits shall have original jurisdiction in all cases of equity, also in all cases at law which involve the title or the right of possession to, or the possession of, or the boundaries of real property; of the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of property in controversy exceeds three hundred dollars, and of the action of forcible entry and unlawful detainer, and also in all criminal cases amounting to felony. They shall have final appellate jurisdiction in all civil cases arising in the county court in which the amount in controversy is one hundred dollars and upwards, and in all cases of misdemeanor. The circuit courts and the judges thereof shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction, and also shall have power to issue writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective circuits.

Sec. 9. There shall be a county court organized in each county. The Governor shall appoint a county judge for each county, who shall be confirmed by the Senate, and such judge shall hold his office for four years from the date of his commission, or until his successor is appointed and qualified.

Sec. 10.[25] The county court shall be a court of Oyer and Terminer.

Sec. 11.[26] The county court shall have jurisdiction of all misdemeanors and all civil cases where the amount in controversy does not exceed three hundred dollars; and its jurisdiction shall be final in all civil cases where the amount in controversy does not exceed one hundred dollars; but in no case shall the county court have jurisdiction when the title or boundaries of real estate is in controversy, or where the jurisdiction will conflict with that of the several courts of record; but they may have co-extensive jurisdiction with the circuit courts in cases of forcible entry and unlawful detention of real estate, subject to appeal to the circuit court. The county court shall have full surrogate or probate powers, but subject to appeal. Provision shall be made by law for all other powers, duties, and responsibilities of the county courts and judges. There shall be a regular trial term of the county court six times in each year, at such times and places as may be prescribed by law.

Sec. 12.[27] Grand and petit jurors shall be taken from the registered voters of the respective counties.

Sec. 13.[28] In all trials, civil and criminal, in the circuit and county courts, the evidence shall be reduced to writing by the clerk of the court or his deputy, under the control of the court; and every witness, after his examination shall have closed, shall be at liberty to correct the evidence he has given, and afterward shall sign the same; such evidence shall be filed in the office of the clerk with the papers in the case.

Sec. 14. All pleas shall be sworn to either by the parties or their attorneys.

Sec. 15.[29] The Governor shall appoint as many justices of the peace as he may deem necessary. Justices of the peace shall have criminal jurisdiction and civil jurisdiction not to exceed fifty dollars; but this shall not extend to the trial of any person for misdemeanor or crime. The duties of justices of the peace shall be fixed by law. Justices of the peace shall hold their offices during good behavior, subject to removal by the Governor at his own discretion.

Sec. 16. The Legislature may establish courts for municipal purposes only, in incorporated towns and cities. All laws for the organization or government of municipal courts shall be general in their provisions, and be equally applicable to the municipal courts of all incorporated towns and cities.

[25] Abrogated, see page 193 infra.
[26] Amended, see p. 193 infra.
[27] Amended, see p. 193 infra.
[28] Abrogated, see p. 192 infra.
[29] Amended, see p. 193 infra.

Sec. 17. Any civil cause may be tried before a practicing attorney as referee, upon the application of the parties, and an order from the court in whose jurisdiction the case may be, authorizing such trial and appointing such referee. Such referee shall keep a complete record of the case, including the evidence taken, and such record shall be filed with the papers in the case in the office of the clerk, and such cause shall be subject to an appeal in the manner prescribed by law.

Sec. 18. No other courts than those herein specified shall be organized in this State.

Sec. 19. The Governor, by and with the advice and consent of the Senate, shall appoint a State Attorney in each judicial circuit, whose duties shall be prescribed by law. He shall hold office for four years from the date of his commission, and until his successor shall be appointed and qualified. The Governor, by and with the advice and consent of the Senate, shall appoint in each county a sheriff and [a] clerk of the circuit court, who shall also be clerk of the county court and [of the] board of county commissioners, recorder, and ex officio auditor of the county, each of whom shall hold his office for four years. Their duties shall be prescribed by law.

Sec. 20. A constable shall be elected by the registered voters in each county for every (200) two hundred registered voters; but each county shall be entitled to at least two constables, and no county shall have more then twelve constables. They shall perform such duties, and under such instructions, as shall be prescribed by law.

Sec. 21. Attorneys at law, who have been admitted to practice in any court of record in any State of the Union, or to any United States Court, shall be admitted to practice in any court of this State, on producing evidence of having been so admitted.

ARTICLE VII.
Administrative Department.

Section 1. There shall be a cabinet of administrative officers, consisting of a Secretary of State, Attorney-General, Comptroller, Treasurer, Surveyor-General, Superintendent of Public Instruction, Adjutant-General, and Commissioner of Immigration, who shall assist the Governor in the performance of his duties.

Sec. 2. The Secretary of State shall keep the records of official acts of the Legislative and Executive departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall be the custodian of the Great Seal of the State.

Sec. 3. The Attorney-General shall be the legal adviser of the Governor, and of each of the cabinet officers, and shall perform such other legal duties as the Governor may direct, or as may be provided by law. He shall be reporter for the Supreme Court.

Sec. 4. The Treasurer shall receive and keep all funds, bonds, or other securities, in such manner as may be provided by law, and shall disburse no funds, bonds, or other securities, except upon the order of the Comptroller, countersigned by the Governor, in such manner as shall be prescribed by law.

Sec. 5. The duties of the Comptroller shall be prescribed by law.

Sec. 6. The Surveyor-General shall have the administrative supervision of all matters pertaining to the public lands, under such regulations as shall be prescribed by law.

Sec. 7. The Superintendent of Public Instruction shall have the administrative supervision of all matters pertaining to public instruction; the supervision of buildings devoted to educational purposes, and the libraries belonging to the university and common schools. He shall organize a historical bureau for the purposes of accumulating such matter and information as may be necessary for compiling and perfecting the history of the State. He shall also establish a cabinet of minerals and other natural productions.

Sec. 8. The Adjutant-General shall, under the orders of the Governor, have the administrative supervision of the military department, and the supervision of the State prison, and of the quarantine [of] the coast, in such manner as shall be prescribed by law.

Sec. 9. The Commissioner of Immigration shall organize a Bureau of Immigration, for the purposes of furnishing of information, and for the encouragement of immigration. The office of Commissioner of Immigration shall expire at the end of fifteen years from the ratification of this Constitution, but the Legislature shall have the power to continue it by law.

Sec. 10. Each officer of the Cabinet shall make a full report of his official acts, of the receipts and expenditures of his official acts, of the receipts and expenditures of his office, and of the requirements of the same, to the Governor at the beginning of each regular session of the Legislature, or whenever the Governor shall require it. Such reports shall be laid before the Legislature by the Governor at the beginning of each regular session thereof. Either House of the Legislature may at any time call upon any Cabinet Officer for any information required by it.

ARTICLE VIII.
Education.

Section 1. It is the paramount duty of the State to make ample provision for the education of all the children residing within its borders, without distinction or preference.

Sec. 2. The Legislature shall provide a uniform system of common schools, and a university, and shall provide for the liberal maintenance of the same. Instruction in them shall be free.

Sec. 3. There shall be a Superintendent of Public Instruction, whose term of office shall be four years and until the appointment and qualification of his successor. He shall have general supervision of the educational interests of the State. His duties shall be prescribed by law.

Sec. 4. The common school fund, the in-

terest of which shall be exclusively applied to the support and maintenance of common schools and purchase of suitable libraries and apparatus therefor, shall be derived from the following sources: The proceeds of all lands that have been or may hereafter be granted to the State by the United States for educational purposes; donations by individuals for educational purposes; appropriations by the State; the proceeds of lands or other property which may accrue to the State by escheat or forfeiture; the proceeds of all property granted to the State, when the purpose of such grant shall not be specified; all moneys which may be paid as an exemption from military duty; all fines collected under the penal laws of this State; such portion of the per capita tax as may be prescribed by law for educational purposes; twenty-five per centum of the sales of public lands which are now or may hereafter be owned by the State.

Sec. 5. A special tax of not less than one mill on the dollar of all taxable property in the State, in addition to the other means provided, shall be levied and apportioned annually for the support and maintenance of common schools.

Sec. 6. The principal of the common school fund shall remain sacred and inviolate.

Sec. 7. Provision shall be made by law for the distribution of the common school fund among the several counties of the State in proportion to the number of children residing therein between the ages of four and twenty-one years.

Sec. 8. Each county shall be required to raise annually by tax, for the support of common schools therein, a sum not less than one-half of the amount apportioned to each county for that year from the income of the common school fund. Any school district neglecting to establish and maintain for at least three months in each year such school or schools as may be provided by law for such district shall forfeit its portion of the common school fund during such neglect.

Sec. 9. The Superintendent of Public Instruction, Secretary of State, and Attorney-General shall constitute a body corporate, to be known as the Board of Education of Florida. The Superintendent of Public Instruction shall be president thereof. The duties of the Board of Education shall be prescribed by the Legislature.

ARTICLE IX.
Homestead.

Section 1. A homestead to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State, together with one thousand dollars' worth of personal property, and the improvements on the real estate, shall be exempted from forced sale under any process of law, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon, or for house, field, or other labor performed on the same. The exemption herein provided for in a city or town shall not extend to more improvements or buildings that the residence and business house of the owner.

Sec. 2. In addition to the exemption provided for in the first section of this article, there shall be and remain exempt from sale by any legal process in this State, to the head of a family residing in this State, such property as he or she may select, to the amount of one thousand dollars; said exemption in this section shall only prevent the sale of property in cases where the debt was contracted, liability incurred, or judgment obtained before the 10th day of May, A. D. 1865. Nothing herein contained shall be so construed as to exempt any property from sale for the payment of the purchase money of the same, or for the payment of taxes or labor.

Sec. 3. The exemptions provided for in sections 1 and 2 of this article, shall accrue to the heirs of the party having enjoyed or taken the benefit of such exemption, and the exemption provided for in section 1 of this article shall apply to all debts, except as specified in said section, no matter when or where the debt was contracted, or liability incurred.

ARTICLE X.
Public Institutions.

Section 1. Institutions for the benefit of the insane, blind, and deaf, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be provided by law.

Sec. 2. A State Prison shall be established and maintained in such a manner as may be fixed by law. Provision may be made by law for the establishment and maintenance of a house of refuge for juvenile offenders, and the Legislature shall have power to establish a home and workhouse for common vagrants.

Sec. 3. The respective counties of the State shall provide in the manner fixed by law for those of the inhabitants who by reason of age, infirmity, or misfortune may have claims upon the aid and sympathy of society.

ARTICLE XI.
Militia.

Section 1. All able-bodied male inhabitants of the State between the ages of eighteen and forty-five years, who are citizens of the United States, or have declared their intention to become citizens thereof, shall constitute the militia of the State; but no male citizen of whatever religious creed or opinion shall be exempt from military duty, except upon such conditions as may be prescribed by law.

Sec. 2. The Legislature shall provide by law for organizing and disciplining the militia of the State, for the encouragement of volunteer corps, the safekeeping of the public arms, and for a guard for the State prison.

Sec. 3. The Adjutant-General shall have the grade of major-general. The Governor, by and with the consent of the Senate, shall appoint two major-generals and four brigadier-generals of militia. They shall take rank according to the date of their commissions. The officers and soldiers of the State militia, when uniformed, shall wear the uniform prescribed for the United States Army.

Sec. 4. The Governor shall have power to call out the militia to preserve the public peace, to execute the laws of the State, to supress insurrection, or repel invasion.

ARTICLE XII.
Taxation and Finance.

Section 1. The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.

Sec. 2. The Legislature shall provide for raising revenue sufficient to defray the expenses of the State for each fiscal year, and also a sufficient sum to pay the principal and interest of the existing indebtedness of the State.

Sec. 3. No tax shall be levied except in pursuance of law.

Sec. 4. No moneys shall be drawn from the Treasury except in pursuance of appropriation made by law.

Sec. 5. An accurate statement of the receipts and expenditures of the public moneys shall be published with the laws of each regular session of the Legislature.

Sec. 6. The Legislature shall authorize the several counties and incorporated towns in the State to impose taxes for county and corporation purposes, and for no other purpose, and all property shall be taxed upon the principle established for State taxation. The Legislature may also provide for levying a special capitation tax and tax on licenses. But the capitation tax shall not exceed one dollar per annum for all purposes, either for State, county, or municipal taxes.

Sec. 7.[30] The Legislature shall have power to provide for issuing State bonds bearing interest, for securing the debt [of the State,] and for the erection of State buildings, support of State institutions, and perfecting public works.

Sec. 8. No tax shall be levied upon persons for the benefit of any chartered company of the State, or for paying the interest on any bonds issued by said chartered companies, or by counties, or by corporations, for the above-mentioned purposes.

ARTICLE XIII.
Census and Apportionment.

Section 1. The Legislature shall, in the year one thousand eight hundred and seventy-five, and every tenth year thereafter, cause an enumeration to be made of all the inhabitants of the State; and they shall then proceed to apportion the representation among the different counties, giving to each county one representative at large, and one additional to every one thousand registered voters therein, but no county shall be entitled to more than four representatives. The Legislature shall also, after every such enumeration, proceed to fix by law the number of senators which shall constitute the Senate of Florida, and which shall never be less than one-fourth nor more than one-half of the whole number of the Assembly.

Sec. 2. When any senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district, and all counties shall remain as now organized, unless changed by a two-thirds vote of both Houses of the Legislature.

ARTICLE XIV.
Suffrage and Eligibility.

Section 1. Every male person of the age of twenty-one years and upwards, of whatever race, color, nationality, or previous condition, who shall, at the time of offering to vote, be a citizen of the United States, or who shall have declared his intention to become such in conformity to the laws of the United States, and who shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida for one year, and in the county for six months next preceding the election at which he shall offer to vote, shall in such county be deemed a qualified elector at all elections under this Constitution. Every elector shall at the time of his registration take and subscribe to the following oath:

I, ————————, do solemnly swear that I will support, protect, and defend the Constitution and government of the United States, and the Constitution and government of the State of Florida, against all enemies, foreign or domestic; that I will bear true faith, loyalty, and allegiance to the same, any ordinances or resolution of any State Convention or Legislature to the contrary notwithstanding. So help me God.

Sec. 2. No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of felony be qualified to vote at any election unless restored to civil rights.

Sec. 3. At any election at which a citizen or subject of any foreign country shall offer to vote, under the provisions of this Constitution, he shall present to the persons lawfully authorized to conduct and supervise such elections, a duly sealed and certified copy of his declaration of intention, otherwise he shall not be allowed to vote; and any naturalized citizen offering to vote, shall produce before said persons lawfully authorized to conduct and supervise the election, the certificate of naturalization, or a duly sealed and certified copy thereof; otherwise he shall not be permitted to vote.

[30]Amended, see p. 192 infra.

Sec. 4. The Legislature shall have power and shall enact the necessary laws to exclude from every office of honor, power, trust, or profit, civil or military, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, larceny, or of infamous crime, or who shall make or become, directly or indirectly, interested in any bet or wager, the result of which shall depend upon any election; or who shall hereafter fight a duel, or send or accept a challenge to fight, or who shall be a second to either party, or be the bearer of such challenge or acceptance; but the legal disability shall not accrue until after trial and conviction by due form of law.

Sec. 5. In all elections by the Legislature the vote shall be **viva voce**, and in all elections by the people the vote shall be by ballot.

Sec. 6. The Legislature, at its first session after the ratification of this Constitution, shall by law provide for the registration, by the clerk of the circuit court in each county, of all the legally qualified voters in each county, and for the returns of elections; and shall also provide that after the completion, from time to time, of such registration, no person not duly registered according to law shall be allowed to vote.

Sec. 7. The Legislature shall enact laws requiring educational qualifications for electors after the year one thousand eight hundred and eighty, but no such laws shall be made applicable to any elector who may have registered or voted at any election previous thereto.

ARTICLE XV.

Schedule.

Section 1. That all ordinances and resolutions heretofore passed by any convention of the people, and all acts and resolutions of the Legislature conflicting or inconsistent with the Constitution of the United States and the statutes thereof, and with this Constitution, and in derogation of the existence or position of this State as one of the States of the United States of America, are hereby declared null and void, and of no effect.

Sec. 2. That all acts and resolutions of the General Assembly, and all official acts of the civil officers of the State, not inconsistent with the provisions of the Constitution and statutes of the United States or with this Constitution, or with any ordinance or resolution adopted by this convention, and which have not been, and are not by this Constitution annulled, are in force, and shall be considered and esteemed as the laws of the State until such acts or resolutions shall be repealed by the Legislature of the State or this Convention.

Sec. 3. All laws of the State passed by the so-called General Assembly since the 10th day of January, A. D. 1861, not conflicting with the word or spirit of the Constitution and laws of the United States, or with this Constitution, shall be valid. All writs, acts, proceedings, judgments, and decrees of the so-called courts of the State, where actual service was made on the defendant, all executions and sales made thereunder, and all acts, orders and proceedings of the judges of probate, and of executors, administrators, guardians, and trustees, provided they were in conformity with the laws then in force, and did not conflict with the Constitution and laws of the United States and this Constitution, shall be valid; the sales of the property or effects of deceased persons shall not prevent the widow from claiming said property in kind, in whosoever hands the same may be found, when the sale had not been made for the purpose of paying the debts of the deceased, and where other than lawful money of the United States was obtained for said property. Nothing herein contained shall be so construed as to make any one who, as an officer of any court, or who acted under the authority of any court, individually liable, provided they acted strictly in accordance with what was then considered the law of the State, and not conflicting with the Constitution and laws of the United States. All fines, penalties, forfeitures, obligations, and escheats heretofore accruing to the State of Florida shall continue to accrue to the use of the State. All recognizances heretofore taken shall remain valid, and all bonds executed to the Governor of the State of Florida, either before or since the 10th day of January, A. D. 1861, or to any other officer of the State in his official capacity, shall be of full force and virtue, for the use therein respectively expressed, and may be sued for and recovered accordingly, unless they were contrary to the laws of the United States or to this Constitution, or to any ordinance or resolution adopted by this Convention; also all criminal prosecution which have arisen may be prosecuted to judgment and execution in the name of the State. All actions at law or suits in chancery, or any proceedings pending in the courts of this State, either prior to or subsequent to the 10th day of January, A. D. 1861, shall continue in all respects valid, and may be prosecuted to judgment and decree. All judgments and decrees rendered in civil causes in any of the courts of the State during the period of time above specified, are hereby declared of full force, validity, and effect; Provided, That unless otherwise provided in this Constitution, the statute of limitation shall not be pleaded upon any claim in the hands of any person for the period of time between the 10th day of January, A. D. 1861, and the 25th day of October, A. D. 1865, whether proceedings at law had been commenced before the 25th day of October, 1865, or not; Provided further, That all claims of widows, minors, and decedents which were not barred by the statutes of this State on the 10th day of January, A. D. 1861, shall be considered good and valid for the period of two years from the ratification of this Constitution.

Sec. 4. That State treasury notes, all bonds issued, and all other liabilities contracted by the State of Florida, or any county or city thereof, on and after the 10th day of January, A. D. 1861, and before the 25th day of October, A. D. 1865, except such liabilities as may be

due to the seminary or school fund, be and are declared null and void, and the Legislature shall have no power to provide for the payment of the same or any part thereof; but this shall not be construed so as to invalidate any authorized liabilities of the State contracted prior to the 10th day of January, A. D. 1861, or subsequent to the 25th day of October, A. D. 1865.

Sec. 5. No money shall ever be appropriated by this State to reimburse purchasers of United States land who purchased the same of the State of Florida.

Sec. 6. All proceedings, decisions, or actions accomplished by civil or military officers acting under authority of the United States subsequent to the 10th day of January, A. D. 1861, and prior to the final restoration of the State to the government of the United States, are hereby declared valid, and shall not be subject to adjudication in the courts of this State, nor shall any person acting in the capacity of a soldier or officer of the United States, civil or military, be subject to arrest for any act performed by him pursuant to authorized instructions from his superior officers during the period of time above designated.

Sec. 7. That in all cases where judgments have been obtained against citizens of the State after the tenth day of January, eighteen hundred and sixty-one, and previous to the twenty-fifth day of October, eighteen hundred and sixty-five, and where actual service was not made on the person of any defendant, such defendant not served with process may appear in court within one year after the adoption of this Constitution, and make oath that injustice has been done, and that he or she has a good and valid defence, stating the defence, and upon making such oath and filing said defence the proceedings on the judgment shall cease until the defence is heard.

ARTICLE XVI.
Miscellaneous.

Section 1. Any person debarred from holding office in the State of Florida by the third section of the fourteenth Article of the proposed amendment to the Constitution of the United States, which is as follows: "No person shall be a senator or representative in Congress, or elector of President or Vice-President, hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legisature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two-thirds [of each House] remove such disability," is hereby debarred from holding office in this State: Provided, That whenever such disability from holding office shall be removed from any person by the Congress of the United States, the removal of such disability shall also apply to this State, and such person shall be restored in all respects to the rights of citizenship as herein provided for electors.

Sec. 2. Any person elected to the Senate of the United States by the Legislature of this State, or any person elected by the people, or appointed to office by the Governor of the State, or by any officer of the State, under the provisions of the Constitution adopted by the Convention of the people convened on the 25th day of October, A. D. 1865, shall not be empowered to hold such office after the same position or office shall have been filled by election or appointment under the provisions of this Constitution; Provided, That all officers holding office under the provisions of the Constitution adopted the 25th day of October, A. D. 1865, and not provided for in this Constitution, shall continue to hold their respective offices, and discharge the duties thereof, until the Governor shall, by his proclamation, declare such offices vacant.

Sec. 3. The several judicial circuits of the circuit courts shall be as follows: The First judicial circuit shall be composed of the counties of Escambia, Santa Rosa, Walton, Holmes, Washington, and Jackson; the Second judicial circuit shall be composed of the counties of Gadsden, Liberty, Calhoun, Franklin, Leon, Wakulla, and Jefferson; the Third judicial circuit shall be composed of the counties of Madison, Taylor, Lafayette, Hamilton, Suwannee, and Columbia; the Fourth judicial circuit shall be composed of the counties of Nassau, Duval, Baker, Bradford, Clay, and St. Johns; the Fifth judicial circuit shall be composed of the counties of Putnam, Alachua, Levy, Marion, and Sumter; the Sixth judicial circuit shall be composed of the counties of Hernando, Hillsborough, Manatee, Polk, and Monroe; the Seventh judicial circuit shall be composed of the counties of Volusia, Brevard, Orange, and Dade.

Sec. 4. The salary of the Governor of the State shall be five thousand dollars per annum; that of the Chief Justice shall be four thousand five hundred dollars; that of each Associate Justice shall be four thousand dollars; that of each Judge of the circuit court shall be three thousand five hundred dollars; that of the Lieutenant-Governor shall be two thousand five hundred dollars; that of each Cabinet officer shall be three thousand dollars. The pay of the members of the Senate and House of Representatives shall be five hundred dollars per annum, and in addition thereto ten cents per mile for each mile travelled from their respective places of residence to the Capital, and the same to return. But such distances shall be estimated by the shortest general thoroughfare. All other officers of the State shall be paid by fees or per diem fixed by law.

Sec. 5. The Legislature shall appropriate two thousand dollars each year for the purchase of such books for the Supreme Court library as the said court shall direct.

Sec. 6. The salary of each officer shall be payable quarterly upon his own requisition.

Sec. 7. The tribe of Indians located in the southern portion of the State, and known as the Seminole Indians, shall be entitled to one

member in each House of the Legislature. Such member shall have all the rights, privileges, and remuneration, as other members of the Legislature. Such members shall be elected by the members of their tribe, in the manner prescribed for all elections by this Constitution. The tribe shall be represented only by a member of the same, and in no case by a white man; Provided, That the representatives of the Seminole Indians shall not be a bar to the representation of any county by the citizens thereof.

Sec. 8. The Legislature may, at any time, impose such tax on the Indians as it may deem proper; and such imposition of tax shall constitute the Indians citizens, and they shall thenceforward be entitled to all the privileges of other citizens, and thereafter be barred of special representation.

Sec. 9. In addition to other crimes and misdemeanors, for which an officer may be impeached and tried, shall be included drunkenness and other dissipations. Incompetency, malfeasance in office, gambling, or any conduct detrimental to good morals, shall be considered sufficient cause for impeachment and conviction. Any officer, when impeached by the Assembly, shall be deemed under arrest, and shall be disqualified from performing any of the duties of his office until acquitted by the Senate. But any officer so impeached and in arrest may demand his trial by the Senate within one year from the date of his impeachment.

Sec. 10. The following shall be the oath of office for each officer in the State, including members of the Legislature: "I do solemnly swear that I will support, protect, and defend the Constitution and government of the United States, and of the State of Florida, against all enemies, domestic or foreign, and that I will bear true faith, loyalty, and allegiance to the same, and that I am entitled to hold office under this Constitution. That I will well and faithfully perform all the duties of the office of————, on which I am now about to enter. So help me God."

Sec. 11. The Legislature may provide for the donation of the public lands to actual settlers. But such donation shall not exceed one hundred and sixty acres to any one person.

Sec. 12. All county officers shall hold their respective offices at the county seats of their counties.

Sec. 13. The Legislature shall provide for the speedy publication of all statutes and laws of a general nature. All decisions of the Supreme Court, and all laws and judicial decisions shall be free for publication by any person. But no judgment of the Supreme Court shall take effect and be operative until the opinion of the court in such case shall be filed with the clerk of said court.

Sec. 14. The Legislature shall not create any office, the term of which shall be longer than four years.

Sec. 15. The Governor, Cabinet, and Supreme Court shall keep their offices at the seat of government. But in case of invasion or violent epidemics, the Governor may direct that the offices of the government shall be removed temporarily to some other place. The session of the Legislature may be adjourned for the same cause to some other place; but in such case of removal, all the departments of the government shall be removed to one place. But such removal shall not continue longer than the necessity for the same shall continue.

Sec. 16. A plurality of votes given at an election by the people shall constitute a choice when not otherwise provided by this Constitution.

Sec. 17. The term of the State officers elected at the first election under this Constitution, not otherwise provided for, shall continue until the first Tuesday of January, A. D. 1873, and until the installation of their successors, excepting the members of the Legislature.

Sec. 18. Each county and incorporated city shall make provision for the support of its own officers, subject to such regulations as may be prescribed by law. Each county shall make provision for building a courthouse and jail, and for keeping the same in good repair.

Sec. 19. If, at the meeting of the Senate at any session, the Lieutenant-Governor has not been qualified, or is not present, the Senate shall elect one of its members as temporary President before proceeding to other business.

Sec. 20. The Legislature shall, at the first session, adopt a seal for the State, and such seal shall be of the size of the American silver dollar. But said seal shall not again be changed after its adoption by the Legislature; and the Governor shall, by his proclamation, announce that said seal has become the great seal of the State.

Sec. 21. The Governor, Lieutenant-Governor, and all the State officers elected by the people, shall be installed on the first day of the meeting of the Legislature, and immediately assume the duties of their respective offices.

Sec. 22. The Governor and Lieutenant-Governor shall have been, before their election to office, nine years citizens of the United States, and three years citizens of the State. All other officers shall have been one year citizens of the State, and six months citizens of the county from which they are elected or appointed. No person shall be eligible to any office unless he be a registered voter.

Sec. 23. The Governor, or any State officer, is hereby prohibited from giving certificates of election or other credentials to any person as having been elected to the House of Representatives of the United States Congress, or the United States Senate, who has not been two years a citizen of the State, and nine years a citizen of the United States, and a registered voter.

Sec. 24.[a] The property of all corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such corporation be for religious, educational, or charitable purposes.

Sec. 25. All bills, bonds, notes, or evidences of debt outstanding and unpaid, given for or

[a] Amended, see p. 193 infra.

in consideration of bonds or treasury notes of the so-called Confederate States, or notes and bonds of this State, paid and redeemable in the bonds or notes of the Confederate States, are hereby declared null and void, and no action shall be maintained thereon in the courts of this State.

Sec. 26. It shall be the duty of the courts to consider that there is failure of consideration, and it shall be so held by the courts of this State, upon all deeds or bills of sale given for slaves, with convenant or warrantee of title or soundness, or both; upon all bills, bonds, notes, or other evidences of debt, given for or in consideration of slaves, which are now outstanding and unpaid, and no action shall be maintained thereon; and all judgments and decrees rendered in any of the courts of this State since the 10th day of January, A. D. 1861, upon all deeds or bills of sale, or upon any bond, bill, note, or other evidence of debt, based upon the sale or purchase of slaves, are hereby declared set aside, and the plea of failure of consideration shall be held a good defence in all actions to said suit; and when money was due previous to the 10th day of January, A. D. 1861, and slaves were given in consideration for such money, these shall be deemed a failure of consideration for the debt; Provided, That settlements and compromise of such transactions made by the parties thereto shall be respected.

Sec. 27. All persons who, as alien enemies under the sequestration act of the so-called Confederate Congress, and now residents of the State, had property sequestered and sold by any person acting under a law of the so-called Confederate States, or the State of Florida, subsequent to the 10th day of January, A. D. 1861, and prior to the 1st day of May, A. D. 1865, shall be empowered to file a bill in equity in the circuit court of the State, and shall be entitled to obtain judgment against the State for all damages sustained by said sale and detention of property. The Court shall estimate the damages upon the assessed valuation of the property in question in the year A. D. 1860, with interest at six per cent. from the time the owner was deprived of the same. But all judgments against the State shall be paid only in certificates of indebtedness, redeemable in State lands. Said certificates shall be issued by the Governor, countersigned by the Secretary of State and by the Comptroller, upon the decree of the court. Oral testimony shall be sufficient to establish the fact of a sale having been made.

Sec. 28. There shall be no civil or political distinction in this State on account of race, color, or previous condition of servitude, and the Legislature shall have no power to prohibit, by law, any class of persons on account of race, color, or previous condition of servitude, to vote or hold any office, beyond the conditions prescribed by this Constitution.

Sec. 29. The apportionment for the Assembly shall be as follows: Escambia two, Santa Rosa one, Walton one, Holmes one, Washington one, Jackson three, Calhoun one, Gadsden two, Franklin one, Liberty one, Wakulla one, Leon four, Jefferson three, Madison two, Taylor one, Hamilton one, Suwannee one, Lafayette one, Alachua two, Columbia two, Baker one, Bradford one, Nassau one, Duval two, Clay one, St. Johns one, Putnam one, Marion two, Levy one, Volusia one, Orange one, Brevard one, Dade one, Hillsborough one, Hernando one, Sumter one, Polk one, Manatee one, and Monroe one. There shall be twenty-four senatorial districts, which shall be as follows, and shall be known by their respective numbers, from one to twenty-four, inclusive:

The First senatorial district shall be composed of Escambia county, the Second of Santa Rosa and Walton, the Third of Jackson, the Fourth of Holmes and Washington, the Fifth of Calhoun and Franklin, the Sixth of Gadsden, the Seventh of Liberty and Wakulla, the Eighth of Leon, the Ninth of Jefferson, the Tenth of Madison, the Eleventh of Hamilton and Suwannee, the Twelfth of Lafayette and Taylor, the Thirteenth of Alachua and Levy, the Fourteenth of Columbia, the Fifteenth of Bradford and Clay, the Sixteenth of Baker and Nassau, the Seventeenth of St. Johns and Putnam, the Eighteenth of Duval, the Nineteenth of Marion, the Twentieth of Volusia and Orange, the Twenty-first of Dade and Brevard, the Twenty-second of Hillsborough and Hernando, the Twenty-third of Sumter and Polk, the Twenty-fourth of Manatee and Monroe, and each senatorial district shall be entitled to one senator.

Sec. 30. No person shall ever be appointed as a judge of the Supreme Court or circuit court, who is not twenty-five years of age, and a practicing attorney in this State.

Sec. 31. The Legislature shall, as soon as convenient, adopt a State Emblem having the design of the Great Seal of the State impressed upon a white ground of six feet six inches fly and six feet deep.

ARTICLE XVII.
Amendments.

Section 1. Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed upon by a two-thirds vote of all the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their respective journals, with the yeas and nays thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice; and if, in the Legislature next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a two-thirds vote of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature may prescribe, and if the people shall approve and ratify such amendment or amendments, by a majority of the electors

qualified to vote for members of the Legislature, voting thereon, such amendment or amendments shall become a part of the Constitution.

Sec. 2. If at any time the Legislature, by a vote of a majority of all the members elected to each of the two Houses, shall determine that it is necessary to cause a revision of this entire Constitution, such determination shall be entered upon their respective journals, with the ayes and nays thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the Legislature next chosen aforesaid, such proposed revision shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to recommend to the electors of the next election for members of the Legislature, to vote for or against a Convention; and if it shall appear that a majority of the electors, voting at such election, shall have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for a Convention, to be holden within six months after the passage of such law, and such Convention shall consist of a number of members not less than both branches of the Legislature. In determining what is a majority of the electors voting at such election, reference shall be had to the highest number of votes cast at such election for the candidates for any office or [on] any question.

Horatio Jenkins, Jr., *President.*
Sherman Conant, *Secretary.*

Done in open Convention. In witness whereof, we, the undersigned, President of said Convention and delegates, present, representing the people of the State of Florida, do hereby sign our names, this, the twenty-fifth day of February, anno Domini one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-second year—and the Secretary of said Convention doth countersign the same.

HORATIO JENKINS, JR.,
President.

Countersigned by Sherman Conant, Secretary.

Those signing the Constitution were:

Ossian B. Hart,	L. C. Armistead,
William Bradwell,	E. Fortune,
J. T. Walls,	Homer Bryan,
N. C. Dennett,	John W. Powell,
John Wyatt,	A. G. Bass,
Green Davidson,	R. Meacham,
Richard H. Wells,	Jesse H. Goss,
J. E. Oates,	Abram Chandler,
Major Johnson,	W. Rogers,
W. J. Purman,	S. B. Conover,
J. E. A. Davidson,	Auburn Erwin,
M. L. Stearns,	C. R. Mobley,
Fred Hill,	Jonathan C. Gibbs,
J. W. Childs,	John W. Butler,
Thos. Urquhart,	George J. Alden,
Andrew Shuler,	Lyman W. Rowley,
David Mizell,	John L. Campbell,
Anthony Mills,	Roland T. Rombauer,
T. W. Osborn,	W. R. Cone,
O. B. Armstrong,	B. M. McRae,
John N. Krimminger,	Samuel J. Pearce,
Wm. K. Cessna,	Elbridge L. Ware.

ORDINANCES ADOPTED BY THE CONVENTION OF 1868.

An Ordinance Declaring the Ordinance of Secession Null and Void.

That the ordinance adopted by the people assembled on the 10th day of January, A. D. 1861, and known as the Ordinance of Secession, is hereby declared null and void.

Adopted February 21, 1868.

An Ordinance in Relation to Certain Suits, Judgments, &C., in the Civil Courts of this State.

Be it ordained by the people of the State of Florida, in Convention assembled, That all Suits heretofore commenced in any of the civil courts of this State during the war between the United States and the so-called Confederate States, and any and all judgments, orders or decrees of said courts, rendered or entered up against any person or persons, any one of whom at the commencement of said suit, or during the pending thereof was beyond the reach and jurisdiction of said courts by reason of the war between the United States and the so-called Confederate States, are hereby declared to be null and void, and of no effect whatever, and all writs, executions, and sales founded on said judgments are also hereby declared void; Provided That nothing in this ordinance shall be construed to prevent the plaintiffs in such cases from commencing their suits anew.

Passed in open Convention February 21, A. D. 1868.

AMENDMENTS TO THE CONSTITUTION OF 1868.[32]

ARTICLE I.

The salary of the Governor of the State shall be three thousand five hundred dollars per annum; that of each Justice of the Supreme Court shall be three thousand dollars; that of each Judge of the Circuit Court shall be two thousand five hundred dollars; that of each

[32]Amendments designated as articles I-V were proposed and passed in 1870 and 1871, and were adopted at an election held on April 4, 1871. Amendments designated as articles V-XIV were proposed and passed in 1874 and 1875, and were adopted at an election held on May 4, 1875. See also pages 57-69 McClellan's Digest.

Cabinet officer shall be two thousand dollars; that of the Lieutenant-Governor shall be five hundred dollars, and he shall receive the same mileage as members of the Legislature; The pay of members of the Legislature shall be per diem, to be fixed by law for each day's actual attendance, and, in addition thereto, ten cents per mile for traveling expenses for each mile from their respective places of residence to the Capital, estimated by the shortest thoroughfare and the same to return. All other officers of the State shall be paid by fees or per diem fixed by law. No Legislature shall increase its own pay.

ARTICLE II.

The offices of Surveyor-General and Commissioner of Immigration are hereby consolidated under the name of Commissioner of Lands and Immigration.

ARTICLE III.

The thirteenth section of the Sixth Article of the Constitution is hereby abrogated.

ARTICLE IV.

The number of terms of the Supreme Court, and the time of holding the same, shall be fixed by law.

ARTICLE V.

The Legislature shall have power to prescribe regulations for calling into the Supreme Court a Judge of the Circuit Court to hear and determine any matters pending before the court in the place of any Justice thereof who shall be disqualified or disabled in such case, from interest or other cause.

ARTICLE VI.

Section two of Article four of the Constitution is hereby amended so as to read as follows:

Section 2. From and after the first Tuesday after the first Monday in January A. D. one thousand eight hundred and seventy-seven, the regular sessions of the Legislature shall be held biennially, commencing on said day, and on the corresponding day of every second year thereafter; but the Governor may convene the same in extra session by his proclamation.

ARTICLE VII.

Section twenty-nine of Article four of the Constitution is hereby amended so as to read as follows:

Section 29. The Assembly shall have the sole power of impeachment; but a vote of two-thirds of all members present shall be required to impeach any officer; and all impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the Senators present. The Senate may adjourn to a fixed day for the trial of any impeachment, and may sit for the purpose of such trial whether the Assembly be in session or not; but the time fixed for such trial shall not be more than six months from the time articles of impeachment shall be preferred by the Assembly. The Chief-Justice shall preside at all trials by impeachment except in the trial of the Chief-Justice, when the Lieutenant-Governor shall preside. The Governor, Lieutenant-Governor, members of the Cabinet, Justices of the Supreme Court and Judges of the Circuit Court shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment, according to law. All other officers who shall have been appointed to office by the Governor, and by and with the consent of the Senate, may be removed from office upon the recommendation of the Governor and consent of the Senate; but they shall, nevertheless, be liable to indictment, trial, and punishment according to law for any misdemeanor in office. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

ARTICLE VIII.

Section seven of Article twelve of the Constitution is hereby amended so as to read as follows:

Section 7. The Legislature shall have power to provide for issuing State bonds bearing interest for securing the debt of the State, for the erection of State buildings, and for the support of State institutions; but the credit of the State shall not be pledged or loaned to any individual, company, corporation, or association; nor shall the State become a joint owner or stockholder in any company, association, or corporation. The Legislature shall not authorize any county, city, borough, township, or incorporated district to become a stockholder in any company, association, or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution, or individual.

ARTICLE IX.

Section five of Article six of the Constitution is hereby amended so as to read as follows:

Section 5. The Supreme Court shall have appellate jurisdiction in all cases at law, and in equity, commenced in Circuit Courts, and of appeal from the Circuit Court in cases arising in the County Court as a Court of Probate, and in the management of the estates of infants, and in all criminal cases commenced in the Circuit Court. The court shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and also all writs necessary or proper to the complete exercise of its jurisdiction. Each of the Justices shall have the power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court or any Justice thereof, or before any Circuit Judge.

Section eight of Article six of the Constitution is hereby amended so as to read as follows:

Section 8. The Circuit Courts shall have original jurisdiction in all cases in equity, also in all cases at law in which the demand or the value of the property involved exceeds one hundred dollars, and in all cases involving the legality of any tax assessments, toll, or municipal fine, and of the action of forcible entry and unlawful detainer, and of actions involving the titles of right of possession of real estate, and of all criminal cases, except such as may be cognizable by law by inferior courts. They shall have appellate jurisdiction of matters pertaining to the probate jurisdiction and the estates and interests of minors in the County Courts, and of such other matters as may be provided by law, and final appellate jurisdiction in all civil cases arising in the court of a Justice of the Peace, in which the amount or value of property involved is twenty-five dollars and upwards, and of misdemeanors tried before any Justice's or mayor's court. The Circuit Courts and Judges shall have power to issue writs of mandamus, injunction, quo warranto, certiorari, habeas corpus, and all writs proper and necessary to the complete exercise of their jurisdiction.

Section ten of Article six of the Constitution is hereby abrogated.

Section eleven of Article six of the Constitution is hereby amended so as to read as follows:

Section 11. The County Court shall have power to take probate of wills, to grant letters testamentary, and of administration and guardianship, to attend the settlement of the estates of decedents and of minors, and to discharge the duties usually pertaining to Courts of Probate, subject to the direction and supervision of the appellate and equity jurisdiction of the Circuit Court, as may be provided by law. And the County Judges shall have and exercise the civil and criminal jurisdiction of Justices of the Peace. They may also have jurisdiction of such proceedings relating to the forcible entry or unlawful detention of lands and tenements, subject to the appellate jurisdiction of the Circuit Court, as may be provided by law.

Section fifteen of Article six of the Constitution is hereby amended so as to read as follows:

Section 15. The Governor shall appoint as many Justices of the Peace as he may deem necessary. Justices of the Peace shall have jurisdiction in civil actions at law in cases in which the amount or value involved does not exceed one hundred dollars; and in criminal cases their powers shall be fixed by law. Their powers, duties and responsibilities shall be regulated by law. They may hold their offices for the term of four years, subject to removal by the Governor for reasons satisfactory to him.

ARTICLE X.

Section twelve of Article six of the Constitution is hereby amended so as to read as follows:

Section 12. Grand and petit jurors shall be taken from the registered voters of the respective counties. The number of jurors for the trial of causes in any court may be fixed by law.

ARTICLE XI.

Section twenty-four of Article sixteen of the Constitution is hereby amended so as to read as follows:

Section 24. The property of all corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such property be held and used exclusively for religious, educational, or charitable purposes.

ARTICLE XII.

Section twenty-two of Article five of the Constitution shall read as follows:

Section 22. The Governor shall have power to disapprove of any item or items of any bills making appropriations of money embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

ARTICLE XIII.

Section fourteen of Article five of the Constitution is hereby amended so as to read as follows:

Section 14. A Lieutenant-Governor shall be elected at the same time and places and in the same manner as the Governor, whose term of office and eligibility shall also be the same. He shall be the President of the Senate, but shall only have a casting vote therein. In the case of the impeachment of the Governor, or his removal from office, death, inability to discharge his official duties, or resignation, the power and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. In case of the impeachment of the Lieutenant-Governor, or his removal from office, death, inability to discharge his official duties, or resignation, the power and duties of the office shall devolve upon the President pro tem. of the Senate. In case a vacancy shall occur both in the offices of the Governor and Lieutenant-Governor, the Legislature, shall at its next session order an election to fill such vacancies. But the Governor shall not, without the consent of the Legislature, be out of the State in time of war.

Section fifteen of Article five of the Constitution is hereby abrogated.

ARTICLE XIV.

Section sixteen of Article five of the Constitution is hereby amended so as to read as follows:

Section 16. The Governor may at any time require the opinion of the Justices of the Supreme Court as to the interpretation of any portion of this Constitution upon any question affecting his Executive powers and duties, and the Justices shall render such opinion in writing.

INDEX TO CONSTITUTIONS OF FLORIDA
of 1838, 1861, 1865 and 1868

Abbreviation: "DR"—Declaration of Rights

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WHITFIELD'S NOTES

Division 2.

GOVERNMENTAL, LEGAL, AND POLITICAL HISTORY OF FLORIDA. FLORIDA 1531-1821.

Following the discovery of America by Columbus in the year 1492 of the Christian era and the subsequent settlements made in America from European countries, there were eventually established in the eastern part of the North American continent, thirteen separate English colonies, which by force of dominating circumstances gradually became coordinated for their common welfare. To effectually protest against unjust and oppressive requirements imposed upon the colonies by Great Britain and for protection from Indian and foreign aggressions, a continental congress was established in 1774, composed of delegates from the several colonies. Later the congress, July 4, 1776, adopted The Declaration of Independence (supra, p. 87), proclaiming the united colonies to be free and independent states. As a result of the revolutionary war the American colonies became sovereign and independent states, and were so recognized by the treaty of Paris (supra, p. 93) of September 3, 1783, between Great Britain and the United States of America. A system of congressional government under articles of confederation (supra, p. 88) that were agreed to by congress, November 15, 1777, and ratified March 1, 1781, continued until the establishment of a firm national government under the constitution of the United States, beginning March 4, 1789.

In the year 1513 Juan Ponce de Leon landed on the Atlantic coast at a point south of the mouth of the St. Johns river perhaps at or about 30 degrees and 8 minutes north latitude, and proclaimed the right of Spain to the country by virtue of discovery. The country was called Florida perhaps because the shore was sighted on March 27, Easter Sunday, called Pascua Florida in the Spanish language, or because of the abundant native flora. Subsequently, Spanish settlements were made principally on the Atlantic and Gulf coasts; and eventually Spain asserted claims to the lands called Florida, from the Atlantic ocean westward to the Mississippi river.

From 1763 to 1783 the Floridas were under the dominion of Great Britian by treaty of February 10, 1763 (supra, p. 100). By English royal proclamation dated October 7, 1763, the territory east of the Apalachicola river was called East Florida, and that west of said river called West Florida, each having a separate government. (5 Am. State Papers, p. 756; supra, p. 101. East Florida and West Florida were re-ceded to Spain by Great Britain by a treaty in 1783 (supra, p. 101).

By the treaty of Paris, the southern boundary of the United States and consequently the northern boundary of the then provinces of the Floridas was established at a line to be "drawn from where the river Mississippi intersects the northernmost part of the thirty-first degree of north latitude due east to the middle of the river Apalachicola or Chattahoochee; thence along the middle thereof to its junction with the Flint river; thence straight to the head of St. Marys river; and thence down along the middle of St. Marys river to the Atlantic ocean." This boundary line was ratified by treaty between the United States and Spain in 1795 and the Perdido river became the western limit of the Floridas. Upon the acquisition of East and West Florida by the United States from Spain, the Perdido river remained the established western line of West Florida.

TREATY OF CESSION.[1]

The treaty of cession of the Floridas by Spain to the United States, dated February 22, 1819, ratified February 19, 1821, and proclaimed February 22, 1821, contains the following:

ARTICLE II.

"His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and doucments shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them."

After the withdrawal of the Spanish authority in July, 1821, the sovereignty of the United States extended to all lands in ceded areas, whether owned by the United States or by individuals. The rights of the Indians, by virtue of occupancy of lands in the territories, were settled through treaties between the United States and the chiefs of the Indian tribes (supra, pp. 126-131) such rights being tribal rather than individual. See Apalachicola L. & D. Co. v. McRae, 86 Fla. 393, 98 So. 505.

[1]For text of treaty see p. 102, supra.

By act of congress approved March 3, 1821 (supra, p. 107) to carry into execution the treaty of cession, the President of the United States was "authorized to take possession of, and to occupy the territories of East and West Florida, and the appendages and appurtenances thereof, ..." See also act of congress, March 3, 1819, supra, p. 106.

MAJOR GENERAL ANDREW JACKSON.
Governor of East and West Florida—1821-1822.

Pursuant to the act of congress, March 3, 1821, President James Monroe, on March 10, 1821, issued to Major General Andrew Jackson, of Tennessee, a commission, authorizing him as commissioner of the United States, "to take possession of and occupy the territories ceded by Spain to the United States"; and on the same day also issued a commission to Andrew Jackson, as governor of East and West Florida. On March 20, 1821, a third commission was issued by the president to Andrew Jackson, with accompaning instructions, vesting him with special and extraordinary powers, conformable to the treaty and the act of congress carrying the treaty into execution. (Supra, pp. 109, 110). East Florida was received from Spain July 10, 1821, at St. Augustine, Florida.[2] At Pensacola, Florida, on July 17, 1821, Andrew Jackson received West Florida from Spain, and upon an exchange of flags made due proclamation "that the government heretofore exercised over the said Provinces (East and West Florida) under the authority of Spain, has ceased, and that that of the United States of America is established over the same."[3]

The transfer of East and West Florida from Spain to the United States having been duly accomplished, the ceded areas were subject to American statutes and executive authority.

Major General Andrew Jackson, governor of the provinces of the Floridas, pursuant to the powers conferred upon him under the act of March 3, 1821, established in the ceded territory by executive ordinances (supra, pp. 112-114) a form of civil government with appropriate administrative and judicial regulations and officers, and divided East and West Florida into two counties: Escambia, extending between the Perdido and Suwannee rivers, and St. Johns, including all the territory of East Florida lying east of the Suwannee river. A county court composed of five justices of the peace, and justice of the peace courts, were established in each of the two counties. See Statutes of Florida 1823-1825, §§3, 8, 13, pages xx-xxii.

Eligius Fromentin, of Louisiana, was appointed judge of the United States court for West Florida, and William P. Duval, of Kentucky, judge for East Florida. See 4 Am. State Papers, Foreign Relations, pp. 753, 754. The jurisdiction exercised by these judges was perhaps regulated by the judiciary acts of September 24, 1789 and March 2, 1793. See act of congress, March 30, 1822; supra p. 115; American Ins. Co. v. 356 Bales of Cotton, 26 U. S. 511, 1 Pet. 511, 7 L. Ed. 242.

In October, 1821, Andrew Jackson returned to his home "The Hermitage," near Nashville, Tennessee, and later resigned as governor. George Walton, secretary of West Florida, and W. G. D. Worthington, secretary of East Florida, acted as governor each within his designated territory respectively, pending the organization of the Territory of Florida. See 4 Am. State Papers, Foreign Relations, pp. 750, 793, 799, et seq. Pensacola was the seat of government for West Florida, and St. Augustine for East Florida.

THE TERRITORY OF FLORIDA—1822-1845.
HISTORICAL SUMMARY.

An act of congress approved March 30, 1822, (supra, p. 115) provided "That all the territory ceded by Spain to the United States, known by the name of East and West Florida, shall constitute a Territory of the United States under the name of the Territory of Florida, the government whereof shall be organized and administered" as provided in the act. The executive power of the territory was vested in a governor, appointed by the President of the United States. A secretary of the territory, appointed by the president, acted as governor in the absence of a governor. The legislative power of the territory was "vested in the Governor and thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed annually by the President of the United States, by and with the advice and consent of the Senate, from among the citizens of the United States residing there."

The legislative council was made elective and was divided into a senate and house of representatives. See acts of congress, May 15, 1826, May 14, 1830, July 7, 1838. The first council met in Pensacola, July 22, 1822. See History of Florida by Caroline M. Brevard, Vol. 1, p. 70 et seq. The second council convened in St. Augustine on the first Monday in May, 1823. Beginning November 8, 1824, the annual meetings of the council were held in Tallahassee, the seat of government. See acts of congress, May 26, 1824, May 14, 1830.

The judicial power of the territory was vested in "Superior Courts, and in such inferior courts and Justices of the Peace as the Legislative Council of the Territory may, from time

[2]See "Process Verbal at St. Augustine," supra, p. 110.
[3]See formal proclamations, supra, pp. 111, 112.

to time, establish." The superior court judges, with district attorneys and marshals, were appointed by the president. There were eventually five superior courts, one each in the western, middle, eastern, southern and Apalachicola districts. As to jurisdiction of the superior court judges, including a special admiralty jurisdiction, and of the court of appeals of the territory, see acts of congress, March 30, 1822, May 26, 1824, May 15, 1826, May 23, 1828, July 14, 1832; U. S. v. Dalcour, 203 U. S. 408, 427; 27 Sup. Ct. 58, 51 L. Ed. 248; Am. Ins. Co. v. 356 Bales of Cotton, 1 Pet. (U. S.) 511. Writs of error were allowed to the supreme court of the United States. See also Territorial Acts, December 29, 1824, and January 19, 1828. The judges of the superior court, by act of congress of May 26, 1824, constituted a court of appeals. Superior court judges held sessions of the territorial court of appeals in Tallahassee. The first session of the court of appeals was held Monday, January 3, 1825, with Judges Joseph L. Smith and A. B. Woodward, present. The last session adjourned sine die, December 13, 1845.

The territorial legislative council by act of August 12, 1822, established "two Inferior Courts to be called the Circuit Courts," composed of one judge each, appointed by the governor, with "exclusive jurisdiction over all sums above twenty and under one hundred dollars, and appellate jurisdiction over sums under twenty dollars, and concurrent jurisdiction in all civil cases arising under the laws of this Territory over one hundred dollars, with Superior Court, both in law and equity saving to all persons the right of appeal or writ of error from the Inferior to the Superior Court." By act of June 24, 1823, county courts were established, and by act of June 11, 1823, provision was made for removing causes to appropriate courts. See also Duval's Compilation, pp. 50, 89, 128. As to wills, probate, etc., see acts November 20, 1828, and November 21, 1829. For territorial courts see Florida Historical Society Quarterly, April, 1941, by C. D. Farris.

On April 17, 1822, William P. Duval was appointed the first governor of the Territory of Florida, serving four three-year terms. He was succeeded by John H. Eaton (term 1834-1836), who had been United States senator from Tennessee, 1818 to 1829, and secretary of war in the cabinet of President Andrew Jackson. Eaton was succeeded by R. K. Call, who was twice governor of the Territory of Florida (1836-1839; 1841-1844). Robert Raymond Reid was governor in 1840 to 1841. John Branch, the last territorial governor of Florida (1844-1845), had been governor of North Carolina, United States senator from North Carolina, and secretary of the navy in the cabinet of President Andrew Jackson.

LOCATION OF SEAT OF GOVERNMENT.

Pursuant to a territorial act of June 24, 1823, the site selected for the seat of government was in the county of Gadsden, now Leon county, described as being in the "county of Gadsden, situated about a mile southwest from the deserted fields of Tallahassee, about a mile south of Ock-lock-o-ny and Tallahassee trails, at a point where the old Spanish Road is intersected by a small trail running southwestwardly." This selection having been made in October, 1823, and approved by proclamation of March 4, 1824, the third legislative council of the territory assembled there in November, 1824.

By an act of congress approved May 24, 1824, 4 Stat. 30, a quarter-section of land was granted to the Territory of Florida "for the seat of government in that territory * * * at the point selected for the permanent seat of government for said territory." The same act also reserved from sale three quarter-sections of lands of the United States lying "Contiguous to, and adjoining the quarter-section granted * * * to be located by the Governor of the said Territory." See also acts of congress approved March 2, 1829, 4 Stat. 357, and §14, act of Feb. 8, 1827, 4 Stat. 204; also 5 Am. State Papers, p. 354.

The governor approved for the seat of government the location that was subsequently surveyed as the S. E. ¼ of Section 36, T. 1 N. R. 1 W. Afterwards the governor selected the N. E. ¼ of Section 36, T. 1 N. R. 1 W.; the S. W. ¼ Section 31, T. 1 N. R. 1 E; the N. E. ¼ of Section 1, T. 1 S. R. 1 W. for seat of government purposes. As the S. W. ¼ of Section 31, T. 1 N. R. 1 E. was in the "entire township" of land (T. 1 W. R. 1 E) granted by act of congress approved December 28, 1824, and patented July 4, 1825, to General Lafayette, the governor relinquished the S. W. ¼ of Section 31 T. 1 N. R. 1 E., and by act of congress approved March 2, 1829, 4 Stat. 357, other reservations were made. See 5 Am. State Papers, p. 354 (Gales & Seaton Edition).

The location selected for the territorial seat of government was chosen because (1) it is about midway between the eastern and western extremities of the then Territory of Florida, St. Augustine being on the Atlantic coast and Pensacola being on the Gulf coast near the Perdido river; (2) at that time the port of St. Marks, at the junction of the Wakulla and St. Marks rivers, was an export trading point for the country between the Apalachicola and Suwannee rivers as well as for Georgia to the north; (3) the location is a succession of red clay hills with many clear, pure water streams, lakes and waterfalls, the fertile soil sustaining in luxurious growth a variety of large hardwood and other valuable and useful trees with abundant grasses and flora; (4) at that time the immense area of the peninsular portion of the territory was little known and contained comparatively few white settlements. The southeast corner of the locality selected for the seat of government was officially desig-

nated as the intersection of the principal meridian and parallel base line to be established as the initial point of official land surveys in the territory. This was done perhaps because the only definite point mentioned in the description of the selected location for the seat of government is at a point where the "old Spanish Road is intersected by a small trail running southwestwardly." At that point of intersection the initial meridian and base line monument was established, from which survey lines north and south and east and west were run in making official surveys according to the rectangular system required by law. The meridian so established was designated "Tallahassee Meridian." The base line is the parallel line running due east and west from the initial point on the Tallahassee Meridian. See Florida House Journal 1903, p. 1475. For acts of congress relating to the territorial government, see supra, pp. 360-383; also Thompson's Digest, p. 550 et seq., and app. XXXIV.

A territorial act approved December 11, 1824, provided that "the site selected for the seat of government shall be laid off in a town to be known by the name of Tallahassee"; and provided for the erection of a capitol building near the center of the said town for use of the territory. See act November 22, 1829; also ch. 11392, acts of 1925, ex. sess.; CGL 1757, 1758; ch. 6131, acts 1911; ch. 11340, acts 1925, ex. sess. The City of Tallahassee was incorporated by territorial act approved December 9, 1825, covering the above described original quarter-section of land selected for the seat of government. The city was subsequently extended to include adjacent lands. See territorial acts, December 22, 1827, and December 29, 1827; January 16, 1828; February 13, 1831; March 2, 1840; ch. 8374, acts 1919; chs. 13439, 13443, acts 1927; ch. 14415, acts 1929; ch. 15516, acts 1931; ch. 20158, acts 1939; chs. 21580, 21583, 21584, acts 1941, and other statutes.

The cornerstone of a capitol building was laid in January, 1826. See Williams, Florida, 1837, p. 121 et seq. This structure was superseded by the permanent capitol building which was constructed pursuant to territorial act, March 4, 1839. See Duval's Comp., p. 337; also "Florida's Capital" by John Kilgore, Tallahassee Historical Society Annual, 1937, p. 8. This building, which forms the central unit of the present capitol, was used by the first state legislature which met in June, 1845. During the administration of Governor William S. Jennings in 1902, the first north and south additions were made. During the administration of Governor Cary A. Hardee in 1922, there were added the present east and west extensions to the capitol building, on the third floor of which respectively are the senate chamber and the hall of the house of representatives. The latest north extension to the state capitol building was constructed in 1936. A corresponding south extension to the capitol building and other necessary state buildings have been provided for by the legislature during Governor Spessard L. Holland's administration.

STATE OF FLORIDA 1845-1945.
HISTORICAL SUMMARY.

The treaty ceding the Floridas to the United States provided that the inhabitants of the ceded territories "shall be incorporated into the Union of the United States, as soon as may be consistent with the principles of the Federal constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the citizens of the United States."

Pursuant to a territorial act of February 2, 1838 (supra, p. 131), a convention met at St. Joseph[4] on December 3, 1838, and on January 11, 1839, proclaimed the constitution of 1838 (supra, p. 132), which the electors ratified in May, 1839. The admission of Florida into the union was deferred by congress until 1845. On January 27, 1845, the territorial legislature adopted a resolution to be presented to congress urging that Florida "be brought into the Union as an independent and sovereign State, at the same time that Iowa shall be admitted." (P. 106, Acts 1845). By act of congress approved March 3, 1845, 5 Stat. 742 (supra, p. 133) Iowa and Florida were "admitted into the Union on equal footing with the original States in all respects whatsoever."

At that time there was no telegraph or railroad communication between Washington, D. C. and Tallahassee, and on March 11, 1845, a territorial act was approved containing a preamble stating that "Whereas, it is believed that the State of Florida has been admitted into the National Confederacy by law, at the session of Congress just terminated, under the Constitution framed at St. Joseph, and ratified and adopted by the people of Florida in 1839," and that because of the death of R. R. Reid, president of the convention of 1838, and the absence of the secretary of the convention, and the formation of new counties and the differences between the provisions of the constitution of 1838 and existing statutes as to the qualifications of voters and otherwise, it was enacted: "That immediately upon official information received by the Governor of this Territory that Congress has approved the State Constitution, and provided for the admission of Florida, it shall be the duty of the Governor to make proclamation thereof," and for an election under the election law of March 15, 1843, for a governor, a congressman and members of the legislature. For an outline of the organization of the state government, see p. 1 et seq., Thompson's Digest.

[4]See "St. Joseph, an Episode of the Economic and Political History of Florida" by James Owen Knauss in Florida Historical Quarterly, V. 177; VI, 3.

William D. Moseley was elected the first governor of the state.[5] David Levy, who had been a delegate from the Territory of Florida, was elected the first congressman from the state. Members of the legislature were also elected, and convened June 23, 1845. The legislature elected David Levy (term 1845-1851), and James D. Westcott, Jr. (term 1845-1849), the first United States senators from Florida. Florida was not represented in the congress of the United States from January 1861 to June 30, 1868.

Pursuant to chapter 1094, acts 1860, a convention met in Tallahassee, January 3, 1861 "for the purpose of taking into consideration the dangers incident to the position of this State in the Federal Union . . . . . ." At this convention an ordinance of secession was passed January 10, 1861; and the constitution was amended by substituting the words "Confederate States" for "United States"; and other unimportant changes were made to enable the state to participate in the operation of the confederate states when formed. See const. 1861, and index, supra, pp. 150 et seq., 194.

Under a constitution adopted in October, 1865, a form of civil government was established but the military authority of the United States was maintained in the state until July 4, 1868. See const. 1865, and index, supra, pp. 163 et seq., 194

The president's plan for restoring the state to its status in the American union was not satisfactory to the congress as then constituted which, in effect disregarding the president's proclamation under which the state government was re-established in 1865 and under which the state constitution of 1865 was established, by an act passed, over the president's veto, on March 2, 1867, placed Florida in a military district with other southern states and required the federal military authorities to order an election of delegates to a convention to frame a new constitution and state government. See const. 1868, and index, supra, pp. 178 et seq., 194.

A new constitution was adopted by a convention held in Tallahassee, June 9, to August 3, 1885. It was ratified at the general election in 1886, to become effective January 1, 1887, and Francis P. Fleming was elected governor in November, 1888. There is no lieutenant-governor under the constitution of 1885. The former commissioner of lands and immigration was made commissioner of agriculture. Beginning in 1888, the six state administrative officers, formerly called cabinet officers, are elected at the general elections. The terms of office of the governor and six state administrative officers begin on the first Tuesday after the first Monday in January after their election for full terms. The adjutant-general is now a military officer appointed by the governor. (§§16, 20, art. IV, const.).

SUPREME COURT.

Under §3, article V of the constitution of 1838, the circuit court judges elected by the legislature constituted the supreme court of the state until, by an amendment in 1848 to the constitution and the enactment of chapter 371, acts 1851, Walker Anderson, chief justice, and Leslie A. Thompson and Albert G. Semmes, associate justices, were elected by the legislature. The circuit judges who were members of the first supreme court were: Thomas Douglas, chief justice, Thomas Baltzell and George S. Hawkins, justices. George W. McCrae and Joseph B. Lancaster, circuit judges, also served as supreme court justices. In 1853, under an amendment to the constitution in 1850, Thomas Baltzell, was elected chief justice, and Thomas Douglas and Charles H. DuPont, associate justices, by the electors of the state. Judge Thomas Douglas died in 1855, and was succeeded by Bird M. Pearson. In 1859, Charles H. DuPont, chief justice, and William A. Forward and David S. Walker, associate justices, were elected. The last named three constituted the court during the period of the civil war.

In December, 1865, David S. Walker became governor under the constitution of 1865, and he appointed to the court, Charles H. DuPont, chief justice, and A. E. Maxwell and James M. Baker, associate justices. In 1866, Judge Maxwell resigned and Judge Samuel J. Douglas was appointed as his successor.

Under the constitution of 1868, Edwin M. Randall, chief justice, and Ossian B. Hart and James D. Westcott, Jr., associate justices, were appointed by the governor and confirmed by the senate to be members of the supreme court of Florida " for life or during good behavior." In January, 1873, Ossian B. Hart resigned to become governor and Franklin D. Fraser was appointed. In May, 1874, Judge Fraser resigned and was succeeded by R. B. Van Valkenburgh. In January, 1885, Judge Randall and Judge Westcott resigned. George G. McWhorter was appointed chief justice and George P. Raney, associate justice. On July 1, 1887, A. E. Maxwell was appointed chief justice under the constitution of 1868. See §5, art. XVIII, const. 1885. On August 1, 1888, Judge Van Valkenburgh died and Henry L. Mitchell was appointed.

The constitution of 1885 provided for the election in 1888 of three justices of the court, the chief justice to be designated by lot. The first justices elected were: A. E. Maxwell, George P. Raney and Henry L. Mitchell. Judge Mitchell resigned and was succeeded January 1, 1891, by R. Fenwick Taylor. In January, 1891, Judge A. E. Maxwell was succeeded by Milton H. Mabry. On May 31, 1894, Judge Raney resigned and was succeeded by Benjamin S. Liddon, who in January, 1897, resigned and was succeeded by Francis B. Carter.

[5]For list of governors, 1845-1945, see infra. p. 228.

Pursuant to chapter 4905, acts 1901, William A. Hocker, E. C. Maxwell and James F. Glen were by the court appointed court commissioners and served till the membership of the court was increased. Under an amendment to the constitution adopted at the general election in November, 1902, increasing the membership of court from three members to six members, Governor W. S. Jennings on December 1, 1902, appointed E. C. Maxwell, Thomas M. Shackleford and Robert S. Cockrell as additional justices. Judge Mabry declined re-election and in January, 1903, was succeeded by William A. Hocker, who served twelve years, declined re-election, and in January, 1915, was succeeded by William H. Ellis. On February 15, 1904, Judge Maxwell resigned and was succeeded by James B. Whitfield. On May 25, 1905, Judge Carter resigned and was succeeded by Charles B. Parkhill, who resigned in January, 1912. Under chapter 6169, acts 1911, the court, after the resignation of Judge Parkhill, consisted of five members until, pursuant to chapter 9280, acts 1923, Governor Cary A. Hardee appointed Glenn Terrell, a sixth justice. When there are six justices, the court may exercise any of its powers when sitting as a body or in two divisions. (Const. art V, §4, as amended in 1902). In January, 1917, Judge Cockrell was succeeded by Jefferson B. Browne. Judge Shackleford resigned in September, 1917, and was succeeded by Thomas F. West. See 86 Fla. p. iii, for list of justices.

In March, 1925, Judge Taylor resigned and retired and Governor Martin appointed Louie W. Strum. The governor appointed Armstead Brown to succeed Judge Browne, who resigned in June, 1925; and in December, 1925, Judge West resigned and Rivers H. Buford was appointed by Governor Martin.

In March, 1931, Judge Strum resigned to become United States district judge, and Fred H. Davis was appointed by Governor Doyle E. Carlton. Judge Davis died on June 20, 1937, and Roy H. Chapman was appointed by Governor Cone. In November, 1938, Judge Ellis resigned and retired and Judge Elwyn Thomas who had been circuit judge for 13 years was appointed and later elected to succeed Judge Ellis. In 1940 the constitution was amended, article V, §2, so there will be seven justices. In December, 1940, Governor Cone appointed Judge Alto Adams, then circuit judge, to be the seventh justice. On January 4, 1943, Judge Whitfield voluntarily resigned and retired. He was succeeded by H. L. Sebring who had been a circuit judge for nine years.

Chapter 5124, acts 1903, as amended by §2 of chapter 12323, acts 1927, authorized the court to hear and determine cases and exercise any of its powers when sitting either in a body or in divisions of three justices each, but the act required that, in all cases where written opinion was prepared by a division, it should, before being filed, be submitted to the other division or to some qualified justice thereof or to the chief justice. This act further provided, however, that in every capital case and every case involving an interpretation or construction of the state or federal constitution every qualified justice present should be given an opportunity of concurring or dissenting from the decision of matters discussed or decided in any written opinion which might be filed. The practical effect of this statute was that the court worked in two divisions designated as Division A and Division B.

In the general election of 1940, §4 of article V of the constitution was amended to read as follows:

> "Section 4. (a) The Supreme Court may hear, consider and determine cases and exercise all its powers and jurisdiction as a single body in which case a majority of the members of the court shall constitute a quorum for the dispatch of business; or it may exercise its powers and jurisdiction in divisions.
>
> "(b) The Circuit Judges shall at all times be subject to call to the Supreme Court by that Court or the Chief Justice thereof, and during the call shall be members thereof as associate justices to act in place of any absent, disqualified or disabled Justice or for assignment to a division, but no division shall include more than one circuit judge. A division shall consist of three members of said court exclusive of the Chief Justice, and the judgment of a division concurred in by the Chief Justice shall be the judgment of the Court unless such case involves (1) capital punishment, or (2) the determination of a State or Federal constitutional question wherein shall be brought into controversy the constitutionality of a Federal or State statute, rule, regulation or municipal ordinance, or (3) there be a dissent to the proposed judgment of a division by a member thereof or the Chief Justice, or (4) ordered by the Chief Justice to be considered by two divisions; whereupon it shall require the consideration of two divisions and the Chief Justice.
>
> "(c) The Chief Justice shall be the chief administrative officer of the court and responsible for the dispatch of business and procuring consistent decisions; he shall not be required to examine the record of a cause but may accept the conclusions of fact found by a division and stated in the opinion or accompanying statement and act upon the law so stated and discussed and its application to such fact, but in event of an equal division between those members properly considering a cause, he shall examine the record and participate therein as other justices. In the event the Chief Justice be unable to act for any cause the Justice longest in continuous service and able

to act shall act instead with like effect."

Since the adoption of this amendment the court has operated in two divisions, with the chief justice as a member of and presiding officer of each division except in those cases where the constitution indicates that the whole court shall sit or act as a body.

When a transcript of record is filed in the office of the clerk it is numbered in chronological order. Even numbered cases are assigned to Division A, while the odd numbered cases are assigned to Division B. This is done to prevent any choosing of the division to which a case shall fall. When transcript of record with briefs have been filed and the case is ready for disposition, if there be no request by counsel of either party for oral argument, such cause is immediately taken up for disposition by the court and the record is by the clerk delivered to the chief justice and by him is assigned to some member of the proper division for the writing of an opinion. When the opinion has been written it is then submitted to the other members of the division to which it falls and, if all concur, the opinion is filed. If any of the justices of that division dissent then the opinion is submitted to the other members of the court and the concurrence of the majority controls the disposition of the case. When cases are noted for oral argument the argument is heard either by the division to which the case falls, or by the whole court, if hearing by the whole court is required under the provisions of the constitution, supra. In event of the absence or inability of the chief justice to serve in any case, the justice oldest in point of service who is present and qualified acts as presiding officer.

Under the constitution the attorney general "shall be Reporter for the Supreme Court." §22, art. IV.

The clerk of the court is appointed by the court. (§7, art. V). Under the constitution, the clerk of the supreme court is librarian of the supreme court library.

The sheriff of Leon county is by statute authorized to serve the writs or process issued by the court. See §25.22, Fla. Stats., 1941.

The marshal of the court has supervision of the court building and grounds, and the custody and sale of court reports. See Ch. 12087, acts 1927; §25.24, Fla. Stats., 1941.

The secretary of state has the custody and sale of the published statutes of the state. See §283.13, Fla. Stats., 1941.

STATE AND COUNTY OFFICERS, ORGANIC PROVISIONS.

Under the constitution of 1885, a biennial general election for state and county officers and for members of the legislature, is held on the first Tuesday after the first Monday in November of every even numbered year (§2, art. III; §9, art. XVIII), and the officers elected for full terms are installed on the first Tuesday after the first Monday in January following the election. (§§2, 28, art. IV; §14, art. XVIII).[6] State senators are elected from senatorial districts, composed of one or more counties, for terms of four years. Members of the house of representatives are elected from counties every two years. Every county has at least one member of the house of representatives.[7]

The legislature convenes in regular session biennially at Tallahassee, on the first Tuesday after the first Monday in April after a general election. The governor may at his discretion convene the legislature in extra session. Regular sessions are limited to sixty days; extra sessions to twenty days. (§2, art. III). The governor and constitutional administrative state officers are elected for four years. There is no lieutenant-governor. The governor cannot be his immediate successor. (§§2, 20, art. IV). The justices of the supreme court are elected for six years. (§2, art. V). Circuit judges were formerly appointed by the governor and confirmed by the senate for six years. (§8, art. V). By a constitutional amendment in 1942, circuit judges will be elected for six-year terms, the first election to be in November, 1948, the terms to begin in January after the election, as other elective state officers. Appointments by the governor to fill vacancies in elective offices are to the next general election. (§6, art. XVIII).

Elections to fill vacancies in elective offices are for the unexpired term. (§7, art. XVIII). Appointments to fill vacancies in appointive offices are for the unexpired term. (§7, art. IV; §33, art. V; RGS 396; CGL 461, 464; §§114.01, 114.04, Fla. Stats., 1941).

[6]Prior to 1895, each political party or individual furnished the printed ballots used at elections of officers in this state. Chapter 4301, acts 1893, authorized the city of Jacksonville, Florida, to use the Australian system of voting by ballots furnished by the city, containing names of all the candidates, the voter checking those of his choice. The constitutionality of the legislative enactment was interpreted in its essential particulars by the supreme court of Florida, the opinion of the court being prepared by Mr. Justice Mabry and concurred in by Chief Justice Raney and Justice Taylor. (State v. Dillon, 32 Fla. 546, 14 So. 383, 22 L.R.A. 124).

The legality of the local act having been established, the legislature in 1895 enacted chapter 4328, authorizing the use of the Australian system by ballots checked at state elections, the expenses of the election to be paid by the counties. This act is now the basic election law, as amended to allow the use of voting machines and absentee votes. See chs. 100, 101, Fla. Stats., 1941.

[7]The constitution of 1885 originally limited the membership of the legislature to 32 senators and 68 members of the house, with an additional member of the house for each new county formed. (§§3, 4, art. VII). The apportionment of senators and representatives by chapter 3703, acts of 1887, was in accord with the requirements of the constitution. There were then 45 counties in the state. The population of the state was 338,406 in 1883. By the census of 1885, Alachua county had 25,947 population; Duval, 22,865; Leon, 17,444; Hillsborough, 7,973; Dade, 333. The legislature having failed to make the decennial apportionments required by the original §3, article VII of the constitution, an amendment thereto was adopted in 1924, increasing the number of senators to 38 and giving to the five counties largest in population three members of the house; to the next eighteen counties largest in population, 2 members of the house, and to the other counties, 1 member of the house each, making 95 members of the house, which, with 38 senators, made a total of 133 members of the legislature. See §§10.01, 10.03, Fla. Stats., 1941; also chs. 23613, 23614, acts 1945.

"In case of the impeachment of the Governor, his removal from office, death, resignation or inability to discharge his official duties, the powers and duties of the Governor shall devolve upon the President of the Senate for the residue of the term, or until the disability shall cease; and in case of the impeachment, removal from office, death, resignation or inability of the President of the Senate, the powers and duties of the office shall devolve upon the Speaker of the House of Representatives. But should there be a general election for the members of the Legislature during such vacancy, an election for Governor to fill the same shall be had at the same time." See §19, art. IV of the constitution.

The governor, administrative officers of the executive department, justices of the supreme court, and circuit judges are liable to impeachment for any misdemeanor in office. (§29, art. III). All officers that are appointed or elected and that are not liable to impeachment may be suspended from office by the governor or may be removed from office by the governor and the senate, for malfeasance or misfeasance or neglect of duty in office, for the commission of any felony or for drunkenness or incompetency. (§15, art. IV).

Members of the legislature cannot be suspended by the governor; but each house with the concurrence of two thirds of all its members present, may expel a member. (§6, art. III).

The house of representatives has the sole power of impeachment by a vote of two thirds of all the members present (a majority being present: §11, art. III); and all impeachments are tried by the senate. The chief justice of the supreme court presides at all trials by impeachment except in a trial of the chief justice, when the governor presides. (§29, art. III).

The governor may appoint a United States senator in case of a vacancy. See seventeenth amendment to the federal constitution, §106.02, Fla. Stats., 1941. Vacancies in the United States house of representatives and in the state legislature are filled by elections. See §98.08, Fla. Stats., 1941.

STATE BONDS.

The constitution provides that "the Legislature shall have the power to provide for issuing State bonds only for the purpose of repelling invasion or suppressing insurrection, or for the purpose of redeeming or refunding bonds already issued, at a lower rate of interest." See amendment §6, art. IX, adopted in 1930. The state now has no outstanding bonds of any nature whatsoever, the last bonds having been retired pursuant to chapter 8507, acts 1921.

Bonds issued in aid of banking or other corporations by the Territory of Florida (p. 73, acts 1833; pp. 265, 303, acts 1835), were apparently not within the legislative powers given to the territory by the acts of congress under which the territorial government existed; and although the territorial council subsequently resolved that such council had no authority to pledge the faith of the territory for the debt of any corporation (p. 52, acts 1842), Florida was admitted as a state without requiring obligations to be assumed as to such territorial bonds, and they were not assumed by the state. See Florida House Journal July 1, 1845, p. 83.

Bonds issued under chapter 1716, acts 1869, and chapter 1732, acts 1870, were held invalid in Holland v. State, 15 Fla. 455, 690; State v. J. P. & M. R. R. Co., 16 Fla. 708. See also Fla. Cent. R. R. Co. v. Schutte, 103 U. S. 118, 26 L. Ed. 327; Trask v. Jacksonville P. & M. R. Co., 124 U. S. 515, 8 Sup. Ct. 574, 31 L. Ed. 521; Smith v. J. P. & M. Ry Co, 43 Fed 731.

ORGANIC LAWS.[8]

The constitution of the United States, which became operative Wednesday, March 4, 1789, the laws of the United States enacted pursuant to the constitution, and the treaties made under the authority of the United States, are, within their appropriate spheres of operation, the supreme law of the land, dominating the laws and regulations, organic or statutory, of the states and territories of the United States. (§2, art. VI, U. S. const.; declaration of rights, Fla. const.; Martin v. Hunter, 1 Wheat (U. S.) 304, 363, 4 L. Ed. 97; El Paso & N Ry. Co. v. Gutierrez, 215 U. S. 87, 30 Sup. Ct. 21, 54 L. Ed. 106; Tennessee v. Davis, 100 U. S. 257, 263, 25 L. Ed. 648; Foster v. Neilson, 2 Pet. (U. S.) 253, 314; Baldwin v. Franks, 120 U. S. 678, 682, 7 Sup. Ct. 656, 763, 30 L. Ed. 766; Montgomery v. State, 55 Fla. 97, 45 So. 879; Gray v. Winthrop, 115 Fla. 721, 156 So. 270, 94 A. L. R. 804).

Upon the cession by Spain to the United States "in full property and sovereignty, all the Territories . . . known by the name of East and West Florida," which became effective July 17, 1821, the entire ceded area became subject to the constitution, laws and treaties of the United States. (A. L. & D. Co. v. McRae, 86 Fla. 393, 448, 98 So. 505).

During the period from July, 1821, when Andrew Jackson took possession of the Floridas for the United States, to the organization of a territorial government in April, 1822, the controlling laws were the ordinances promulgated by Major General Andrew Jackson, governor of the Floridas, subject to the constitution and laws of the United States and the executive authority of the president See acts of congress, March 3, 1819, and March 3, 1821.

An act of congress approved March 30, 1822,

[8]See p. 135 et seq. for texts of Florida constitutions. (1838, 1861, 1865, 1868) and organic laws relating to Florida 1819-1868; see Vol. I. Fla. Stats., 1941. for texts of constitutions of the United States, and Florida (1885), and indexes thereto.

organized East and West Florida into the Territory of Florida and provided a system of civil government divided into legislative, executive and judicial departments, which continued until Florida became a state, March 3, 1845. During the territorial period the organic law was the federal constitution, together with the acts of congress.

A constitutional convention formulated, and on January 11, 1839, promulgated, the constitution of 1838, which was approved by the electorate and became the organic law of the state upon its admission into the union, March 3, 1845.

The territorial laws and regulations remained in force subject to the constitution and laws of the United States until Florida became a state, after which some of the territorial laws were continued in force. (§1, art. 17, const. 1838).

The constitution of 1838-1839 was the first constitution of the state, and was recognized as being in force until the adoption of the constitution of 1861, the constitution and laws of the United States being paramount within their proper spheres. See Florida Historical Quarterly, October, 1938.

Pursuant to an act of the legislature a convention adopted the ordinance of secession January 10, 1861, and later adopted the constitution of 1861.

At the conclusion of the war between the states in 1865, the government of the state was under the military authority of the federal government. On July 13, 1865, the President of the United States, by proclamation appointed as provisional governor of Florida, William Marvin, with authority to prescribe rules and regulations for convening a convention of delegates to be chosen only by those electors "who are loyal to the United States," for the purpose of amending the state constitution of 1861 so as to restore the state "to its constitutional relations to the federal government," this being in accord with the presidential plan of restoring Florida to its proper place in the union. By proclamation dated August 23, 1865, Governor Marvin issued a call for an election of delegates to a convention, and the convention assembled at Tallahassee, October 25, 1865, and on October 28, 1865, repealed the ordinance of secession. The constitution of 1865 was then adopted, dated November 7, 1865. A legislature and state officers were chosen, and a government was established under the constitution of 1865.

The federal military authority was not entirely withdrawn from the state, and the constitution of 1865, adopted under the presidential plan of reorganizing the government of the state, was not satisfactory to congress. On the 14th, 15th and 16th of November, 1867, in accordance with the congressional plan of restoring the state to its place in the union, an election for delegates to a constitutional convention was held in the state under federal military control, the electorate being largely of a race not yet formally enfranchised, and the fifteenth amendment to the federal constitution had not then been adopted. See acts of congress, March 2, 1867, March 23, 1867, and July 19, 1867. On January 20, 1868, the convention assembled in Tallahassee and, after great confusion and disorder, on February 25, 1868, proclaimed the constitution of 1868. The constitution of 1868 was ratified by the voters and officers were elected, with Harrison Reed as governor, who assumed the civil government of the state, June 8, 1868, a formal transfer from the military to the civil authority being made July 4, 1868.

As the constitution of 1868 provided for the appointment, by the governor of all the judicial and administrative officers of the state and counties except county constables, it was not in accord with the will of the people. A constitutional convention was called pursuant to chapter 3577, acts 1885, which convention met in Tallahassee and on August 3, 1885, proclaimed the adoption of the constitution of 1885, making most of the state and county officers elective. It was ratified at the general election in 1886, and became effective January 1, 1887. The constitution of 1885, as amended to date, is the organic law of the state, the federal constitution and laws being dominant within their spheres of operation.

COMMON LAW.

The general common law of England as modified by statutes is in force in this state except where inconsistent with the constitution and laws of the United States or of the State of Florida[9]; and all the laws and ordinances in force in the Territory of Florida to July 22, 1822, are repealed. See territorial acts of Sept. 2, 1822, and Nov. 6, 1829; §6, art. XVI, const. 1838; §5, art. XV, const. 1861; §6, art. XVI, const. 1865; §§2, 3, p. 21 Thompson's Digest; §§7, 8, p. 708 McClellan's Digest; RGS 59, 60, 71; CGL 87 (71), 88 (72); §§2.01, 2.02, Fla. Stats., 1941; Menendez v. Rodriques, 106 Fla. 214, 143 So. 223; Blood v. Hunt, 97 Fla. 551, 121 So. 886.

The act of November 6, 1829, adopted as part of the Florida law the general common and statute law of England down to July 4, 1776, and not only down to the fourth year of James I of England, as was provided in the act of September 2, 1822. The act of 1829 was also designed to remove doubt as to the legal effect of the provision of the act of 1822, which purports to repeal all laws and ordinances then in force. When the act of 1822 was passed, the act of congress of March 30, 1822, 3 Stats. 654, provided that "the Governor by and with the advice and consent of the said Legislative Council, or a majority of them, shall have power to alter, modify or repeal the laws which

[9]See British statutes in force in the State of Florida, supra, p. 1 et seq.

may be in force at the commencement of this Act." An act of June 29, 1823, disapproved by the governor, need not be considered. See acts 1823, p. 136. The act of 1829, accomplished the legislative intent without reference to the act of 1823. The latter act indicates knowledge at that time of the date when the council of 1822 met and organized for lawmaking purposes, which appears to have been July 22, 1822. What common and statute law of England was in force in Florida between the date of the act of 1822 and the date of the act of 1829, is perhaps not now material. Thompson's Digest, p. 21.

By act of congress March 30, 1822, 3 Stats. 654, the first legislative council was required to meet at Pensacola, Florida, on the second Monday in June, 1822; but it seems that it did not in fact convene with a quorum until Monday, July 22, 1822. The first organized session was doubtless held Monday, July 22, 1822, which is stated as the date of the repeal of all prior laws and ordinances in force in the territory. See annotations, §§2.01, 2.02, Volume II, Fla. Stats., 1941. The "laws and ordinances" that were repealed were the laws of Spain that where continued in force in the Floridas by the proclamation and the ordinances promulgated in 1821 by Major General Andrew Jackson, governor of the provinces of the Floridas. See proclamation dated July 17, 1821, supra., p. 112; ordinance dated July 21, 1821, supra, p. 113; pp. XIV and XX, Stats. of Fla., 1823-1825. In view of the above enactments, the civil law of Spain is not in force in this state, except as portions of such civil law may be incorporated in statutory enactments. See §708.01, Fla. Stats., 1941.

BRITISH STATUTES IN FORCE.

Section 2.01, Fla. Stats., 1941, provides that: "The common and statute laws of England which are of a general and not a local nature, * * * down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state." See Thompson's Digest, p. 21.

Judge Leslie A. Thompson, who was later a justice of the supreme court of Florida, was authorized by statute and executive appointment to complete the compilation of the British Statutes in force in Florida. The work was admirably done and approved, but was not then published. The legislature has again authorized the publication and it is included in this volume. See part I, supra.

BOUNDARIES.

The constitution of 1838 under which Florida was admitted into the union as a state provides that "The jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which by the treaty of Amity, settlement and limits, between the United States and his Catholic Majesty, on the 22nd day of February, A. D. 1919, were ceded to the United States." (Art. XII).

Early conflicts as to boundaries between the Spanish province of Florida and the British provinces to the north were removed when by the treaty of 1763 Florida was ceded by Spain to Great Britain. By proclamation of October 7, 1763, the British sovereign divided Florida into East and West Florida. East Florida was "bounded to the westward by the Gulf of Mexico and the Apalachicola river; to the northward by a line drawn from that part of said river where the Chattahoochee and Flint rivers meet to the source of St. Mary's river, and by course of said river to the Atlantic Ocean." West Florida was bounded north by the parallel of 31 north latitude from the Mississippi to the Chattahoochee river. In 1764 the then British province of Georgia was limited to the north line thus prescribed for Florida. The above line, from the junction of the Chattahoochee and Flint rivers to the source of the St. Mary's river, has from 1763 been the recognized boundary line between Florida and Georgia.

By the treaties of 1783, Great Britain recognized the independence and sovereignty of the United States in the former British provinces, adopted the above described line as the southern boundary of the United States, and ceded the Floridas to Spain. By treaty of October 7, 1795, between the United States and Spain, this boundary was confirmed, and Commissioners Andrew Ellicott for the United States, and Stephen Minor for Spain, in 1798 and 1799, ran and marked the boundary line from the Mississipi to the Chattahoochee river, and determined the geographical position of the junction of the Chattahoochee and Flint rivers to be in north latitude 30° 42′ 42.8″, and west longitude 84° 53′ 15″. They fixed upon the eastern terminus of the straight line from the junction of the Chattahoochee and Flint rivers to the head of the St. Mary's river at a point where the St. Mary's river issues from the Okefenoke swamp, and in February, 1800, erected a mound of earth to designate the spot. The mound is still in existence and appears on the maps as Ellicott's mound. "The commissioners, supposing that the true head of the river was located in the swamp, agreed that it should be considered as distant two miles northeast from the mound, and that in running the boundary line from the Chattahoochee it should be run to the north of the mound, and not nearer to it than one mile. The point fixed upon as the head of the

St. Mary's was determined by observations to be in N. latitude 30° 21′ 30½″, W. longitude 82° 15′ 45″. The commissioners signed a joint report of their proceedings, and transmitted the same to their respective governments." It thus appears that, by authority of the United States and Spain, the termini of the line in question were fixed and settled in February, 1800. See Coffee v. Groover, 123 U. S. 1, 13, 8 Sup. Ct. 1, 31 L. Ed. 51.

In February, 1819, the State of Georgia appointed a commission to ascertain the true head of the St. Mary's river, it being asserted that the true head of the river was its south or west branch and not the north branch on which the eastern terminus of the boundary line was fixed at Ellicott's mound. The commission's report agreed with the report made by Ellicott. Notwithstanding this report of the Georgia commission, that state, in 1819, employed an engineer who ran what is known as the Watson line. This line seems to have terminated considerably south of Ellicott's mound.

After the Floridas were ceded by Spain to the United States, the United States surveyor-general for the Territory of Florida, in 1825, caused the boundary line between Georgia and Florida to be run and marked. This line was called McNeil's line. It was north of the Watson line. Following much controversy, the States of Georgia and Florida agreed on a line run by G. J. Orr and B. F. Whitner in 1859. This line is north of the McNeil line and it terminated within twenty-five feet north of the original Ellicott's mound. (Bush's Digest, 103; McClellan's Digest, 952; ch. 1017, acts 1859, p. 28; acts 1861, p. 237; Coffee v. Groover, 123 U. S. 1, 211, 8 Sup. Ct. 1, 31 L. Ed. 51; Groover v. Coffee, 19 Fla. 63; Coffee v. Groover, 20 Fla. 64; resolution 16, acts 1861. See app., Fla. Legislative Journals 1845, pp. 13, 26). Ellicott's mound is marked by a monument topped by an United States coast and geodetic survey triangulation station (1934), and about twenty-five feet south of this marker is a smaller mound, probably the original Ellicott's mound. See report of Herman Gunter, director, Florida geological survey, March 28, 1945, on file in the Florida state library.

The western line of Florida having been fixed at the Perdido river (Pollard v. Hagan, 44 U. S. 212, 228, 3 How. 212, 228, 11 L. Ed. 565), the northern boundary of the Territory and State of Forida is on the thirty-first degree of north latitude to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean. The other boundaries are the Atlantic ocean and the gulf of Mexico, east, south and west of the mainland and adjacent islands, including the Florida reefs and the Tortugas Islands. See the several constitutions of the state under heading "Boundaries." Also annotations under art. I, const. 1885, Vol. II, Fla. Stats., 1941.

COUNTIES.

First Counties: Escambia and St. Johns.

"An Ordinance[10] dividing the Floridas into two counties by Major General Andrew Jackson, Governor of the provinces of the Floridas, * * * * * as follows:

All the county lying between the Perdido and Suwaney rivers, with all the islands therein, shall form one county to be called Escambia.

All the country lying east of the river Suwaney, and every part of the ceded territories, not designated as belonging to the former county, shall form a county to be called St. Johns. * * *.

Pensacola, July 21st, 1821.

(Signed) ANDREW JACKSON.

St. Augustine, Aug. 20, 1821."

* * *

Later Counties Established.

A territorial act of August 12, 1822, provided that the "Territory shall be divided into four counties, two in that part known as West Florida, and two in that part known as East Florida, as follows, to wit, in West Florida all that part of the Territory west of the Choctohacha river, shall constitute the County of Escambia—all that part of the Territory east of the said river to the Suwaney river shall constitute another county, to be called Jackson—and that part of East Florida lying north of the river St. Johns, and north of a line, commencing at a place called the Cowford, on said river, and terminating at the mouth of the Suwaney river, shall constitute a county by the name of Duval, and all the remaining portion of East Florida shall be constituted a county by the name of St. Johns." Cowford is the location of the City of Jacksonville, in Duval county.

Gadsden county was established by an act of June 24, 1823, including all east of the Apalachicola river and west of the Suwannee and Alapaha rivers. Monroe county was formed by an act of July 3, 1823. Leon, Walton, Alachua, Nassau, and Mosquito counties were formed by act of December 29, 1824. Leon county first extended from the Ocklocknee to the Suwannee river, Gadsden county being then confined between the Apalachicola and Ocklocknee rivers. Washington county was created by §4 of act of December 9, 1825.

The territorial council passed an act November 23, 1828, providing for a county to be named Call, apparently to be located in the northern part of what was then Leon county; but the governor did not approve of that portion of the act, and such provision did not become a law. It does not appear that the act of November 23, 1828, was passed notwithstanding the governor's disapproval of a portion of the act. See acts 1828, p. 219, special endorsement, p. 224.

A county called Fayette was formed in West

[10]See Ordinances of Major General Andrew Jackson, supra, p. 112.

Florida by act of February 9, 1832. Its boundaries were more accurately defined by an act of February 16, 1833. By act of February 1, 1834, the acts organizing Fayette county were repealed and the territory annexed to Jackson county.

Hernando county was formed February 24, 1843, and on March 6, 1844, its name was changed to Benton county. Benton county was changed to Hernando county, December 24, 1850.

Mosquito county was changed to Orange county January 30, 1845. St. Lucie county was established March 14, 1844, and changed to Brevard county January 6, 1855. A new St. Lucie county was established in 1905. New River was formed December 21, 1858, and changed to Bradford county December 6, 1861.

The state is now divided into sixty-seven counties and six congressional districts. See chs. 7, 8, Fla. Stats., 1941; also ch. 21975, acts 1943.

COUNTIES AS CREATED.

1. Escambia	July 21, 1821	Pages XX and 3	Acts	1822
2. St. Johns	July 21, 1821	Pages XX and 3	Acts	1822
3. Jackson	August 12, 1822	Page 3	Acts	1822
4. Duval	August 12, 1822	Page 3	Acts	1822
5. Gadsden	June 24, 1823	Page 8	Acts	1823
6. Monroe	July 3, 1823	Page 141	Acts	1823
7. Leon	December 29, 1824	Page 260	Acts	1824
8. Walton	December 29, 1824	Page 260	Acts	1824
9. Alachua	December 29, 1824	Page 260	Acts	1824
10. Nassau	December 29, 1824	Page 260	Acts	1824
11. Mosquito (name changed)	December 29, 1824	Page 260	Acts	1824
Orange (Mosquito)	January 30, 1845	Page 56	Acts	1845
12. Washington	December 9, 1825	Page 36	Acts	1825
13. Jefferson	January 20, 1827	Page 151	Acts	1827
14. Madison	December 26, 1827	Page 8	Acts	1827
15. Hamilton	December 26, 1827	Page 8	Acts	1827
16. Columbia	February 4, 1832	Page 33	Acts	1832
17. Franklin	February 8, 1832	Page 44	Acts	1832
18. Hillsborough	January 25, 1834	Page 46	Acts	1834
19. Dade	February 4, 1836	Page 19	Acts	1836
20. Calhoun	January 26, 1838	Page 9	Acts	1838
21. Santa Rosa	February 18, 1842	Page 3	Acts	1842
22. Hernando (name changed)	February 24, 1843	Page 48	Acts	1843
Benton (Hernando)	March 6, 1844	Page 16	Acts	1844
Hernando (Benton)	December 24, 1850	Laws	Chap.	415
23. Wakulla	March 11, 1843	Page 29	Acts	1843
24. Marion	March 14, 1844	Page 43	Acts	1844
25. St. Lucie (name changed)	March 14 1844	Page 31	Acts	1844
Brevard (St. Lucie)	January 6, 1855	Laws	Chap.	651
26. Levy	March 10, 1845	Page 54	Acts	1845
27. Holmes	January 8, 1848	Laws	Chap.	176
28. Putnam	January 13, 1849	Laws	Chap.	280
29. Sumter	January 8, 1853	Laws	Chap.	548
30. Volusia	December 29, 1854	Laws	Chap.	624
31. Manatee	January 9, 1855	Laws	Chap.	628
32. Liberty	December 15, 1855	Laws	Chap.	771
33. Lafayette	December 23, 1856	Laws	Chap.	806
34. Taylor	December 23, 1856	Laws	Chap.	806
35. Suwannee	December 21, 1858	Laws	Chap.	895
36. New River (name changed)	December 21, 1858	Laws	Chap.	895
Bradford (New River)	December 6, 1861	Laws	Chap.	1300
37. Clay	December 31, 1858	Laws	Chap.	866
38. Baker	February 8, 1861	Laws	Chap.	1185
39. Polk	February 8, 1861	Laws	Chap.	1201
40. Osceola	May 12, 1887	Laws	Chap.	3768
41. Lee	May 13, 1887	Laws	Chap.	3769
42. DeSoto	May 19, 1887	Laws	Chap.	3770
43. Lake	May 27, 1887	Laws	Chap.	3771
44. Citrus	June 2, 1887	Laws	Chap.	3772
45. Pasco	June 2, 1887	Laws	Chap.	3772
46. St. Lucie	May 24, 1905	Laws	Chap.	5567
47. Palm Beach	April 30, 1909	Laws	Chap.	5970

COUNTIES AS CREATED- (Continued)

48. Pinellas	May	23, 1911	Laws	Chap. 6247
49. Bay	April	24, 1913	Laws	Chap. 6505
50. Seminole	April	25, 1913	Laws	Chap. 6511
51. Broward	April	30, 1915	Laws	Chap. 6934
52. Okaloosa	June	13, 1915	Laws	Chap. 6937
53. Flagler	April	28, 1917	Laws	Chap. 7399
54. Okeechobee	May	8, 1917	Laws	Chap. 7401
55. Hardee	April	23 1921	Laws	Chap. 8513
56. Highlands	April	23, 1921	Laws	Chap. 8513
57. Charlotte	April	23, 1921	Laws	Chap. 8513
58. Glades	April	23, 1921	Laws	Chap. 8513
59. Dixie	April	25, 1921	Laws	Chap. 8514
60. Sarasota	May	14, 1921	Laws	Chap. 8515
61. Union	May	20, 1921	Laws	Chap. 8516
62. Collier	May	8, 1923	Laws	Chap. 9362
63. Hendry	May	11, 1923	Laws	Chap. 9360
64. Martin	May	30, 1925	Laws	Chap. 10180
65. Indian River	May	30, 1925	Laws	Chap. 10148
66. Gulf	June	6, 1925	Laws	Chap. 10132
67. Gilchrist	December	4, 1925	Laws	Chap. 11371

POPULATION OF FLORIDA, BY COUNTIES, 1830-1910.

COUNTIES	1830	1840	1850	1860	1870	1880	1885	1890	1895	1900	1905	1910
Alachua	2,204	2,282	2,254	8,232	17,328	16,462	25,947	22,934	28,207	32,245	34,007	34,305
Baker					1,325	2,303	2,889	3,333	3,712	4,516	3,880	4,805
Bay												
Bradford					3,671	6,112	6,926	7,516	9,499	10,295	12,943	14,090
Brevard				246	1,216	1,478	2,375	3,401	4,558	5,158	4,348	4,717
Broward												
Calhoun		1,142	1,377	1,446	998	1,580	2,294	1,681	3,274	5,132	5,796	7,465
Charlotte												
Citrus								2,394	4,261	5,391	7,543	6,731
Clay				1,914	2,098	2,838	4,260	5,154	5,200	5,635	5,484	6,116
Collier												
Columbia		2,102	4,808	4,646	7,335	19,589	11,299	12,877	12,955	17,094	19,913	17,689
Dade		146	159	83	85	527	333	861	3,322	4,955	12,089	11,933
De Soto								4,944	6,418	8,047	12,446	14,200
Dixie												
Duval	1,970	4,156	4,539	5,074	11,921	19,431	22,865	26,800	34,766	39,733	47,912	75,163
Escambia	2,518	3,993	4,351	5,768	7,817	12,156	17,000	20,188	22,503	28,313	32,383	38,039
Flagler												
Franklin		1,030	1,561	1,904	1,256	1,791	2,276	3,308	4,475	4,890	4,636	5,201
Gadsden	4,895	5,992	8,784	9,396	9,802	12,169	11,209	11,894	13,693	15,294	16,511	22,198
Gilchrist												
Glades												
Gulf												
Hamilton	553	1,464	2,511	4,154	5,749	6,790	7,201	8,507	9,991	11,881	9,921	11,825
Hardee												
Hendry												
Hernando			926	1,200	2,938	4,248	7,178	2,476	2,940	3,638	4,040	4,997
Highlands												
Hillsborough		4,522	2,377	2,981	3,216	5,814	7,973	14,941	31,362	36,013	51,416	78,374
Holmes			1,205	1,386	1,572	2,170	3,207	4,336	6,232	7,762	9,027	11,557
Indian River												
Jackson	3,907	4,681	6,639	10,209	9,528	14,372	14,425	17,544	21,630	23,377	26,824	28,821
Jefferson	3,312	5,713	7,718	9,876	13,398	16,065	15,573	15,757	15,007	16,195	13,130	17,210
Lafayette				2,068	1,783	2,441	3,600	3,686	3,783	4,987	5,923	6,710
Lake								8,034	8,349	7,467	7,515	9,509
Lee								1,414	2,235	3,071	3,961	6,294
Leon	6,494	10,713	11,442	12,343	15,236	19,662	17,444	17,752	19,567	19,887	18,883	19,427
Levy			465	1,781	2,018	5,767	6,649	6,586	7,534	8,603	9,280	10,361
Liberty				1,457	1,050	1,362	1,327	1,452	2,079	2,956	2,835	4,700
Madison	525	2,644	5,490	7,779	11,121	14,798	14,555	14,316	13,660	15,446	16,152	16,919
Manatee				854	1,931	3,544	5,671	2,895	3,830	4,663	8,530	9,550
Marion			3,338	8,609	10,804	13,046	17,424	20,796	21,875	24,403	26,725	26,941
Martin												
Monroe	517	688	2,645	2,913	5,657	10,940	15,040	18,786	17,167	18,006	20,973	21,563
Mosquito	733	73										
Nassau	1,511	2,892	2,164	3,644	4,247	6,635	8,610	8,294	8,843	9,654	11,012	10,525
New River				3,820								
Okaloosa												
Okeechobee												
Orange			466	987	2,155	6,618	14,400	12,584	12,459	11,374	13,591	19,107
Osceola								3,133	3,394	3,444	3,622	5,507
Palm Beach												5,577
Pasco								4,249	4,697	6,054	6,100	7,502
Pinellas												
Polk					3,160	3,181	6,575	7,905	10,983	12,472	17,863	24,148
Putman			687	2,712	3,821	6,261	9,560	11,186	11,331	11,641	11,192	13, 096
St. Johns	2,538	2,694	2,525	3,038	2,618	4,535	5,544	8,712	7,708	9,165	11,003	13, 208

Table and Notes continued next page.

POPULATION OF FLORIDA, BY COUNTIES, 1830-1910. (Continued)

COUNTIES	1830	1840	1850	1860	1870	1880	1885	1890	1895	1900	1905	1910
St. Lucie			139								3,024	4,057
Santa Rosa	868		2,883	5,480	3,312	6,645	7,490	7,961	8,914	10,293	11,801	14,897
Sarasota												
Seminole												
Sumter				1,549	2,952	4,686	9,462	5,363	5,308	6,187	5,549	6,696
Suwannee				2,303	3,556	7,161	8,829	10,524	12,544	14,554	18,011	18,603
Taylor				1,384	1,453	2,279	2,160	2,122	3,062	3,999	5,581	7,103
Union												
Volusia				1,158	1,723	3,294	6,897	8,467	11,580	10,003	12,143	16,510
Wakulla			1,955	2,839	2,506	2,723	2,890	3,117	3,700	5,149	5,207	4,802
Walton	1,207	1,461	1,817	3,037	3,041	4,201	4,729	4,816	7,962	9,346	12,269	16,460
Washington	978	859	1,950	2,154	2,302	4,089	4,320	6,426	7,820	10,154	11,908	16,403
STATE TOTALS	34,730	45,477	87,445	140,424	187,748	269,493	338,406	391,422	464,359	528,542	614,902	752,619

NOTES

(1) For census of 1825 see Florida Historical Quarterly, July 1943 by Dr. Dorothy Dodd.

(2) For censuses of 1830-1860, see ibid, July 1927, by R. M. Harper.

(3) For censuses of 1915 to date, and tables to population acts, see Volume II, and Cumulative Supplements to Volumes I and II, Florida Statutes, 1941.

LIST OF GOVERNORS.
1845-1945

1845-1849 William D. Moseley
1849-1853 Thomas Brown
1853-1857 James E. Broome
1857-1861 Madison S. Perry
1861-1865 John Milton
A. K. Allison*
William Marvin**
1865-1868 David S. Walker
1868-1872 Harrison Reed
Samuel T. Day***
1873-1877 Ossian B. Hart
M. L. Stearns****
1877-1881 George F. Drew
1881-1885 William D. Bloxham
1885-1889 Edward A. Perry
1889-1893 Francis P. Fleming
1893-1897 Henry L. Mitchell
1897-1901 William D. Bloxham
1901-1905 William S. Jennings
1905-1909 Napoleon B. Broward
1909-1913 Albert W. Gilchrist
1913-1917 Park Trammell
1917-1921 Sidney J. Catts
1921-1925 Cary A. Hardee
1925-1929 John W. Martin
1929-1933 Doyle E. Carlton
1933-1937 David Sholtz
1937-1941 Fred P. Cone
1941-1945 Spessard L. Holland
1945-194- Millard F. Caldwell

LAND GRANTS AND LAND TITLES.
LAND SURVEYS.

The tremendous importance of land surveys is immediately apparent when it is appreciated that such surveys are inseparably associated with questions relating to proprietary title in land, its acquisition, tenure and disposition. Surveys are the basis of descriptions for ownership, for the assessment, levy and collection of taxes, and for the location of places and areas throughout the country.

As a general rule, land surveys in Florida are in accordance with the rectangular system starting from an initial point at the intersection of a principal meridian and base parallel that is duly established pursuant to law and to instructions from the general land office of the United States. The statutes of the United States require north and south lines to be run according to the true meridian, such lines to be crossed by other lines at right angles so as to form townships six miles square, except where impracticable because of navigable waters, reservations or other obstacles, then to be departed from no further than such particular circumstances require. Normal townships are divided into 36 sections, containing, as nearly as may be, six hundred and forty acres each. The sections are numbered respectively, beginning with the number one in the northeast section and proceeding west and east alternately through the township with progressive numbers until the thirty-six be completed. (Act of congress, May 18, 1796; §2395, U. S. Rev. Stats., 43 U. S. C. A. §751). Sections may be divided into squares of quarter sections containing 160 acres or quarter quarter sections containing 40 acres. Fractional or irregular sections may be divided into lots to be numbered consecutively. See Hardee v. Horton, 90 Fla. 452, 108 So. 189; Everglades Sugar & Land Co. v. Bryan, 81 Fla. 75, 87 So. 68; Martin v. Busch, 93 Fla. 535, 112 So. 274.

Townships are numbered to the north or south commencing with number one at the base line, and with range numbers to the east or

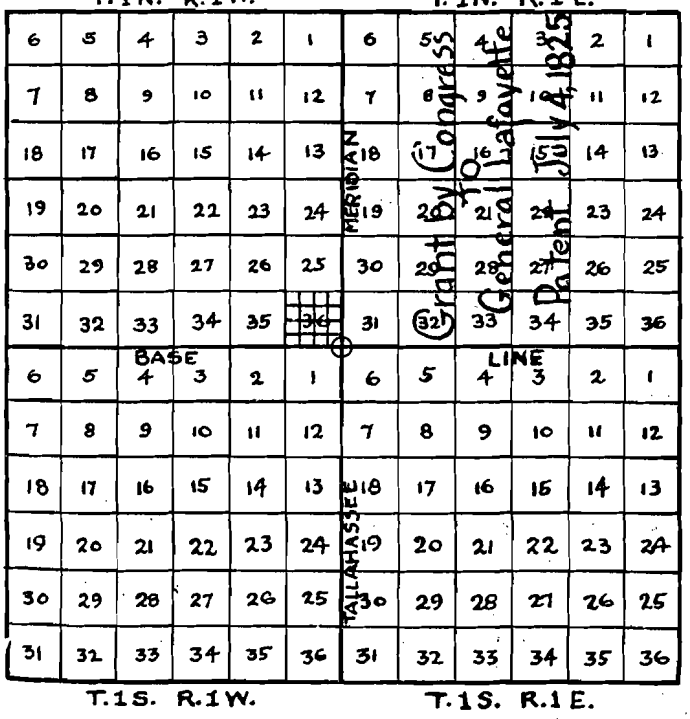
*President of the senate, who took office at the death of Milton, April 1, 1865.
**Provisional governor by presidential proclamation, July 13, 1865.
***Acting, during impeachment proceedings against Governor Reed, 1872.
****Became governor upon death of O. B. Hart, March 18, 1874.

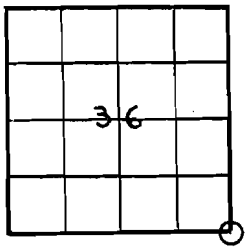
west beginning with number one at the principal meridian. A principal meridian may be established at any duly authorized initial point, and a line is run north and south from the initial point so as to conform to the true meridian. From the initial point, the base line is extended east and west on a true parallel of latitude. The Tallahassee principal meridian was established in 1824, under the authority contained in a letter dated July 9, 1824, from the commissioner of the general land office of the United States to Colonel Robert Butler, United States surveyor-general for Florida, appointed under the authority of §6 of the act of congress, May 8, 1822, 3 Stats. 718. In the letter Colonel Butler was directed to survey the lands near the seat of government of the Territory of Florida and to initiate the surveys thereof upon the southeast corner of the location selected by the governor of the territory under the provisions of the act of congress of May 24, 1824, 4 Stats. 30, for the seat of government. Later in the year 1824, the Tallahassee base and meridian were surveyed from the authorized initial point at the southeast corner of the location selected for the seat of government, such point being "situated about a mile southwest from the deserted fields of Tallahassee, about a mile south of the Ocklocknee and Tallahassee trails at a point where the old Spanish road is intersected by a small trail running southwestwardly." The point of intersection of the Tallahassee principal meridian and the parallel base line so established is at longitude 84° 16′ 42″ west from Greenwich and latitude 30° 28′ north from the equator. See Greenwich and Meridian and Prime, Webster's International Dictionary.

Pursuant to chapter 10188, acts 1925 (§258.08, Fla. Stats., 1941), a monument was erected at "the intersection of the Guide Meridian and the Base Parallel of Florida," which is in the southeastern portion of Tallahassee, the capital of the state. See also ch. 11902, acts 1927; §258.08, Fla. Stats., 1941.

The rectangular system of surveys of public lands was inaugurated by a committee appointed by the continental congress. This committee reported an ordinance, which ordinance as passed May 20, 1785, provided for townships 6 miles square, containing 36 sections of one mile square. The first public surveys were made under this ordinance. Subsequently the acts of May 18, 1796, 1 Stats. 465, May 10, 1800, 2 Stats. 73, §2395 U. S. Rev. Stats., 43 U. S. C. A. §751, and other statutes were enacted regulating the survey and disposal of the public lands.

METHOD OF NUMBERING TWPS. AND RGS. FROM BASE LINE AND FROM TALLAHASSEE MERIDIAN AND SHOWING NORMAL SUBDIVISION OF TOWNSHIPS INTO SECTIONS





NORMAL SUBDIVISION OF A SECTION INTO QUARTER SECTIONS AND QUARTER-QUARTER SECTIONS

Intersection of TALLAHASSEE MERIDIAN with BASE LINE:- Longitude 84°16'42" W. from Gr. Latitude 30°2800 N. from Eq.)

ORIGIN OF LAND TITLES.

Land titles in Florida are in general predicated upon (1) Spanish grants to individuals made prior to January 24, 1818, and recognized or confirmed by the United States pursuant to the treaty of cession dated February 22, 1819; (2) grants or patents from the United States to the Territory of Florida or to the State of Florida or to private ownership, of lands ceded to the United States by the treaty of cession from Spain; (3) grants or conveyances from the state of lands granted, patented or approved to the state by the United States under various acts of congress, or of lands under bodies of navigable water or of tide lands, the two latter classes of lands belonging to the state by virtue of its sovereignty upon being "admitted into the Union on equal footing with the original States in all respects whatsoever."

LANDS CEDED BY SPAIN TO THE UNITED STATES.[11]

By article II of the treaty of Spain, dated February 22, 1819, and ratified February 22, 1821, "His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida* *." Article VIII excepted from the cession to the United States "all the grants of land made before January 24, 1818, * * * * * shall be ratified and confirmed to the persons in possession of the lands." See United States v. Arredondo, 31 U. S. 691, 6 Pet. 691, 8 L. Ed. 547; Mitchell v. United States, 34 U. S. 711, 9 Pet. 711, 9 L. Ed. 283; Apalachicola Land & Development Co. v. McRae, 86 Fla. 393, 98 So. 505; Keech v. Enriquez, 28 Fla. 597, 10 So. 91; Wilson v. Knight, 48 Fla. 196, 37 So. 186; Sullivan v. Richardson, 33 Fla. 1, 14 So. 692; Florida Town Imp. Co. v. Bigalsky, 44 Fla. 771, 33 So. 450; Norton v. Jones, 83 Fla. 81, 90 So. 854; Commodores Point Terminal Co. v. Hudnal, 283 Fed. 150; Sanchez v. Deering, 298 Fed. 286; Sanchez v. Deering, 3 Fed. 2d 841; Sanchez v. Deering, 270 U. S. 227, 70 L. Ed. 556, 46 Sup. Ct. 214. Such excepted grants were pursuant to acts of congress, 3 Stats. 709, 754; 4 Stats. 125, 156, 202, duly confirmed as contemplated by the treaty. The treaty and acts of congress to effectuate it are discussed by Chief Justice Marshall in United States v. Percheman, 32 U. S. 51, 7 Pet. 51, 8 L. Ed. 604. See also Mitchell v. Furman, 180 U. S. 402, 21 Sup. Ct. 430, 45 L. Ed. 596; Wilson Cypress Co. v. Enrique Del Pozo y. Marcos, 236 U. S. 635, 25 Sup. Ct. 446, 59 L. Ed. 758. Similar grants are construed in Joplin v. Chachere, 192 U. S. 94, 24 Sup. Ct. 214, 48 L. Ed. 539; Enrique Del Pozo y. Marcos v. Wilson Cypress Co., 269 U. S. 82, 46 Sup. Ct. 52, 70 L. Ed. 172; 4 Am. State Papers, 83 et seq.

As to the legal status of grants of lands made by Great Britain during its dominion over the Floridas between 1763 and 1783, see report of land commission appointed under the treaty of cession with Spain and effectuating acts of congress, 4 Am. State Papers (Duff Green Ed.), 154, 243, 244, 245, 249, 250, 489, 490, et seq. (Gale & Seton's Ed.) 250, 381, 388, 732; see also Harcourt v. Gaillard, 25 U. S. 523, 12 Wheat. 523, 6 L. Ed. 716; 5 Am. State Papers, 757-762.

By the treaty of 1783 (see supra, p. 101), between Great Britain and Spain, Great Britain ceded to Spain "in full right East Florida, as also West Florida." See 4 Am. State Papers, 154, 253; also article by W. H. Watson, Esq., of Pensacola, Vol. 6 Florida Historical Society Quarterly, p. 123, October, 1927. Great Britian acknowledged the independence of the United States as a distinct sovereign by the treaty of Paris, September 3, 1783, after the Floridas had been re-ceded to Spain by Great Britain by the treaty of Versailles in 1783.

Under the treaty with Spain the United States acquired the ownership of all lands, including high lands, swamp and overflowed lands, submerged lands and tide lands that had not been granted or conveyed to private ownership prior to January 24, 1818, when the first proposal by Spain for the cession was made. The estimated area of the ceded territory is 35,000,000 acres land area and 3,000,000 acres water area, making an estimated total of 38,000,000 acres of land and water, now constituting the territorial area of the State of Florida, not including the area between the mainland and the gulf stream and three leagues from the mainland in the gulf of Mexico. (Art. I, const.).

At the time of the cession of East and West Florida by Spain to the United States which was made effective in July, 1821, the Indians who were occupying portions of the ceded territory had possessory rights in the lands by virtue of occupancy. Mitchell v. United States, 34 U. S. 711, 9 Pet. 711, 9 L. Ed. 283; Apalachicola Lands & Dev. Co. v. McRae, 86 Fla. 393, 98 So. 505. The United States by treaties with the Indians[12] and by other means limited the area of Indian occupancy and ultimately secured the removal of all Indians from Florida except the few hundred Seminoles who now dwell upon reservations in the Everglades in the extreme southern portion of the state.

The act of congress of March 3, 1821, like the act of March 3, 1819, made no express provision for the disposal of the lands ceded to the United States by the treaty with Spain, and surveys of the public lands in the ceded territories for purposes of sales to individuals do not appear to have been made until after the organization of the Territory of Florida, in 1822.

[11] See treaty of Amity, settlement & limits, supra, p. 102.
[12] See Indian treaties, supra, p. 126 et seq.

By act of congress of March 30, 1822, 3 Stats. 654, "all that territory ceded by Spain to the United States, known by the name of East and West Florida shall constitute a Territory of the United States, under the name of the Territory of Florida." During the existence of the Territory of Florida, the United States continued to own the lands ceded by Spain, its policy being to preserve the lands under navigable bodies of water and tide lands for the benefit of the future State of Florida (Shively v. Bowlby, 152 U. S. 1, 14 Sup. Ct. 548, 38 L. Ed. 331), and to so utilize the uplands including swamp and overflowed lands as to encourage their settlement, reclamation and cultivation. When the State of Florida was formed by act of congress of March 3, 1845, 5 Stats. 742, it became, by virtue of its sovereignty, the owner for the people of all lands under navigable bodies of water and tide lands within the state (Pollard v. Hagan, 44 U. S. 212, 3 How. 212, 11 L. Ed. 565); but the uplands including swamp and overflowed lands owned by the United States within the limits of the state continued to be property of the United States, and were held for the purposes of such grants and conveyances as may be made or authorized by the congress.

LAND GRANTS TO THE TERRITORY.

By act of congress of March 3, 1823, 3 Stats. 754, "an entire township in each of the districts of East and West Florida" was "reserved from sale for the use of a seminary of learning." The same law declares "that all the navigable rivers and waters in the districts of East and West Florida shall be, and forever remain, public highways." See also act of congress January 27, 1829, ch. VIII, 4 Stats. 201.

By act of congress of May 24, 1824, 4 Stats. 30, the United States granted to the territory a quarter section of land for a seat of government, and reserved other quarter sections for the same purpose. See acts of congress, February 8, 1827, 4 Stats. 202, and March 2, 1829, 4 Stats. 357; territorial act, March 4, 1839; Duval's Comp. p. 329. An act of congress, May 26, 1824, granted to each county in each state and territory one quarter-section of land for the county seat of government. (Ch. 169, 4 Stats. 50; see also act of congress, May 20, 1785, 5 Stats. 666; Duval's Comp. p. 329).

LAND GRANTS TO THE STATE.

An act of congress of March 3, 1845, 5 Stats. 788, supplemental to the act admitting Florida into the union, provides: "That in consideration of the concession made by the State of Florida in respect to the public lands, there be granted to the State eight entire sections of land for the purpose of fixing their seat of government; also, section number sixteen in every township, or other lands equivalent thereto, for the use of the inhabitants of such township, for the support of public schools; also, two entire townships of land, in addition to the two townships already reserved, for the use of two seminaries of learning, one to be located east, and the other west of the Suwannee river; also, five per centum of the net proceeds of the sale of lands within said State, which shall be hereafter sold by Congress, after deducting all expenses incident to the same; and which said net proceeds shall be applied by said State for the purposes of education." The previous grant of two townships of land for seminaries is that made to the territory by act of March 3, 1823, above cited. The University of Florida at Gainesville and the State College for Women at Tallahassee, are the successors of the "two seminaries of learning, one east and the other west of the Suwannee river." See ch. 5384, acts 1905; State ex rel Moodie v. Bryan, 50 Fla. 293, 39 So. 929; Lewis v. Gaillard, 61 Fla. 819, 56 So. 281.

The grant of eight sections of land was not for a location on which to build a seat of government or a state capitol. The eight sections were intended to be sold and the proceeds used by the new state in erecting a suitable capitol building at the seat of government already located. See ch. 54, acts 1845; resolution no. 2, p. 72, acts 1847; ch. 60, acts 1845, p. 137.

Under this grant the following described surveyed lands were, on July 3, 1851, approved, viz.: the south half of section seven, the west half of section eight, the west half of section seventeen, the east half of section eighteen, entire sections nineteen, twenty, twenty-one, twenty-nine, thirty and thirty-two, all in township seven south, range seventeen east, the same being "equal to eight sections." This land is in Columbia county, Florida. Unlike the swamp and overflowed land grant act of September 28, 1850, the statute granting the eight sections above did not require a patent to pass the title. The lands having been surveyed, the filing and due approval of the lists of selections by surveyed descriptions, perfected the title of the state to the lands selected and identified by survey and description.

SIXTEENTH OR SCHOOL SECTIONS.

The grant of "section number sixteen in every township or other land equivalent thereto" for school purposes made to the state by the act of congress, March 3, 1845, 5 Stats. 788, includes the sixteenth section in every township of lands then owned by the United States in the State of Florida. Where, because of fractional townships or other reasons, there is no sixteenth section, or only a fractional sixteenth section, or where the sixteenth section has been disposed of by the United States, other lands are granted to make up the deficiency. See acts of congress, February 26, 1859, February 28, 1891, 11 Stats. 385, 19 Stats. 796, 43 U. S. C. A. §§851, 852. Such lands are called "Lieu Lands." The title of the state of the sixteenth sections that are found in place and not previously disposed of by the United States, is complete upon an authorized survey duly approved, no patent being required. State ex rel. Kittel v. Jennings, Gov., 47 Fla. 307, 35 So. 986; Cooper v. Roberts, 59 U. S. 173, 18 How. 173, 15 L. Ed. 338.

SEMINARY LANDS.

The two "entire townships" of land granted by the act of March 3, 1823, and the two additional "entire townships" granted by the act of March 3, 1845, for "two seminaries of learning," were selected from the surveyed lands in the state belonging to the United States, and such selections were duly approved by the federal authorities thereby perfecting the title in the state. See Fraser v. O'Connor, 115 U. S. 102, 5 Sup Ct. 1141, 29 L. Ed. 311. Acts of congress, January 29, 1827; July 1, 1836; Florida Legislative Journals 1845, app. pp. 38, 43.

The title to the school and seminary lands is in the state. Such title may be conveyed by the state board of education. (§689.12, Fla. Stats., 1941; Hampton vs. State Board of Education, 90 Fla. 88, 105 So. 323.) As to conveyances of tide lands under legislative authority, see Deering Co. v. Martin et al., 95 Fla. 224, 116 So. 54.

THE INTERNAL IMPROVEMENT FUND.

By act of congress of September 4, 1841, the United States granted to certain named states and to each new state thereafter admitted into the union, five hundred thousand acres of land within their limits for purposes of internal improvement. See §8, ch. 16, act September 4, 1841, 5 U. S. Stats. 455. The grant was applicable to the State of Florida upon its admission into the union, March 3, 1845. See ch. 94, acts 1847. The title to lands under this grant passed to the state upon lists of selected surveyed lands duly approved by the commissioner of the general land office and the secretary of the interior of the United States.

The constitution of 1838, under which the State of Florida was admitted into the union, contained the following provisions, which in substance appear in the constitutions of 1861 and 1865, the constitutions of 1861 and 1865 having been adopted after the grant in 1850 of the immense areas of swamp and overflowed lands to the state by the United States:

"A liberal system of internal improvements, being essential to the development of the resources of the country, shall be encouraged by the government of this state; and it shall be the duty of the general assembly, as soon as practicable, to ascertain, by law, proper objects of improvement, in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriate for such improvements."

An act of congress of September 28, 1850, (Ch. 84, 9 U. S. Stats. 519), granted to the state all of the then unsold swamp and overflowed lands in the state, the fee simple to said lands to vest in the state, upon patents issued therefor subject to the disposal of the legislature. The act provides that "the proceeds of said lands, whether from the sale or direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of levees and drains." See Mills County v. Chicago, B. N. Q. R. Co., 107 U. S. 557, 2 Sup. Ct. 654, 27 L Ed. 578; Trustees Internal Improvement Fund v. Root, 63 Fla. 666, 58 So. 371; United States v. Minnesota, 270 U. S. 181, 46 Sup. Ct. 298, 70 L. Ed. 539. This grant does not include the sixteenth sections previously granted by the act of March 3, 1845, to the state for schools (State v. Jennings, 47 Fla. 307, 35 So. 986); nor does the grant include land under navigable bodies of water or tide lands that belong to the state by virtue of its sovereignty since March 3, 1845. (Broward v. Mabry, 58 Fla. 398, 50 So. 826; Martin v. Busch, 93 Fla. 535, 112 So. 274).

Under the grant of September 28, 1850, the State of Florida has received patents to more than 20,000,000 acres of swamp and overflowed lands, all of which except about 1,000,000 acres have passed from the state pursuant to grants, by the legislature to or for the benefit of railroads, canal and other companies, or sold or conveyed to private ownership under statuaory authority.

By chapter 610, acts 1855,[13] §253.01 et seq., Fla. Stats., 1941, the legislature vested in the governor of the state and four other state officers who are now the comptroller, state treasurer, attorney general and commissioner of agriculture, and their successors in office, in trust, so much as remained unsold of the five hundred thousand acres of land granted by the

[13]See also ch. 332, acts 1850-1851; ch. 496, acts 1852-1853.

act of congress of September 4, 1841; also all the swamp land or lands subject to overflow granted to the state by the act of congress of September 28, 1850, together with the proceeds of sales thereof, as a distinct and separate fund, to be called the internal improvement fund of the State of Florida. See Trustees of Internal Imp. Fund v. Bailey, 10 Fla. 112, 125; Trustees of Internal Imp. Fund v. Root, 59 Fla. 648, 51 So. 535; Trustees Internal Imp. Fund v. Root, 63 Fla. 666, 58 So. 371; State of Florida v. Anderson, 91 U. S. 667, 676; Union Trust Co. New York v. Southern Inland Nav. & Imp. Co., 130 U. S. 565, 9 Sup. Ct. 606, 32 L. Ed. 1043; Railroad Companies v. Schutte, 103 U. S. 118, 26 L. Ed. 327; Littlefield v. Improvement Fund Trustees, 117 U. S. 419, 29 L. Ed. 930. The title to swamp and overflowed land vests in the state upon delivery of a patent. See Lee Wilson & Co. v. United States, 245 U. S. 24, 38 Sup. Ct. 21, 62 L. Ed. 128; Chapman & Dewey Lumber Co. v. St. Francis Levee Dist., 232 U. S. 186, 34 Sup. Ct. 297, 58 L. Ed. 564; Rogers Locomotive Machine Works v. American Emigrant Co., 164 U. S. 559, 17 Sup. Ct. 188, 41 L. Ed 552; Byrne Realty Co. v. South Florida Farms Co., 81 Fla. 805, 89 So. 318; Everglades Sugar & Land Co. v. Bryan, 81 Fla. 75, 87 So. 68; South Florida Farms Co. v. Goodno, 84 Fla. 532, 94 So. 672; Seminole Fruit & Land Co. v. Pyles, 13 Fed. 2d 878. In the other grants to the state the title is complete upon duly approved official lists of surveyed lands. As to unsurveyed lands, see Hardee v. Horton, 90 Fla. 452, 108 So. 189.

By chapter 610 the state officers were given powers as trustees to hold and to sell and transfer the lands for the uses, and purposes prescribed by statute. One of the trusts imposed by §2 of said act was that the proceeds from the sale of lands of the fund should be used to pay the interest "as it may become due on the bonds to be issued by" railroad companies under the authority of the act. See Fed. Cas. Nos. 17007, 17008, 17011, 1 Woods 647, 2 Woods 647, 130 U. S. 565. Portions of the railroads contemplated by chapter 610 were constructed prior to and during the civil war. The railroad companies made large bond issues as contemplated by the statute and owing to depressed conditions growing out of and following the civil war the companies could not provide funds for the interest payments, and as the sales of the lands of the internal improvement fund by the trustees did not afford sufficient revenue to make interest payments on all the bonds, the internal improvement fund became greatly indebted to holders of interest coupons due on the bonds outstanding.

Upon the default of a railroad to make the payments as required by the act, the trustees were authorized to take possession of the railroad and its property and to sell the same at public auction to the highest bidder, the proceeds from such sale to be applied by the trustees "to the purchase and cancelling of the outstanding bonds" of the company "or incorporated with the sinking fund," the purchasers being bound to continue the payments to the sinking fund as provided in said act. See Wilson v. Mitchell, 43 Fla. 107, 30 So. 703. The roads were seized and sold by the trustees of the internal improvement fund under the provisions of chapter 610. Some history of these transactions is referred to by the United States supreme court in cases of State of Florida v. Anderson, 91 U. S. (1 Otto) 667-683, 23 L. Ed. 291-295, also Central Railroad Company v. J. Fred Schutte et al., 103 U. S. (13 Otto) 118-145, 26 L. Ed. 327-337.

The indebtedness of the fund for the unpaid interest coupons on the bonds of the railroad companies resulted in litigation in the federal courts in which a receiver of the fund was appointed June 1, 1872. See Minutes Trustees I. I. Fund, Vol. 2, pp. 280, 498. To relieve the fund of its statutory indebtedness and to encourage the development of the state, Governor Bloxham and his co-trustees, in 1881, negotiated a sale to Hamilton Disston of Philadelphia, Pennsylvania, of 4,000,000 acres of the swamp and overflowed lands for $1,000,000. The lands at that time were of only nominal value because of the small population in the southern part of the state and the lack of transportation facilities and of information as to the attractions and natural resources of this region. With the proceeds of the sale to Disston the statutory debt of the fund for interest on bonds issued by railroad companies, was duly paid and the remainder of the lands were secured to the fund subject to legislative disposition. This was the beginning of a new era of development and progress in Florida, particularly in the southern, eastern and western portions of the state. Many statutory grants of large areas of swamp and overflowed lands were made to new railroad companies to aid in the construction of transportation facilities that were essential to the development of the state. This was regarded as the most feasible method of utilizing the lands to secure essential internal improvements to aid and encourage "the settlement and cultivation of the land" as required by §16, chapter 610. This legislative method of administering the lands proved most helpful in developing the resources of the state and was approved by the courts. See Trustees I. I. Fund v. St. Johns Ry. Co., 16 Fla. 531; Gonzales v. Sullivan, 16 Fla. 791; Trustees I. I. Fund v. Root, 59 Fla. 648, 51 So. 535; Yager v. McNeill, 60 Fla. 400, 53 So. 12; Trustees I. I. Fund v. Root, 63 Fla. 666, 58 So. 371. The policy of encouraging railroad and canal building by legislative land grants secured the construction of the transportation facilities that so materially contributed to the development and progress of the state to its present prominent position in the union.

The act of congress of September 28, 1850, contemplated that the swamp and overflowed lands granted by the act to the state should be surveyed by the United States and "a patent to be issued to the State therefor." Some sur-

veys were made and some of the lands granted by the act were patented to the state. However, the granted swamp and overflowed lands that were in the Everglades were not surveyed by the United States. In order to utilize the remainder of the granted lands for the purposes to which they had been assigned by law, on April 29, 1903, Governor W. S. Jennings obtained from the United States what is known as Everglades patent no. 137, describing by metes and bounds an estimated area of 2,862,080 acres of unsurveyed swamp and overflowed land, the greater portion of the area being in the Everglades section of the state between Lake Okeechobee and the southern extremity of the peninsula. See Hardee v. Horton, 90 Fla. 452, 108 So. 189, for copy of Everglades patent no. 137 and maps.

Although the organic provision relative to internal improvements that was a part of the state constitutions of 1838, 1861 and 1865, was not incorporated in the constitutions of 1868 and 1885, the statute enacted in 1855, chapter 610, continued in force, defining the trusts to which the swamp and overflowed lands of the state should be devoted. One of the trusts of the act of 1855, in §16, is that "the trustees of the Internal Improvement Fund shall * * * make such arrangements for the drainage of the swamp or overflowed lands as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the land.". (Trustees I. I. Fund v. Gleason, 15 Fla. 384; Trustees I. I. Fund v. St. Johns Ry. Co., 16 Fla. 531; Everglades Sugar & Land Co. v. Bryan, 81 Fla. 75, 87 So. 68. This trust provision has been re-enacted and continued in force. See §19, p. 595, McClellan's Digest; RGS 1070; CGL 1401; §253.18, Fla. Stats., 1941.

At the instance of Governor Bloxham, chapter 3326, acts 1881, was enacted and has repeatedly been re-enacted providing that "any and all grants of lands other than the alternate sections within the usual six-mile limit made or that may be made by any act, shall be subject to the rights of all creditors of the internal improvement fund, and to the trusts to which said fund is applicable and subject under the act approved January 6, 1855, ... , and subject to control, management and sale and application of said fund and the lands constituting the same, by the trustees of the internal improvement fund, for the purposes of said trust under said act." See RGS 1077; CGL 1408; §253.22, Fla. Stats., 1941.

Land grants made by the legislature to railroad companies to aid in the construction of new transportation facilities were equal to, if not in excess of, the entire area of public lands then belonging to the state. By administrative adjustments and settlements of these grants, begun in 1903, more than a million acres of swamp and overflowed lands were secured to the state. See Minutes Trustees I. I. Fund, Vol. 7, p. 146. Pursuant to a policy of drainage inaugurated by Governors Jennings and Broward, the lands are being used by the trustees in accordance with the object of the grant to the state. See ch. 5377, acts 1905; ch. 5709, acts 1907; ch. 6456, acts 1913; ch. 6957, acts 1915; ch. 7305, acts 1917; chs. 7862 to 7865, acts 1919; chs. 8412-13, acts 1921; ch. 9119, acts 1923; ch. 10026, acts 1925; ch. 12016, acts 1927; ch. 14717, acts 1931; ch. 20658, acts 1941.

Under the terms of the original internal improvement act of 1855, cities and counties of the state were authorized to take subscriptions to stock of the railroad companies referred to in the act and to issue bonds and incur indebtedness for the purpose of aiding in the construction of the roads. See Cotten v. Co. Commis, 6 Fla. 610; County Commissioners of Columbia County v. King, 13 Fla. 451; Gonzales v. Sullivan, 16 Fla. 791; Hawkins v. Trustees I. I. Fund, 34 Fla. 405, 16 So. 311. Chapter 3474, acts 1883, and chapter 6972, acts 1915, state that certain therein named counties and a city did issue bonds and incur indebtedness for those purposes and that the railroads had been subsequently sold by the trustees for the benefit of said fund but the indebtedness incurred by the city and counties had not been paid by the roalroad companies or out of the proceeds of the sale of the railroads and the city and counties have been compelled to pay their bonds and indebtedness. The legislature by said acts of 1883 and 1915, determined that it was proper for the city and counties to be reimbursed for the moneys so paid out by them, and the then remaining portions of the 500,000 acres of land granted to the state for internal improvement purposes by the act of congress of September 4, 1841, and certain portions of the swamp and overflowed lands, were appropriated to the payment of the indebtedness incurred under the statute by the city and certain counties for subscriptions to the capital stock of the railroad companies. See ch. 610, acts 1855; ch. 1110, acts 1860; ch. 3474, acts 1883; ch. 6972, acts 1915.

The swamp and overflowed land grant does not include land under bodies of navigable water or tide lands, which are sovereignty lands; and chapter 610, acts 1855, gives the trustees of the internal improvement fund no authority to dispose of such submerged and tide lands (Broward v. Mabry, 58 Fla. 398, 50 So. 826; State v. Gerbing, 56 Fla. 603, 47 So. 353), though chapter 7304, acts 1917, and other statutes give to the trustees stated powers with reference to such sovereignty lands. See Martin v. Busch, 93 Fla. 535, 112 So. 274.

Swamp lands, as distinguished from overflowed lands, are such as require drainage to dispose of needless water or moisture on or in the lands, in order to make them fit for successful and useful cultivation. Overflowed lands are those that are covered by nonnavigable waters or are subject to such periodical or frequent overflows of water, salt or fresh (not including lands between ordinary high

and low water marks of navigable waters), as to require drainage or levees or embankments to keep out the waters, and thereby render the lands suitable for successful cultivation. (State v. Gerbing, 56 Fla. 603, 47 So. 353).

OTHER LAND GRANTS.

An act of congress of May 17, 1856 (ch. 31, 11 Stats. 15) granted to the state for stated railroads "every alternate section of land designated by odd numbers for six miles in width on each side of said roads." Chapter 147, acts of congress, March 2, 1855, 10 Stats. 634, and chapter 117, act March 3, 1857, 11 Stats. 251, provided for grants of lands to the state as indemnity for lands lost to the state by obstacles in surveys or disposed of by the United States that were included in grants to the state. Such lands are commonly called "indemnity lands." See act February 26, 1859, U. S. Rev. Stat., §2276; act March 2, 1855, U. S. Rev. Stat., §2482.

SOVEREIGNTY LANDS.

When by treaty dated February 22, 1819, Spain ceded to the United States "in full property and sovereignty, all the territories * * * * * known by the name of East and West Florida," the titles to all the lands within the ceded domain became subject to the laws of the United States. During the period when Florida was a territory of the United States, the policy of the federal government was to hold the lands under bodies of navigable water and tide lands for the use of the public, to inure to the state for the benefit of its inhabitants upon the formation of a state government, the other lands owned by the United States in the territory being subject to acquisition in private ownership. (Shively v. Bowlby, 152 U. S. 1, 14 Sup. Ct. 548, 38 L. Ed. 331).

When Florida was admitted as a state, March 3, 1845, the state by virtue of its sovereignty, became the owner for the benefit of its inhabitants of all lands under bodies of navigable water and tide lands within its territorial limits. These lands were called sovereignty lands. State law regulates the title to submerged land in the state and the rights of riparian owners with reference thereto. (Minn. Mills Co. v. St. Paul W. Co., 168 U. S. 349, 18 Sup. Ct. 157; Shively v. Bowlby, 152 U. S. 1, 14 Sup. Ct. 548, 38 L. Ed. 331. See also Hardin v. Jordan, 140 U. S. 371, 11 Sup. Ct. 808, 838, 35 L. Ed. 428; Fox River Paper Co. v. R. R. Com., 274 U. S. 651, 47 Sup. Ct. 669; Appleby v. New York, 271 U. S. 364, 46 Sup. Ct. 569, 70 L. Ed. 492). The use and disposition of such lands are within the regulating province of the legislature, subject only to the rights of riparian owners under the law of the state and to such rights as the public may have in the lawful use of the navigable waters and to the dominant power of congress over the navigable waters. It has been held that by statute, limited portions of the submerged lands may be sold to private ownership when substantial rights of the public in the use of the navigable waters are not unlawfully invaded and the authority of congress as to navigable waters is not interfered with. (State v. Gerbing, 56 Fla. 603, 47 So. 353; Broward v. Mabry, 58 Fla. 398, 50 So. 826; South Florida Farms Co. v. Goodno, 84 Fla. 532, 94 So. 672; Apalachicola Land & Development Co. v. McRae, 86 Fla. 393, 98 So. 505; Hardee v. Horton, 90 Fla. 452, 108 So. 189).

There are recognized limitations upon the power of the legislature to pass to private ownership the submerged lands under navigable waters when the public interests and rights are disregarded so as to produce detriment. See Chicago v. Illinois Cent. R. Co., 146 U. S. 387, 13 Sup. Ct. 110; Illinois v. Illinois Cent. R. Co.; 184 U. S. 77, 22 Sup. Ct. 300; Appleby v. New York, 271 U. S. 364, 46 Sup. Ct. 569; State v. City of Tampa, 88 Fla. 196, 102 So. 336. Riparian owners have title to ordinary high water mark. (Martin v. Busch, 93 Fla. 535, 112 So. 274; State ex rel v. Gerbing, 56 Fla. 603, 47 So. 353; Broward v. Mabry, 58 Fla. 398, 50 So. 826. Brickell v. Trammell, 77 Fla. 544, 82 So. 221).

Ch. 6451, acts 1913; ch. 6960, acts 1915; ch. 7304, acts 1917; RGS 1056 et seq.; §253.06 et seq., Fla. Stats., 1941, and perhaps other acts, confer upon the trustees of the internal improvement fund stated authority with reference to tide and submerged lands. See Deering v. Trustees, 95 Fla. 224, 116 So. 54.

As to rights granted by the riparian acts of 1856 and 1921, see RGS 1227 et seq.; §271.01, Fla. Stats., 1941; ch. 8537, acts 1921. (Geiger v. Filor, 8 Fla. 325; Rivas v. Solary, 18 Fla. 122; Sullivan v. Moreno, 19 Fla. 200; Ruge v. Apalachicola Oyster Canning & Fish Co., 25 Fla. 656, 6 So. 489; Dumas v. Garnett, 32 Fla. 64, 13 So. 464; State v. Black River Phosphate Co., 32 Fla. 82, 13 So. 640; Sullivan v. Richardson, 33 Fla. 1, 14 So. 692; Axline v. Shaw, 35 Fla. 305, 17 So. 411; Ferry Pass Inspector's & Shippers' Ass'n v. White River Inspectors' & Shippers' Ass'n, 57 Fla. 399, 48 So. 643; Merrill-Stephens Co. v. Durkee, 62 Fla. 549, 57 So. 428; Thiessen v. Gulf F. & A. R. Co., 75 Fla. 28, 78 So. 491; Brickell v. Trammell, 77 Fla. 544, 82 So. 221; City of Tarpon Springs v. Smith, 81 Fla. 479, 88 So. 613; Panama Ice & Fish Co. v. Atlantic & St. A. B. R. Co., 71 Fla. 419, 71 So. 608; Lord v. Curry,

71 Fla. 68, 71 So. 21; Escambia Land & Mfg. Co. v. Ferry Pass & Shippers Ass'n, 59 Fla. 239, 52 So. 715; Commodores Point Terminal Co. v. Hudnall, 3 Fed. 2d 841; 283 Fed. 150).

Whether a stream or body of water is navigable for useful public purposes is to be determined by the application of appropriate provisions and principles of law to particular facts of separate cases. Where a stream or body of water is permanent in character and in its ordinary natural state is in fact navigable for useful purposes, and is of sufficient size and so situated and conditioned that it may be used for purposes of trade and travel common to the public locality where it is located, such water may be regarded as being of a public character, and the title to the land thereunder, including the shore or space between ordinary high and low water marks, when not included in the valid terms of a grant or conveyance to private ownership, is held by the state in its sovereign capacity in trust for the lawful uses of all the people of the state in the water and the land, subject to lawful governmental regulations of such uses. The state may make limited dispositions of such lands as may be allowed by law. Capacity for navigation, not usage for that purpose, determines the navigable character of waters with reference to the ownership and uses of the land covered by the water. Grants and conveyances of land bordering on navigable waters carry title in general to ordinary high water mark when a valid contrary intent does not appear. (Broward v. Mabry, 58 Fla. 398, 50 So. 826; State of Oklahoma v. State of Texas, 258 U. S. 574, 42 Sup. Ct. 406, 66 L. Ed. 771; Economy Light & Power Co. v. United States, 256 U. S. 113, 41 Sup. Ct. 409, 65 L. Ed. 847).

Tide lands are those covered and uncovered daily by the normal tides. (State v. Gerbing, 56 Fla. 603, 47 So. 353; Mann v. Tacoma L. Co., 153 U. S. 273, 14 Sup. Ct. 820, 38 L. Ed. 714; Baer v. Moran Bros. Co., 153 U. S. 287, 14 Sup. Ct. 823, 38 L. Ed. 718; Apalachicola Land & Dev. Co. v. McRae, 86 Fla. 393, 98 So. 505).

STATE SCHOOL FUND.

The constitution of 1868 provided that "the common school fund * * * * * shall be derived from the following sources: The proceeds of all lands that have been or may hereafter be granted to the State by the United States for educational purposes; * * * * * twenty-five per centum of the sales of public lands which are now or may hereafter be owned by the State;" and that "the principle of the common school fund shall remain sacred and inviolate." (§§4, 6, art. VIII, const. 1868). The constitution of 1885 makes the same provision as to the state school fund. (§4, art. XII, const.). On October 22, 1907, the state board of education adopted a resolution calling upon the trustees of the internal improvement fund to account to the school fund for twenty-five per cent of the proceeds from sales of public lands made by the trustees.

On February 5, 1908, Attorney General William H. Ellis rendered to Governor Napoleon B. Broward an opinion that "The term 'public lands' as used in the constitutions of 1868 and 1885, designated a class of lands distinguished from those granted by the United States to the State of Florida for public school purposes, all the proceeds of the sales of such lands constituting part of the School Fund, while only twenty-five per cent of the proceeds of the sales of 'public lands' * * * * * was to be paid into the School Fund. The public lands consisted, among others, of the sixteenth section in every township granted by Act of Congress of March 3, 1845, for school purposes; five hundred thousand acres granted by Act of Congress of September 4, 1841 for Internal Improvement, and the swamp and overflowed lands granted by Act of September 28, 1850. * * * * * The lands designated in the Act of 1855, Chapter 610, Laws of Florida, did not lose their character as public lands by being pledged in trust to aid in the construction of certain objects of improvement. The legislature by that act simply designated some object of improvement to be constructed first and to postpone others * * * * * Section 4, Article VIII, Constitution of 1868, which was carried into and became a part of the Constitution of 1885, so far as it provides that the Common or State School Fund should consist in part of the twenty-five per cent of the sales of public lands which were then owned or thereafter acquired by the State, operated as an amendment to Chapter 610, Laws of Florida * * * * * and is a limitation or inhibition upon the Legislature from diverting more than seventy-five per cent of the sales of the public lands designated in the act to purposes other than increasing the Common or State School Fund. Section 4, Article VIII, Constitution of 1868, was not applicable to the sales of the lands which were sold for the purpose of discharging the lien of the bondholders of the railroads which acquired the right of the provisions of the act prior to 1868. The constitutional provisions could not, of course, have the effect of impairing the obligations of contracts nor depriving those persons of vested rights acquired under an Act of 1855." (Citing, Newhall v. Sanger, 92 U. S. 761, 23 L. Ed. 769; 10 Fla. 112, 125; Gormley v. Bunyan, 138 U. S. 623, text 625, 11 Sup. Ct. 453, 34 L. Ed. 1086; Trustees I. I. Fund v. St. Johns Ry. Co., 16 Fla. 531).

In an opinion rendered January 3, 1920, by Glenn Terrell, as counsel for the trustees of the internal improvement fund, it is held: (1) that the "public lands" of the state are those

state lands that are open to sale and disposition under general laws, citing Bardon v. Northern Pac. R. Co., 145 U. S. 535, text 538, 12 Sup. Ct. 856, 36 L. Ed. 806; and Newhall v. Sanger, 92 U. S. 761, 762, 23 L. Ed. 769; (2) that at the date of the adoption and ratification in 1868, of the organic provisions that the school fund "shall be derived from the following sources: The proceeds of all lands * * * * * granted to the State by the United States for public school purposes * * * * * twenty-five per centum of the sales of public lands * * * * * owned by the State," the only public lands owned were those held under grants by congress (a) of the sixteenth sections of lands for school purposes, (b) of lands for internal improvement purposes, (c) of swamp and overflowed lands; (3) that in adopting and ratifying the quoted provision as to twenty-five per cent of the sales of public lands, the convention and the electors could have had in mind no other lands than the internal improvement lands and the swamp and overflowed lands, since the whole of the sixteenth sections belonged to the state school fund; (4) that the state could apply to the state school fund twenty-five per cent of the sales of the internal improvement lands and the swamp and overflowed lands in the absence of objection by the United States, the grantor of such lands; (5) that the statutory vesting of the title of the internal improvement lands and the swamp and overflowed lands in public officers as trustees, was subject to future changes in the law and the beneficial ownership of the lands remained in the state; (6) that the organic provision operated as a self executing amendment of the statute, chapter 610, laws of Florida, defining the trust purposes of the lands vested in the state trustees; (7) that since the constitution of 1868 became effective the state school fund is entitled to receive twenty-five per cent of the internal improvement lands and of the swamp and overflowed lands held by the state trustees, provided no obligations or vested right against the internal improvement fund that existed prior to the effective date of the constitution of 1868 is thereby impaired. (Citing, Mills County v. Burlington & M. R. Co., 107 U. S. 557, 565, 2 S. Ct. 654, 27 L. Ed. 578; Hagar v. Reclamation Dist. No. 108, 111 U. S. 701, 4 S. Ct. 663, 28 L. Ed. 569; U. S. v. State of Louisiana, 127 U. S. 182, 187, 8 S. Ct. 1047, 32 L. Ed. 66; American Emigrant Co. v. Adams County, 100 U. S. 61, 25 L. Ed. 563; Trustees of Internal Imp. Fund v. Root, 59 Fla. 648, 51 So. 535; Trustees of Internal Imp. Fund v. Bailey, 10 Fla. 112, 125, 81 Am. Dec. 194; Lainhart v. Catts, 73 Fla. 735, 75 So. 47).

Lands under bodies of navigable waters and tide lands in the state, known as sovereignty lands, belong to the state; and statutes may require all as well as twenty-five per cent of the proceeds of permissible sales of such sovereignty lands to be paid into the state school fund, that "shall remain sacred and inviolate." Chapter 12016, acts 1927, relating to the internal improvement fund, expressly recognizes the organic right of the state school fund to receive twenty-five per cent of all sales of internal improvement lands and of swamp and overflowed lands held by the trustees of the internal improvement fund.

PUBLIC LANDS.

The words "public lands" as used in §4, art. VIII of the constitution of 1868 and in §4, art. XII of the constitution of 1885, have reference to open areas of land the title to which is based upon sovereign grants from the United States to Florida, and designed for general public purposes such as education, internal improvements, and drainage, and reclamation, the lands being in their natural undeveloped condition and generally in large contiguous areas. Such "public lands" include the 500,000 acres granted to the states for general internal improvement purposes by act of congress of September 4, 1841 (5 Stats. 453), and the swamp and overflowed lands granted for general drainage and reclamation purposes by act of congress of September 28, 1850 (9 Stats. 519, 43 U. S. C. A. §§982-984). The above are "public lands" within the scope, meaning and intendments of the provision of §4, art. XII of the constitution which provides that "twenty-five per cent of the sales of public lands which are now or may hereafter be owned by the State" shall become a part of "the State Fund, the interest of which shall be exclusively applied to the support and maintenance of public free schools." Lands, the title to which becomes vested in the state through the operation of the law for taxing lands held in private ownership, are not a part of the "public lands" of the state under the present laws. See State ex rel. Town of Crescent City v. Holland, 151 Fla. 806, 10 So. (2d) 577.

SOME INDIAN AND SPANISH GRANTS.

While by article II of the treaty dated February 22, 1819, 8 Stat. 252, supra, p. 102, Spain ceded to the United States, East and West Florida, article VIII provides that: "All the grants of land made before the 24th of January, 1818, * * * * * shall be ratified and confirmed to the persons in possession of the lands. * * * * * All grants made since the said 24th day of January, 1818, * * * * * are hereby declared, and agree to be null and void." In accordance with the treaty, claims of grants of land in the territories by Spain prior to

January 24, 1818, were determined by commissioners or adjudicated by the courts.

Under Spanish rule the Indians could make no grant or cession of lands occupied by them except in accordance with the dominant authority of Spain, and confirmation by Spain of cessions in lands made by the Indians, was essential to make title. (A.L. & D. C. v. McRae, 86 Fla. 393, 98 So. 505). See territorial act, Feb. 11, 1831, Duval's Comp., p. 46.

FORBES PURCHASE.

Prior to 1819, trading companies known as Panton, Leslie & Co., and their successors John Forbes & Co., by permission of the Crown, did an extensive mercantile business among the Indians. Large debts to the mercantile company having been incurred by the Indians which they could not pay, and depredations upon the merchandise stores of said companies having been made by them, the Indians in consideration of such indebtedness and depredations, ceded to the companies at different times large tracts of land occupied by said Indians. The cession of these lands, including islands, was confirmed by the Spanish authorities.

Speaking generally, the "lands and islands" composing the several Indian-Spanish grants or cessions included in Forbes Purchase are:

1. Grant to Panton Leslie & Co., confirmed by Spanish authority in 1804 and 1806.

2. Grant to John Forbes & Co., confirmed by Spanish authority in 1811.

3. Grant of an island in Apalachicola river to John Forbes confirmed by Spanish authority in 1811. This island is in Franklin county. For descriptions of the grants, see Apalachicola Land & Development Co. v. McRae, 86 Fla. 393, 398, 98 So. 505, 5 American State Papers, p. 329. The grants were held to be valid under the treaty of cession dated February 22, 1819. (Mitchell v. U. S., 34 U. S. 711, 9 Pet. 711, 9 L. Ed. 283; United States v. Mitchell, 40 U. S. 52, 15 Pet. 52, 10 L. Ed. 658). See also Vol. 16, Florida Historical Society Quarterly, p. 55; Dictionary of American History (N.Y. 1940), II 299.

An asserted land grant by Spain to John Forbes & Co. of large areas in West Florida was, by a superior court of the territory held invalid under the eighth article of the treaty of cession. This adjudication was held to be binding in United States v. Dalcour, 203 U. S. 408, 27 Sup. Ct. 58, 5 L. Ed. 248.

The lands covered by the several grants included in Forbes Purchase are in the counties of Leon, Wakulla, Gadsden, Liberty and Franklin, between St. Marks river on the east and Apalachicola river on the west. A map of the areas of Forbes Purchases is printed on the opposite page, and in addition it shows various Indian trails and the route taken by General Jackson to Fort Gadsden, his route to the Miccosukee towns, his route to St. Marks, and part of his return route.

EXPLANATION OF MAP

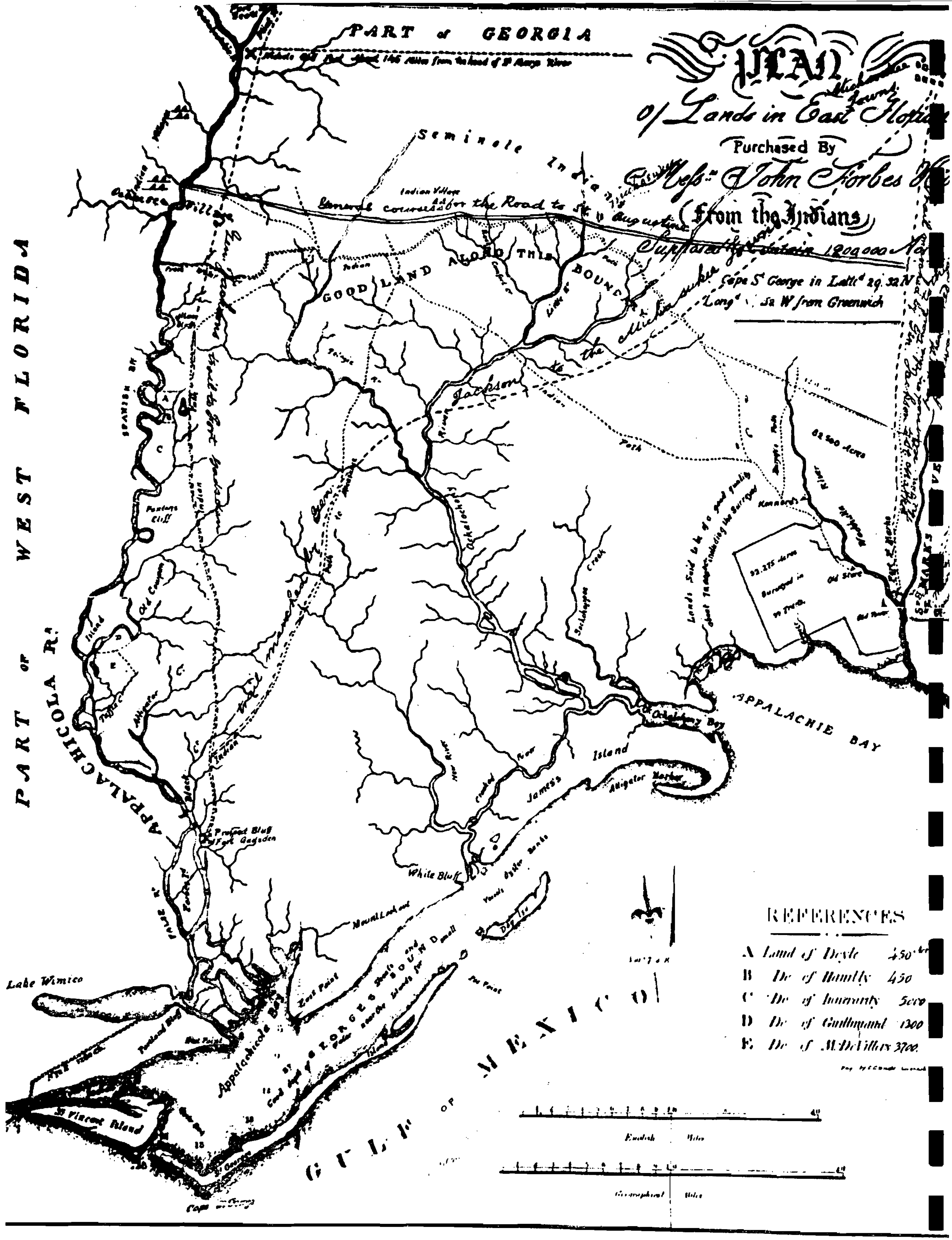
The north-south dotted line immediately east of the "Appalachicola" river is "General Jackson's trail to Fort Gadsden."

The east-west road, indicated by double line, extending from the "Appalachicola" river east to the edge of the map, represents the "general course for the road to St. Augustine."

The dotted line running north-easterly from Fort Gadsden, over the "Ockalockony" river, to the upper right hand corner of the map, is the "trail marched by Gen. Jackson to the Mickasukee Towns."

The north-south dotted line immediately west of the St. Marks river extending from the "Mickasukee Towns" southerly to St. Marks, indicates the "Trail marched by Gen. Jackson to St. Marks"; and the junction of this trail with the east-west road to St. Augustine is described thus: "The General returned on this trail to this point & then turned off for Sewannee."

Other dotted lines indicate Indian paths.


PART of GEORGIA
PLAN
of Lands in East Florida
Purchased By
Messrs John Forbes & Co
From the Indians
Seminole Indians
GOOD LAND ALONG THIS BOUND
Cape St George in Latt 29.32 N
WEST FLORIDA
PART OF APPALACHICOLA R.
Jackson River
Ockolockony Bay
APPALACHIE BAY
James's Island
Alligator Harbor
White Bluff
Prospect Bluff
Fort Gadsden
Lake Wimico
Appalachicola Bay
St Vincent Island
Dog Isd
GULF OF MEXICO
REFERENCES
A Land of Doyle 450 Ac
B Do of Hambly 450
C Do of Innerarity 5000
D Do of Guillmard 1300
E Do of McDevillars 3700
English Miles
Geographical Miles

OTHER SPANISH GRANTS.

The Arredondo Spanish grant of December 22, 1817, "a square tract containing 289,645 5/7 acres of English measure the centre whereof to be a place known as Alachua inhabited at other times by a tribe of Seminole Indians," is adjudicated in U. S. v. Don Fernando De La Maza Arredondo, 31 U. S. 691-760, 6 Pet. 691-760, 8 L. Ed. 547, and referred to in Axline v. Shaw, 35 Fla. 169, 17 So. 411; Apalachicola L. & D. Co. v. McRae, 86 Fla. 393, 452, 98 So. 505. See also U. S. v. Heirs of Arredondo, 38 U. S. 88, 13 Pet. 88, 10 L. Ed. 71; U. S. v. Heirs of Arredondo, 38 U. S. 133, 13 Pet. 133, 10 L. Ed. 93.

As to the Spanish grant to Daniel Hogans, March 18, 1817, of 255 acres of land north of St. Johns river and east of Hogan creek, Jacksonville, Duval county, and ganancial property rights under the Spanish law, see Commodore Point Terminal Co. v. Hudnal, 283 Fed. 150; Commodore Point Terminal Co. v. Hudnal, 3 Fed. 2d 841. See also McHardy v. McHardy's Ex'r, 7 Fla. 302; McGee v. Alba, 9 Fla. 382; Kingsley v. Broward, 19 Fla. 722; Territorial act December 23, 1824; Duval's Comp., pp. 45, 183; Thompson's Digest, p. 194; McClellan's Digest, p. 754; RGS 3946; CGL 88, 5865; §§2.02, 708.01, Vol. II, Fla. Stats, 1941.

Other asserted grants by Spain to individuals prior to January 24, 1818, are referred to in adjudicated cases:

Pedro Fornells, January 18, 1805, 175 acres of land on Key Biscayne. Sanchez v. Deering, 288 Fed. 412.

Vincente S. Pintado, December 18, 1817, water front at Pensacola. Sullivan v. Richardson, 33 Fla. 1, 14 So. 692; Richardson v. Sullivan's Ex'rs, 38 Fla. 90, 20 So. 815; Richardson v. Louisville & N. R. Co., 169 U. S. 128, 18 Sup. Ct. 268, 42 L. Ed. 687.

Joseph Fish, June 19, 1795, Anastasia Island, near St. Augustine. Mitchell v. Furman, 180 U. S. 402, 21 Sup. Ct. 430, 45 L. Ed. 596. See also Doe v. Roe, 13 Fla. 602.

Francisco Rochelave, a tract of land at the point of the Flag Staff, at or near Pensacola. Doe v. Latimer, 2 Fla. 71.

Peter Alba, Jr., 1817, lots in City of Pensacola. McGee v. Doe, 9 Fla. 382.

Maria Suarez, widow of Purnal Taylor, September 13, 1816, 200 acres on the St. Johns river. Doggett v. Hart, 5 Fla. 215, 58 Am. Dec. 464; Hogans v. Carruth, 18 Fla. 587; 4 Am. State Papers, 170; Hogans v. Carruth, 19 Fla. 84.

John Master, September 13, 1816, 100 acres on the St. Johns river. Doggett v. Hart, 5 Fla. 215.

See also, Keech v. Enriquez, 28 Fla. 597, 10 So. 91; Wilson v. Knight, 48 Fla. 196, 37 So. 187; Florida Town Imp. Co. v. Bigalsky, 44 Fla. 771, 33 So. 450; Daggett v. Willey, 6 Fla. 482; Doe v. Doe, 13 Fla. 602; Hart v. Bostwick, 14 Fla. 162; U. S. v. Morant, 123 U. S. 335, 8 Sup. Ct. 189, 31 L. Ed. 171.

British grants in Florida 1763-1783, see Florida Historical Society Quarterly, October, 1927, pp. 120, 123. See also, White's New Recompilation, Vol. 2, p. 296 et seq.

WHITFIELD'S NOTES

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FLORIDA LEGAL BIBLIOGRAPHY

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PART III

SELECTED FEDERAL LAWS IN GENERAL USE

SELECTED FEDERAL LAWS IN GENERAL USE

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SELECTED FEDERAL LAWS IN GENERAL USE

AUTHENTICATION OF LAWS AND RECORDS.

AUTHENTICATION OF LEGISLATIVE ACTS; PROOF OF JUDICIAL PROCEEDINGS OF STATE.

The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken. 28 U.S.C.A. §687.

FORM OF AUTHENTICATION OF JUDGMENT FOR USE IN ANOTHER STATE.

State of ————————)
County of ————————) ss.

I, ————————, clerk of the ———— court ————————, in and for the county of ————————, state of ————————, aforesaid, do hereby certify that the annexed and foregoing writing is a true and perfect copy of the pleadings and original process, with the return of service thereon, together with the final judgment of my said court, in the suit of ————————, plaintiff, against ————————, defendant, as the same appear of record and on file in my office.

In witness whereof, I have hereunto set my hand, and affixed the official seal of said court at ————————, on this ———— day of ————————, 19——.

(L. S.)

————————,
————Clerk————.

State of ————————)
County of ————————) ss.

I, ————————, presiding judge of the ———— court ———— county, in the state of ————————, do hereby certify that ————————, whose genuine signature is affixed to the above and foregoing certificate, was, on the date of signing said certificate, and now is, the clerk of ———— court of the county of ———— aforesaid; that his official acts as such clerk are entitled to full faith and credit, and, that said foregoing attestation is in due form of law.

Given under my hand and the seal of my said court this ———— day of ————, 19——.

(L. S.)

————————, presiding judge.

PROOF OF RECORDS IN OFFICES NOT PERTAINING TO COURTS.

All records and exemplifications of books, which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken. 28 U.S.C.A. §688.

FORM OF AUTHENTICATION OF RECORD OF DEED FOR USE IN ANOTHER STATE

)
State of ————————)
County of ————————) ss.
)

I, ————————, recorder of deeds of the county of ————————, in the state of ————————, aforesaid, do hereby certify that I am the keeper of the records and office books kept in the office of recorder of deeds of said county of ————————, the same being a public office not appertaining to a court.

I do further certify that I have compared the foregoing with the original record of a deed recorded in the said office of recorder of deeds of ———— county, aforesaid, in volume ————, at page ————, of the land records of said county, and that the foregoing is a correct transcript therefrom, and a true copy of the record of said deed, together with the certificate of acknowledgment thereto, as the same appears of record in said office of recorder of deeds.

In witness whereof, I have hereunto set my hand and affixed the official seal of said office this ———— day of ————, 19——.

(L. S.)

————, recorder of deeds.

)
State of ————————)
County of ————————) ss.
)

I, ————————, presiding judge of the ———— court ———— of the county of ————, in the state of ————, do hereby certify that the above named ———— is now, and at the time of making the foregoing attestation was, the recorder of deeds of said ———— county in the state of ————, and the keeper of the records and office books of said office, the same being a public office not appertaining to a court.

I further certify that said office of recorder of deeds is kept in my said county of ————; that I am the presiding judge of the ———— court ———— of said county, and that the foregoing attestation of said ———— is in due form and by the proper officer.

In testimony whereof, I have hereunto set my hand and affixed the official seal of my said court this ———— day of ————, 19——.

(L. S.)

————, presiding judge.

)
State of ————————)
County of ————————) ss.
)

I, ————————, clerk of the ———— court of ———— county, aforesaid, of which the above named ———— is the presiding judge, hereby certify that said court is a court of record; that said ————, whose name is subscribed to the last foregoing certificate, was, at the time of making the said certificate, presiding judge of said court, duly commissioned and qualified as such, and that I am well acquainted with the handwriting of said judge and know his signature to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said court at ————, this ———— day of ————, 19——.

(L. S.)

————
———— Clerk ————

COPIES OF FOREIGN RECORDS RELATING TO LAND TITLES.

It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of one of the departments, the General Counsel for the Department of the Treasury, or the Commissioner of the General Land Office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively; and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the General Counsel for the Department of the Treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals. 28 U.S.C.A. §689.

STATUTES AT LARGE; CONTENTS; ADMISSIBILITY IN EVIDENCE.

The Secretary of State shall cause to be compiled, edited, indexed, and published, the United States Statutes at Large, which shall contain all the laws and concurrent resolutions enacted during each regular session of Congress; all treaties to which the United States is a party that have been proclaimed since the date of the adjournment of the regular session of Congress next preceding; all international agreements other than treaties to which the United States is a party that have been signed, proclaimed, or with reference to which any other final formality has been executed, since that date; all proclamations by the President in the numbered series issued since that date; and also any amendments to the Constitution of the United States proposed or ratified pursuant to article V thereof since that date, together with the certificate of the Secretary of State issued in compliance with the provision contained in section 160 of Title 5. In the event of an extra session of Congress, the Secretary of State shall cause all the laws and concurrent resolutions enacted during said extra session to be consolidated with, and published as part of, the contents of the volume for the next regular session. The United States Statutes at Large shall be legal evidence of the laws, concurrent resolutions, treaties, international agreements other than treaties, proclamations by the President, and proposed or ratified amendments to the Constitution of the United States therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States. (1 U.S.C.A. §30).

FUGITIVES FROM JUSTICE.

Fugitives from State or Territory.—Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory. 18 U.S.C.A. §662.

Penalty for resisting agent.—Any agent so appointed as provided in section 662 of this title who receives the fugitive into his custody shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than $500 or imprisoned not more than one year. (18 U.S.C.A. §663).

NATURALIZATION OF ALIENS.

Extracts from Nationality Act of 1940 (Oct. 14, 1940, Ch. 876) as amended to September 26, 1945. (8 U.S.C.A., §501, et seq.)

TITLE I

Sec. 1. This Act may be cited as the Nationality Act of 1940. (8 U.S.C.A. §907).

CHAPTER I—DEFINITIONS

Sec. 101. For the purposes of this Act—

(a) The term "national" means a person owing permanent allegiance to a state.

(b) The term "national of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

(c) The term "naturalization" means the confering of nationality of a state upon a person after birth.

(d) The term "United States" when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States.

(e) The term "outlying possessions" means all territory, other than as specified in subsection (d), over which the United States exercises rights of sovereignty, except the Canal Zone.

(f) The term "parent" includes in the case of a posthumous child a deceased parent.

(g) The term "minor" means a person under

twenty-one years of age. (8 U.S.C.A. §501).

Sec. 102. For the purposes of Chapter III of this Act—

(a) The term "state" includes (except as used in subsection (a) of section 301), Alaska, Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands of the United States.

(b) The term "naturalization court," unless otherwise particularly described, means a court authorized by subsection (a) of section 301 to exercise naturalization jurisdiction.

(c) The term "clerk of court" means a clerk of a naturalization court.

(d) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(e) The term "Attorney General" means the Attorney General of the United States.

(f) The term "Service" means the Immigration and Naturalization Service of the United States Department of Justice.

(g) The term "designated examiner" means an examiner or other officer of the Service designated under section 333 by the Commissioner.

(h) The term "child" includes a child legitimated under the law of the child's residence or domicile, whether in the United States or elsewhere; also a child adopted in the United States, provided such legitimation or adoption takes place before the child reaches the age of sixteen years and the child is in the legal custody of the legitimating or adopting parent or parents. (8 U.S.C.A. §502).

Sec. 103. For the purposes of subsections (a), (b), and (c) of section 404 of this Act, the term "foreign state" includes outlying possessions of a foreign state, but does not include self-governing dominions or territory under mandate, which, for the purposes of these subsections, shall be regarded as separate states. (8 U.S.C.A. §503).

Sec. 104. For the purposes of sections 201, 307 (b), 403, 404, 405, 406 and 407 of this Act, the place of general abode shall be deemed the place of residence. (8 U.S.C.A. §504).

CHAPTER II—NATIONALITY AT BIRTH.

Sec. 201. The following shall be nationals and citizens of the United States at birth:

(a) A person born in the United States, and subject to the jurisdiction thereof;

(b) A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: Provided, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(c) A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions, prior to the birth of such person;

(d) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) A person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person;

(f) A child of unknown parentage found in the United States, until shown not to have been born in the United States;

(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, had had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: Provided, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up a residence in the United States or its outlying possession by the time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American, educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation;

(h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934. (8 U.S.C.A. §601).

Sec. 202. All persons born in Puerto Rico on or after April 11, 1899, subject to the jurisdiction of the United States, residing on the effective date of this Act in Puerto Rico or

other territory over which the United States exercised rights of sovereignty and citizens of the United States under any other Act, are hereby declared to be citizens of the United States. (8 U.S.C.A. §602).

Sec. 203. (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, is declared to be a citizen of the United States. (8 U.S.C.A. §603).

Sec. 204. Unless otherwise provided in section 201, the following shall be nationals, but not citizens, of the United States at birth:

(a) A person born in an outlying possession of the United States of parents one of whom is a national, but not a citizen, of the United States;

(b) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have resided in the United States or one of its outlying possessions prior to the birth of such person;

(c) A child of unknown parentage found in an outlying possession of the United States, until shown not to have been born in such outlying possession. (8 U.S.C.A. §604).

Sec. 205. The provisions of section 201, subsections (c), (d), (e) and (g), and section 204, subsections (a) and (b), hereof apply, as of the date of birth, to a child born out of wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act if the mother had the nationality of the United States at the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status. (8 U.S.C.A. §605).

CHAPTER III—NATIONALITY THROUGH NATURALIZATION.

General Provisions

Jurisdiction To Naturalize

Sec. 301. (a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States now existing, or which may hereafter be established by Congress in any State, Districts Courts of the United States for the Territories of Hawaii and Alaska, and for the District of Columbia and for Puerto Rico, and the District Court of the Virgin Islands of the United States; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdictions of such courts, except as otherwise specifically provided in this Act.

(b) A person who petitions for naturalization in any State court having naturalization jurisdiction, may petition within the State judicial district or State judicial circuit in which he resides, whether or not he resides within the county in which the petition for naturalization is filed.

(c) The courts herein specified, upon request of the clerks of such courts, shall be furnished from time to time by the Commissioner or a Deputy Commissioner with such blank forms as may be required in naturalization proceedings.

(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this Act, and not otherwise. (8 U.S.C.A. §701).

Substantive Provisions

Eligibility For Naturalization

Sec. 302. The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of sex or because such person is married. (8 U.S.C.A. §702).

Sec. 303. The right to become a naturalized citizen under the provisions of this chapter shall extend only to white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere, and Chinese persons or persons of Chinese descent: Provided, That nothing in this section shall prevent the naturalization of native-born Filipinos having the honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in section 324, nor of former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 317. As amended Dec. 17,

1943, c. 344, Sec. 3, 57 Stat. 601. (8 U.S.C.A. §703).

Sec. 304. No person except as otherwise provided in this Act shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot speak the English language. This requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized. (8 U.S.C.A. §704).

Sec. 305. No person shall hereafter be naturalized as a citizen of the United States—(a) Who advises, advocates, or teaches or who is a member of or affiliated with any organization, association, society, or group that advises, advocates, or teaches opposition to all organized government; or

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or any other organized government, because of his or their official character; or

(3) the unlawful damage, injury, or destruction of property; or

(4) sabotage.

(c) Who writes, publishes, or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, distribution, publication, or display any written or printed matter advising, advocating, or teaching opposition to all organized government, or advising, advocating, or teaching—

(1) the overthrow by force or violence of the Government of the United States or of all forms of law; or

(2) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government; or

(3) the unlawful damage, injury, or destruction of property; or

(4) sabotage.

(d) Who is a member of or affiliated with any organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (c).

For the purpose of this section—

(1) the giving, loaning, or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and

(2) the giving, loaning, or promising of money or anything of value to any organization, association, society, or group of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching or affiliation.

The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization is or has been found to be within any of the classes enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes. (8 U.S.C.A. §705).

Sec. 306. A person who, at any time during which the United States has been or shall be at war, deserted or shall desert the military or naval forces of the United States, or who, having duly enrolled, departed, or shall depart from the jurisdiction of the district in which enrolled, or went or shall go beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall, upon conviction thereof by a court martial, be ineligible to become a citizen of the United States; and such deserters shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof. (8 U.S.C.A. §706).

Sec. 307. (a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(b) Absence from the United States for a continuous period of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization, or during the period between the date of filing the petition and the date of final hearing, shall be presumed to break the continuity of such residence, but such presumption may be overcome by the presentation of evidence satisfactory to the naturalization court that such individual

had a reasonable cause for not sooner returning to the United States. Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the petition for naturalization or during the period between the date of filing the petition and the date of final hearing, shall break the continuity of such residence, except that in the case of an alien who has resided in the United States for at least one year, during which period he has made a declaration of intention to become a citizen of the United States, and who thereafter is employed by or under contract with the Government of the United States or any American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof, no period of absence from the United States shall break the continuity or residence if—

(1) Prior to the beginning of such period (whether such period begins before or after his departure from the United States) the alien has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, and

(2) Such alien proves to the satisfaction of the court that his absence from the United States for such period has been for such purpose.

(c) No period of absence from the United States during the five years immediately preceding June 25, 1936, shall be held to have broken the continuity of residence required by the naturalization laws if the alien proves to the satisfaction of the Attorney General and the court that during all such period of absence he has been under employment by, or contract with, the United States, or such American institution of research, or American firm or corporation, described in subsection (b) of this section, and has been carrying on the activities described in that subsection in its behalf.

(d) The following shall be regarded as residence within the United States within the meaning of this chapter:

(1) Honorable service on vessels owned directly by the Government of the United States, whether or not rendered at any time prior to the applicant's lawful entry into the United States: Provided, That this subdivision shall not apply to service on vessels operating in and about the Canal Zone in connection with the maintenance, operation, protection, and civil government of the Panama Canal and Canal Zone.

(2) Continuous service by a seaman on a vessel or vessels whose home port is in the United States and which are of American registry or American owned, if rendered subsequent to the applicant's lawful entry into the United States for permanent residence and immediately preceding the date of naturalization. (8 U.S.C.A. §707).

Sec. 308. Any alien who has been lawfully admitted into the United States for permanent residence and who has heretofore been or may hereafter be absent temporarily from the United States solely in his or her capacity as a regularly ordained clergyman or nun, shall be considered as residing in the United States for the purpose of naturalization, notwithstanding any such absence from the United States, but he or she shall in all other respects comply with the requirements of the naturalization laws. Such alien shall prove to the satisfaction of the Attorney General and the naturalization court that his or her absence from the United States has been solely in the capacity hereinbefore described. (8 U.S.C.A. §708).

Requirements As To Proof

Sec. 309. (a) As to each period and place of residence in the State in which the petitioner resides at the time of filing the petition, during the entire period of at least six months immediately preceding the date of filing the petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

(b) At the hearing on the petition, residence in the State in which the petitioner resides at the time of filing the petition, for at least six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 307 during such residence shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by subsection (a) of this section to be included in the petition. At the hearing, residence within the United States during the five-year period, but outside the State, or within the State but prior to the six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 307 during such period at such places, shall be proved either by depositions taken in accordance with subsection (e) of section 327, or oral testimony, of at least two such witnesses for each place of residence.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section the requirements of subsection (a) of section 307 as to the petitioner's residence, moral character, at-

tachment to the principles of the Constitution of the United States, and disposition toward the good order and happiness of the United States may be established by any evidence satisfactory to the naturalization court in those cases under subsection (b) of section 307 in which the alien declarant has been absent from the United States because of his employment by or contract with the Government of the United States or an American institution of research, recognized as such by the Attorney General, or employment by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof.

(d) The clerk of court shall, if the petitioner requests it at the time of filing the petition for naturalization, issue a subpoena for the witnesses named by such petitioner to appear upon the day set for the final hearing, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned upon notice to the Commissioner, in such manner and at such time as the Commissioner, with the approval of the Attorney General, may by regulation prescribe. If it should appear after the petition has been filed that any of the verifying witnesses thereto are not competent, and it further appears that the petitioner has acted in good faith in producing such witnesses found to be incompetent, other witnesses may be substituted in accordance with such regulations. (8 U.S.C.A. §709).

Married Persons

Sec. 310. (a) Any alien who, after September 21, 1922, and prior to May 24, 1934, has married a citizen of the United States, or any alien who married prior to May 24, 1934, a spouse who was naturalized during such period and during the existence of the marital relation may, if eligible to naturalization, be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(1) No declaration of intention shall be required;

(2) In lieu of the five-year period of residence within the United States, and the six months' period of residence in the State where the petitioner resided at the time of filing the petition, the petitioner shall have resided continuously in the United States for at least one year immediately preceding the filing of the petition.

(b) Any alien who, on or after May 24, 1934, has married or shall hereafter marry a citizen of the United States, or any alien whose husband or wife was naturalized on or after May 24, 1934, and during the existence of the marital relation or shall hereafter be so naturalized may, if eligible for naturalization, be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(1) No declaration of intention shall be required;

(2) In lieu of the five-year period of residence within the United States, and the six months' period of residence in the State where the petitioner resided at the time of filing the petition, the petitioner shall have resided continuously in the United States for at least three years immediately preceding the filing of the petition.

(c) The naturalization of any woman on or after May 24, 1934, by any naturalization court of competent jurisdiction, upon proof of marriage to a citizen or the naturalization of her husband and proof of but one year's residence in the United States is hereby validated only so far as relates to the period of residence required to be proved by such person under the naturalization laws.

(d) The naturalization of any male person on or after May 24, 1934, by any naturalization court of competent jurisdiction, upon proof of marriage to a citizen of the United States after September 21, 1922, and prior to May 24, 1934, or of the naturalization during such period of his wife, and upon proof of three years' residence in the United States, is hereby validated only so far as relates to the period of residence required to be proved by such person under the naturalization laws and the omission by such person to make a declaration of intention. (8 U.S.C.A. §710).

Sec. 311. A person who upon the effective date of this section is married to or thereafter marries a citizen of the United States, or whose spouse is naturalized after the effective date of this section, if such person shall have resided in the United States in marital union with the United States citizen spouse for at least one year immediately preceding the filing of the petition for naturalization, may be naturalized after the effective date of this section upon compliance with all requirements of the naturalization laws with the following exceptions:

(a) No declaration of intention shall be required.

(b) The petitioner shall have resided continuously in the United States for at least two years immediately preceding the filing of the petition in lieu of the five-year period of residence within the United States and the six months' period of residence within the State where the naturalization court is held. (8 U.S.C.A. §711).

Sec. 312. An alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment

abroad of the citizen spouse, may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required; and

(b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required. (8 U.S.C.A. §712).

Children

Sec. 313. A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, be deemed a citizen of the United States, when—

(a) Such naturalization takes place while such child is under the age of eighteen years; and

(b) Such child is residing in the United States at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years. (8 U.S.C.A. §713).

Sec. 314. A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(a) The naturalization of both parents; or

(b) The naturalization of the surviving parent if one of the parents is deceased; or

(c) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents; and if—

(d) Such naturalization takes place while such child is under the age of eighteen years; and

(e) Such child is residing in the United States at the time of the naturalization of the parent last naturalized under subsection (a) of this section, or the parent naturalized under subsection (b) or (c) of this section, or thereafter begins to reside permanently in the United States while under the age of eighteen years. (8 U.S.C.A. §714).

Sec. 315. A child born outside of the United States, one of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if under the age of eighteen years and not otherwise disqualified from becoming a citizen and is residing permanently in the United States with the citizen parent, on the petition of such citizen parent, without a declaration of intention, upon compliance with the applicable procedural provisions of the naturalization laws. (8 U.S.C.A. §715).

Sec. 316. An adopted child may, if not otherwise disqualified from becoming a citizen, be naturalized before reaching the age of eighteen years upon the petition of the adoptive parent or parents if the child has resided continuously in the United States for at least two years immediately preceding the date of filing such petition, upon compliance with all the applicable procedural provisions of the naturalization laws, if the adoptive parent or parents are citizens of the United States, and the child was:

(a) Lawfully admitted to the United States for permanent residence; and

(b) Adopted in the United States before reaching the age of sixteen years; and

(c) Adopted and in the legal custody of the adoptive parent or parents for at least two years prior to the filing of the petition for the child's naturalization. (8 U.S.C.A. §716).

Former Citizens Of The United States

Sec. 317. (a) A person who was a citizen of the United States and who prior to September 22, 1922, lost United States citizenship by marriage to an alien or by the spouse's loss of United States citizenship, and any person who lost United States citizenship on or after September 22, 1922, by marriage to an alien ineligible to citizenship, may, if no other nationality was acquired by affirmative act other than such marriage, be naturalized upon compliance with all requirements of the naturalization laws with the following exceptions:

(1) No declaration of intention and no certificate of arrival shall be required, and no period of residence within the United States or within the State where the petition is filed shall be required.

(2) The petition need not set forth that it is the intention of the petitioner to reside permanently within the United States.

(3) The petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner.

(4) The petition may be heard at any time after filing if there is attached to the petition at the time of filing a certificate from a naturalization examiner stating that the petitioner has appeared before such examiner for examination.

Such person shall have, from and after the naturalization, the same citizenship status as that which existed immediately prior to its loss.

(b) (1) From and after the effective date of this Act, a woman, who was a citizen of the United States at birth, and who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, and whose marital status with such alien has or shall have terminated, if no other nationality was acquired by affirmative act other than such marriage, shall, from and after the taking of the oath of allegiance prescribed by subsection (b) of section 335 of this Act, be deemed to be a citizen of the United States to the same extent as though her marriage to said alien had taken place on or after September 22, 1922.

(2) Such oath of allegiance may be taken abroad before a diplomatic or consular officer of the United States, or in the United States before the judge or clerk of a naturalization court.

(3) Such oath of allegiance shall be entered in the records of the appropriate embassy or legation or consulate or naturalization court, and upon demand, a certified copy of the proceedings, including a copy of the oath administered, under the seal of the embassy or legation or consulate or naturalization court, shall be delivered to such woman at a cost not exceeding $1, which certified copy shall be evidence of the facts stated therein before any court of record or judicial tribunal and in any department of the United States.

(c) A person who shall have been a citizen of the United States and also a national of a foreign state, and who shall have lost his citizenship of the United States under the provisions of section 401 (c) of this Act, shall be entitled to the benefits of the provisions of subsection (a) of this section, except that contained in subdivision (2) thereof. Such person, if abroad, may enter the United States as a nonquota immigrant, for the purpose of recovering his citizenship, upon compliance with the provisions of the Immigration Acts of 1917 and 1924. (8 U.S.C.A. §717).

Sec. 318. (a) A former citizen of the United States expatriated through the expatriation of such person's parent or parents and who has not acquired the nationality of another country by any affirmative act other than the expatriation of his parent or parents may be naturalized upon filing a petition for naturalization before reaching the age of twenty-five years and upon compliance with all requirements of the naturalization laws with the following exceptions:

(1) No declaration of intention and no certificate of arrival and no period of residence within the United States or in a State shall be required;

(2) The petition may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner;

(3) If there is attached to the petition at the time of filing, a certificate from a naturalization examiner stating that the petitioner has appeared before him for examination, the petition may be heard at any time after filing; and

(4) Proof that the petitioner was at the time his petition was filed and at the time of the final hearing thereon a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and that he intends to reside permanently in the United States shall be made by any means satisfactory to the naturalization court.

(b) No former citizen of the United States, expatriated through the expatriation of such person's parent or parents, shall be obliged to comply with the requirements of the immigration laws, if he has not acquired the nationality of another country by any affirmative act other than the expatriation of his parent or parents, and if he has come or shall come to the United States before reaching the age of twenty-five years.

(c) After his naturalization such person shall have the same citizenship status as if he had not been expatriated. (8 U.S.C.A. §718).

Sec. 319. (a) A person who as a minor child lost citizenship of the United States through the cancelation of the parent's naturalization on grounds other than actual fraud or presumptive fraud as specified in the second paragraph of section 15 of the Act of June 29, 1906, as amended (34 Stat. 601; 40 Stat. 544, U. S. C., title 8, sec. 405), or who shall lose citizenship of the United States under subsection (c) of section 338 of this Act, may, if such person resided in the United States at the time of such cancelation and if, within two years after such cancelation or within two years after the effective date of this section, such person files a petition for naturalization or such a petition is filed on such person's behalf by a parent or guardian if such person is under the age of eighteen years, be naturalized upon compliance with all requirements of the naturalization laws with the exception that no declaration of intention shall be required and the required five-year period of residence in the United States need not be continuous.

(b) Citizenship acquired under this section shall begin as of the date of the person's naturalization, except that in those cases where the person has resided continuously in the United States from the date of the cancelation of the parent's naturalization to the date of the person's naturalization under this section, the citizenship of such person shall relate back to the date of the parent's naturalization which has been canceled or to the date of such person's arrival in the United States for permanent residence if such date was subsequent to the date of naturalization of said parent. (8 U.S.C.A. §719).

Persons Misinformed Of Citizenship Status

Sec. 320. A person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July 1, 1920, and was on that date otherwise qualified to become a citizen of the United States, except that such person had not made a declaration of intention required by law and who during or prior to that time, because of misinformation regarding the citizenship status of such person, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention, and upon satisfactory proof to the court that petitioner has so acted may be admitted as a citizen of the United States upon complying with the other requirements of the naturalization laws. (8 U.S.C.A. §720).

See also Sec. 720a U.S.C.A. (July 2, 1940, c. 512, Secs. 1, 2, 54 Stat. 715): Aliens spending childhood in United States excepted from certain requirements.

Nationals but not Citizens of the United States

Sec. 321. A person not a citizen who owes permanent allegiance to the United States, and who is otherwise qualified may, if he becomes a resident of any State, be naturalized upon compliance with the requirements of this Act, except that in petitions for naturalization filed under the provisions of this section, residence within the United States within the meaning of this Act shall include residence within any of the outlying possessions of the United States. (8 U.S.C.A. §721).

Puerto Ricans

Sec. 322. A person born in Puerto Rico of alien parents, referred to in the last paragraph of section 5, Act of March 2, 1917 (U. S. C., title 8, sec. 5), and in section 5a, of the said Act, as amended by section 2 of the Act of March 4, 1927 (U. S. C., title 8, sec. 5a), who did not exercise the privilege granted of becoming a citizen of the United States, may make the declaration provided in said paragraph at any time, and from and after the making of such declaration shall be a citizen of the United States. (8 U.S.C.A. §722).

Persons Serving in Armed Forces or on Vessels*

Sec. 323. A person who, while a citizen of the United States and during the first or second World War, entered the military or naval service of any country at war with a country with which the United States was or is at war, who has lost citizenship of the United States by reason of any oath or obligation taken for the purpose of entering such service, or by reason of entering or serving in such armed forces, and who intends to reside permanently in the United States, may be naturalized by taking before any naturalization court specified in subsection (a) of section 301, the oaths prescribed by section 335. Any such person who has lost citizenship of the United States during the second World War may, if he so desires, be naturalized by taking, before any diplomatic or consular officer of the United States abroad, the oaths prescribed by section 335. For the purposes of this section, the second World War shall be deemed to have commenced on September 1, 1939, and shall continue until such time as the United States shall cease to be in a state of war. Certified copies of such oath shall be sent by such diplomatic or consular officer or such court to the Department of State and to the Department of Justice. As amended Apr. 2, 1942, c. 208, 56 Stat. 198. (8 U.S.C.A. §723).

Sec. 323a. A person who was a member of the military or naval forces of the United States at any time after April 5, 1917, and before November 12, 1918, or at any time after April 20, 1898, and before July 5, 1902, or who served on the Mexican Border as a member of the regular Army or National Guard from June 1916, to April 1917, who is not an alien ineligible to citizenship, who was not at any time during such period or thereafter separated from such forces under other than honorable conditions who was not a conscientious objector who performed no military duty whatever or refused to wear the uniform, and who was not at any time during such period or thereafter discharged from the military or naval forces on account of his alienage, shall, if he has resided in the United States continuously for at least two years pursuant to a legal admission for permanent residence in lieu of the usual five years' residence within the United States and six months' residence within the State of his residence at the time of filing the petition for naturalization, during all of which two-year period he has behaved as a person of good moral character, be entitled at any time within one year after December 7, 1942, to naturalization upon compliance with all the requirements of the naturalization laws, except that—

(1) no declaration of intention shall be required;

(2) no certificate of arrival shall be required unless such person's admission to the United States was subsequent to March 3, 1924; and

(3) no residence within the jurisdiction of the court shall be required.

Such petitioner shall verify his petition for naturalization by the affidavits of at least two credible witnesses who are citizens of the United States, or shall furnish the depositions of two such witnesses made in accordance with the requirements of subsection (e) of section 327, to prove the required residence, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States. On application filed for any benefits under this section, the requirement of fees for naturalization documents is hereby waived. Oct. 14, 1940, c. 876, Title I, subchap. III, Sec. 323A, as added Dec. 7, 1942, c. 690, 56 Stat. 1041. (8 U.S.C.A. §723a).

Sec. 324. (a) A person, including a native-born Filipino, who has served honorably at any time in the United States Army, Navy, Marine Corps, or Coast Guard for a period or periods aggregating three years and who, if separated from such service, was separated under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.

(b) A person filing a petition under subsection (a) of this section shall comply in all respects with the requirements of this chapter except that—

*See also 1942 Act Persons serving in the armed forces of the United States during the present war, infra, Sec. 701 et seq.

(1) No declaration of intention shall be required;

(2) No certificate of arrival shall be required;

(3) No residence within the jurisdiction of the court shall be required;

(4) Such petitioner may be naturalized immediately if the petitioner be then actually in any of the services prescribed in subsection (a) of this section, and if, before filing the petition for naturalization, such petitioner and at least two verifying witnesses to the petition, who shall be citizens of the United States and who shall identify petitioner as the person who rendered the service upon which the petition is based, have appeared before and been examined by a representative of the Service.

(c) In case such petitioner's service was not continuous, petitioner's residence in the United States and States, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing said petition between the periods of petitioner's service in the United States Army, Navy, Marine Corps, or Coast Guard, shall be verified in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon by witnesses, citizens of the United States, in the same manner as required by section 309. Such verification and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

(d) The petitioner shall comply with the requirements of section 309 as to continuous residence in the United States for at least five years and in the State in which the petition is filed for at least six months, immediately preceding the date of filing the petition, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service shall be considered as residence within the United States or the State.

(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of affidavits and testimony or depositions of witnesses. (8 U.S.C.A. §724).

Sec. 325. (a) A person who has served honorably or with good conduct for an aggregate period of at least five years (1) on board of any vessel of the United States Government other than in the United States Navy, Marine Corps, or Coast Guard, or (2) on board vessels of more than twenty tons burden, whether or not documented under the laws of the United States, and whether public or private, which are not foreign vessels, and whose home port is in the United States, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years, and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the service on a reenlistment, reappointment, or reshipment, or within six months after an honorable discharge or separation therefrom.

(b) The provisions of subsections (b), (c), (d), and (e) of section 324 shall apply to petitions for naturalization filed under this section, except that service with good conduct on vessels described in subsection (a) (2) of this section may be proved by certificates from the masters of such vessels. (8 U.S.C.A. §725).

Alien Enemies

Sec. 326. (a) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may be naturalized as a citizen of the United States if such alien's declaration of intention was made not less than two years prior to the beginning of the state of war, or such alien was at the beginning of the state of war entitled to become a citizen of the United States without making a declaration of intention, or his petition for naturalization shall at the beginning of the state of war be pending and the petitioner is otherwise entitled to admission, notwithstanding such petitioner shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject.

(b) An alien embraced within this section shall not have such alien's petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner to be represented at the hearing, and the Commissioner's objection to such final hearing shall cause the petition to be continued from time to time for so long as the Commissioner may require.

(c) Nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

(d) The President of the United States may, in his discretion, upon investigation and report by the Department of Justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon such alien shall have the privilege of applying for naturalization. (8 U.S.C.A. §726).

Procedural and Administrative Provisions

Executive Functions

Sec. 327. (a) The Commissioner, or, in his absence, a Deputy Commissioner, shall have charge of the administration of the naturalization laws, under the immediate direction of the Attorney General, to whom the Commissioner shall report directly upon all naturalization matters annually and as otherwise required.

(b) The Commissioner, with the approval of the Attorney General, shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States.

(c) The Commissioner is authorized to promote instruction and training in citizenship responsibilities of applicants for naturalization including the sending of names of candidates for naturalization to the public schools, preparing and distributing citizenship textbooks to such candidates as are receiving instruction in preparation for citizenship within or under the supervision of the public schools, preparing and distributing monthly an immigration and naturalization bulletin and securing the aid of and cooperating with official State and National organizations, including those concerned with vocational education.

(d) The Commissioner shall prescribe and furnished such forms as may be required to give effect to the provisions of this chapter, and only such forms as may be so provided shall be legal. All certificates of naturalization and of citizenship shall be printed on safety paper and shall be consecutively numbered in separate series.

(e) Members of the Service may be designated by the Commissioner or a Deputy Commissioner to administer oaths and to take depositions without charge in matters relating to the administration of the naturalization and citizenship laws. In cases where there is a likelihood of unusual delay or of hardship, the Commissioner or a Deputy Commissioner may, in his discretion, authorize such depositions to be taken before a postmaster without charge, or before a notary public or other person authorized to administer oaths for general purposes.

(f) A certificate of naturalization or of citizenship issued by the Commissioner or a Deputy Commissioner under the authority of this Act shall have the same effect in all courts, tribunals, and public offices of the United States, at home and abroad, of the District of Columbia, and of each State, Territory, and insular possession of the United States, as a certificate of naturalization or of citizenship issued by a court having naturalization jurisdiction.

(g) Certifications and certified copies of all papers, documents, certificates, and records required or authorized to be issued, used, filed, recorded, or kept under any and all provisions of this chapter shall be admitted in evidence equally with the original in any and all cases and proceedings under this Act and in all cases and proceedings in which the originals thereof might be admissible as evidence.

(h) The officers in charge of property owned or leased by the Government are authorized, upon the recommendation of the Attorney General, to provide quarters, without payment of rent, in any building occupied by the Service, for a photographic studio, operated by welfare organizations without profit and solely for the benefit of aliens seeking naturalization. Such studio shall be under the supervision of the Commissioner. (8 U.S.C.A. §727).

Registry of Aliens

Sec. 328. (a) The Commissioner shall cause to be made, for use in complying with the requirements of this chapter, a registry of each person arriving in the United States after the effective date of this Act, of the name, age, occupation, personal description (including height, complexion, color of hair and eyes, and fingerprints), the date and place of birth, nationality, the last residence, the intended place of residence in the United States, the date and place of arrival of said person, and the name of vessel or other means of transportation, upon which said person arrived.

(b) Registry of aliens at ports of entry required by subsection (a) of this section may be made as to any alien not ineligible to citizenship in whose case there is no record of admission for permanent residence, if such alien shall make a satisfactory showing to the Commissioner, in accordance with regulations prescribed by the Commissioner, with the approval of the Attorney General, that such alien—

(1) Entered the United States prior to July 1, 1924;

(2) Has resided in the United States continuously since such entry;

(3) Is a person of good moral character; and

(4) Is not subject to deportation.

(c) For the purposes of the immigration laws and naturalization laws an alien, in respect of whom a record of registry has been made as authorized by this section, shall be deemed to have been lawfully admitted to the United States for permanent residence as of the date of such alien's entry. (8 U.S.C.A. §728).

Certificate of Arrival

Sec. 329. (a) The certificate of arrival required by this chapter may be issued upon application to the Commissioner in accordance with regulations prescribed by the Commissioner, with the approval of the Attorney General, upon the making of a record of registry as authorized by section 328 of this Act.

(b) No declaration of intention shall be made by any person who arrived in the United States after June 29, 1906, until such person's lawful entry for permanent residence shall have been established, and a certificate showing the date, place, and manner of arrival in the United States shall have been issued. It shall be the duty of the Commissioner or a Deputy Commissioner to cause to be issued such certificate. (8 U.S.C.A. §729).

Photographs

Sec. 330. (a) Two photographs of the applicant shall be signed by and furnished by each applicant for a declaration of intention and by each petitioner for naturalization or citizenship. One of such photographs shall be affixed by the clerk of the court to the triplicate declaration of intention issued to the declarant and one to the duplicate declaration of intention required to be forwarded to the Service; and one of such photographs shall be affixed to the original certificate of naturalization issued to the naturalized citizen and one to the duplicate certificate of naturalization required to be forwarded to the Service.

(b) Two photographs of the applicant shall be furnished by each applicant for—

(1) A record of registry;

(2) A certificate of derivative citizenship;

(3) A certificate of naturalization;

(4) A special certificate;

(5) A declaration of intention or a certificate of naturalization or of citizenship, in lieu of one lost, mutilated, or destroyed; and

(6) A new certificate of citizenship in the new name of any naturalized citizen who, subsequent to naturalization, has had such citizen's name changed by order of a court of competent jurisdiction or by marriage.

One such photograph shall be affixed to each such declaration or certificate issued by the Commissioner and one shall be affixed to the copy of such declaration or certificate retained by the Service. (8 U.S.C.A. §730).

Declaration of Intention

Sec. 331. An applicant for naturalization shall make, under oath before, and only in the office of, the clerk of court or such clerk's authorized deputy, regardless of the place of residence in the United States of the applicant, not less than two nor more than seven years at least prior to the applicant's petition for naturalization, and after the applicant has reached the age of eighteen years, a signed declaration of intention to become a citizen of the United States, which declaration shall be set forth in writing, in triplicate, and shall contain substantially the following averments by such applicant:

(1) My full, true, and correct name is _____(full, true name, without abbreviation, and any other name which has been used, must appear here).

(2) My present place of residence is _____ (number and street),_____(city or town), _____ (county), _____(State).

(3) My occupation is _____.

(4) I am _____ years old.

(5) My personal description is as follows: Sex _____; color_____, complexion _____, color of eyes_____, color of hair_____, height _____ feet _____ inches, weight_____ pounds; visible distinctive marks_____; race _____ ; present nationality_____ .

(6) I was born on_____(month, day, and year), in_____(city or town),_____ (county, district, province, or state), _____ (country).

(7) I am _____ married; the name of my wife or husband is_____; we were married on_____(month, day, and year), at_____(city or town),_____(state or country); he or she was born at_____ (city or town),_____(county, district, province, or state),_____(country), on _____(month, day, and year); and entered the United States at_____(city or town), (State), on_____(month, day, and year), for permanent residence in the United States, and now resides at_____(city or town),_____(state or country).

(8) I have_____children; and the name, sex, date, and place of birth, and present place of residence of each of said children who is living are as follows:_____ .

(9) My place of last foreign residence was _____(city or town),_____(county, district, or province),_____(country).

(10) I emigrated to the United States from _____(city or town),_____(country).

(11) My lawful entry for permanent residence in the United States was at_____ (city or town),_____(State), under the name of_____, on_____(month, day, and year), on the_____(name of vessel or other means of conveyance).

(12) I have_____been absent from the United States, having departed therefrom on_____ (dates of departures), from the port or ports of_____, upon the following vessels or other means of conveyance:_____(names of vessels or conveyances upon departures); and returned to the United States on_____ (dates of return to the United States), at the port or ports of_____, upon the following vessels or other means of conveyance_____ (names of vessels or conveyances upon return).

(13) I have_____heretofore made declaration of intention number_____, on_____ _____(month, day, and year), at_____ (city or town),_____(county),_____ (State), in the_____(name of court).

(14) I am not an anarchist, nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organi-

zation or body of persons teaching disbelief in or opposition to organized government.

(15) It is my intention in good faith to become a citizen of the United States and to reside permanently therein.

(16) I will, before being admitted to citizenship, renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at the time of admission to citizenship I may be a subject or citizen.

(17) I certify that the photograph affixed to the duplicate and triplicate hereof is a likeness of me and was signed by me.

(18) So help me God. (8 U.S.C.A. §731).

Petition for Naturalization

Sec. 332. (a) An applicant for naturalization shall, not less than two nor more than ten years after such declaration of intention has been made, make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing, signed by the applicant in the applicant's own handwriting, if physically able to write, and duly verified by witnesses, which petition shall contain substantially the following averments by such applicant.

(1) My full, true, and correct name is _____ (full, true name, without abbreviation, and any other name which has been used, must appear here).

(2) My present place of residence is _____ (number and street), _____ (city or town), _____ (county), _____ (State).

(3) My occupation is _____.

(4) I am _____ years old.

(5) My personal description is: Sex _____; color _____; complexion _____, color of eyes _____, color of hair _____, height _____ feet _____ inches, weight _____ pounds; visible distinctive marks _____; race _____; present nationality _____.

(6) I was born on _____ (month, day, and year), in _____ (city or town), _____ (county, district, province, or state), _____ (country).

(7) I am _____ married; the name of my wife or husband is _____; we were married on _____ (month, day and year), at _____ (city or town), _____ (state or country); he or she was born at _____ (city or town), _____ (county, district, province, or state), _____ (country), on _____ (month, day, and year); entered the United States at _____ (city or town), _____ (State), on _____ (month, day, and year), for permanent residence in the United States, and now resides at _____ (city or town), _____ (state or country).

(8) I have _____ children; and the name, sex, date, and place of birth, and present place of residence of each of said children who is living are as follows: _____.

(9) My last place of foreign residence was _____ (city or town), _____ (county, district, or province), _____ (country).

(10) I emigrated to the United States from _____ (city or town), _____ (country).

(11) My lawful entry for permanent residence in the United States was at _____ (city or town), _____ (State), under the name of _____, on _____ (month, day, and year), on the _____ (name of vessel or other means of conveyance), as shown by the certificate of my arrival attached to this petition.

(12) I have _____ been absent from the United States, having departed therefrom on _____ (dates of departures), from the port or ports of _____, upon the following vessels or other means of conveyance: _____ (names of vessels or conveyances upon departures); and returned to the United States on _____ (dates of return to the United States), at the port or ports of _____, upon the following vessels or other means of conveyance: _____ (names of vessels or conveyances upon return).

(13) I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since _____, and continuously in the State in which this petition is made for the term of six months at least immediately preceding the date of this petition, to wit, since _____.

(14) I declared my intention to become a citizen of the United States on _____ (month, day, and year), in the _____ (name of court) Court of _____, at _____ (city or town), _____ (State).

(15) I have _____ heretofore made petition for naturalization number _____, on _____ (month, day, and year), at _____ (city or town), _____ (county), _____ (State), in the _____ (name of court), and such petition was dismissed or denied by that Court for the following reasons and causes, to wit: _____, and the cause of such dismissal or denial has been cured or removed.

(16) I am not an anarchist, nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(17) I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

(18) It is my intention in good faith to become a citizen of the United States, and to reside permanently therein.

(19) It is my intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen.

(20) Attached hereto and made a part of this, my petition for naturalization, are my declaration of intention to become a citizen of the United States (if such declaration of intention be required by the naturalization law), a certificate of arrival from the Immigration

and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of the two verifying witnesses required by law.

(21) Wherefore, I, petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to_____.

(22) I, aforesaid petitioner, being duly sworn, depose and say that I have (read) (heard read) this petition and know that the same is true of my own knowledge except as to matters herein stated to be alleged upon information and belief, and that as to those matters I believe it to be true; and that this petition is signed by me with my full, true, and correct name. So help me God._____
(full, true, and correct name of petitioner).

(b) The applicant's petition for naturalization, in addition to the averments required by subsection (a) of this section, shall include averments of all other facts which may be material to the applicant's naturalization and required to be proved upon the hearing of such petition.

(c) At the time of filing the petition for naturalization there shall be filed with the clerk of court a certificate from the Service, if the petitioner arrived in the United States after June 29, 1906, stating the date, place, and manner of petitioner's arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

(d) Petitions for naturalization may be made and filed during the term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court. (8 U.S.C.A. §732).

Hearing of Petitions

Sec. 333. (a) The Commissioner or a Deputy Commissioner shall designate members of the Service to conduct preliminary hearings upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such court. For such purposes any such designated examiner is hereby authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to subpoena witnesses, and to administer oaths, including the oath of the petitioner to the petition for naturalization and the oath of petitioner's witnesses.

(b) The findings of any such designated examiner upon any such preliminary hearing shall be submitted to the court at the final hearing upon the petition with a recommendation that the petition be granted, or denied, or continued, with the reasons therefor. Such findings and recommendations shall be accompanied by duplicate lists containing the names of the petitioners, classified according to the character of the recommendations, and signed by the designated examiner. The judge to whom such findings and recommendations are submitted shall, if he approve such recommendations, enter a written order with such exceptions as the judge may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations. One of such lists shall thereafter be filed permanently of record in such court and the duplicate list shall be sent by the clerk of such court to the Commissioner. (8 U.S.C.A. §733).

Sec. 334. (a) Every final hearing upon a petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant, and, except as provided in subsection (b) of this section, the witnesses shall be examined under oath before the court and in the presence of the court.

(b) The requirement of subsection (a) of this section for the examination of the petitioner and witnesses under oath before the court and in the presence of the court shall not apply in any case where a designated examiner has conducted the preliminary hearing authorized by subsection (a) of section 333; except that the court may, in its discretion, and shall, upon demand of the petitioner, require the examination of the petitioner and the witnesses under oath before the court and in the presence of the court.

(c) Except as otherwise specifically provided in this Act, no final hearing shall be held on any petition for naturalization nor shall any person be naturalized nor shall any certificate of naturalization be issued by any court within thirty days after the filing of the petition for naturalization, nor within sixty days preceding the holding of any general election within the territorial jurisdiction of the naturalization court.

(d) The United States shall have the right to appear before any court in any naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of the petition concerning any matter touching or in any way affecting the petitioner's right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

(e) It shall be lawful at the time and as a part of the naturalization of any person, for the court, in its discretion, upon the prayer of the petitioner included in the petition for naturalization of such person, to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith. (8 U.S.C.A. §734).

Oath of Renunciation and Allegiance

Sec. 335. (a) A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court (1) to support the Constitution of the United States, (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen, (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same, provided that in the case of the naturalization of a child under the provisions of section 315 or 316 the naturalization court may waive the taking of such oath if in the opinion of the court the child is too young to understand its meaning.

(b) The oath prescribed by subsection (a) of this section which the petitioner for naturalization is required to take, shall be in the following form:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature.

(c) In case the person petitioning for naturalization has borne any hereditary title, or has been of any of the orders of nobility in any foreign state, the petitioner shall, in addition to complying with the requirements of subsections (a) and (b) of this section, make under oath in open court, in the court to which the petition for naturalization is made, an express renunciation of such title or order of nobility, and such renunciation shall be recorded in the court as a part of such proceedings. (8 U.S.C.A. §735).

Certificate of Naturalization

Sec. 336. A person, admitted to citizenship by a naturalization court in conformity with the provisions of this Act, shall be entitled upon such admission to receive from the clerk of such court a certificate of naturalization, which shall contain substantially the following information: number of petition for naturalization; number of certificate of naturalization; date of naturalization; name, signature, place of residence, autographed photograph, and personal description of the naturalized person, including age, sex, marital status, and country of former nationality; title, venue, and location of the naturalization court; statement that the court, having found that the petitioner intends to reside permanently in the United States, had complied in all respects with all of the applicable provisions of the naturalization laws of the United States, and was entitled to be admitted a citizen of the United States of America, thereupon ordered that the petitioner be admitted as a citizen of the United States of America; attestation of the clerk of the naturalization court; and seal of the court. (8 U.S.C.A. §736).

Functions and Duties of Clerks of Courts

Sec. 337. (a) It is hereby made the duty of the clerk of each and every naturalization court to administer the oath in the clerk's office to each applicant for a declaration of intention made before such clerk, and to retain the original of such declaration of intention for the permanent files of the court, to forward the duplicate thereof to the Commissioner within thirty days after the close of the month in which such declaration was filed, and to furnish the declarant with the triplicate thereof.

(b) It shall be the duty of the clerk of each and every naturalization court to forward to the Commissioner a duplicate of each petition for naturalization within thirty days after the close of the month in which such petition was filed, and to forward to the Commissioner certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of persons as may be required from time to time by the Commissioner.

(c) It shall be the duty of the clerk of each and every naturalization court to issue to any person admitted by such court to citizenship a certificate of naturalization and to forward to the Commissioner within thirty days after the close of the month in which such certificate was issued, a duplicate thereof, and to make and keep on file in the clerk's office a stub for each certificate so issued, whereon shall be entered a memorandum of all the essential facts set forth in such certificate, and to forward a duplicate of each such stub to the Commissioner within thirty days after the close of the month in which such certificate was issued.

(d) It shall be the duty of the clerk of each and every naturalization court to report to the Commissioner, within thirty days after the close of the month in which the final hearing and decision of the court was had, the name and number of the petition of each and every person who shall be denied naturalization together with the cause of such denial.

(e) Clerks of courts shall be responsible for all blank certificates of naturalization received by them from time to time from the Commissioner, and shall account to the Commissioner for them whenever required to do so. No certificate of naturalization received by any clerk of court which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the Commissioner.

(f) It shall be the duty of the clerk of each and every naturalization court to cause to be filed in chronological order in separate volumes, indexed, consecutively numbered, and made a

part of the records of such court, all declarations of intention and petitions for naturalization. (8 U.S.C.A. §737).

Revocation of Naturalization

Sec. 338. (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

(b) The party to whom was granted the naturalization alleged to have been fraudulently or illegally procured shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

(c) If a person who shall have been naturalized shall, within five years after such naturalization, return to the country of such person's nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to become a permanent citizen of the United States at the time of filing such person's petition for naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancelation of the certificate of naturalization as having been obtained through fraud. The diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization.

(d) The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 shall not, where such action takes place after the effective date of this Act, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or available to a wife or minor child of the naturalized person had such naturalization not been revoked, but the citizenship and any such right or privilege of such wife or minor child shall be deemed valid to the extent that it shall not be affected by such revocation: *Provided,* That this subsection shall not apply in any case where the revocation and setting aside of the order was the result of actual fraud.

(e) When a person shall be convicted under this Act of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

(f) Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Commissioner; in case such certificate was not originally issued by the court making such order, it shall direct the clerk of the naturalization court in which the order is revoked and set aside to transmit a copy of such order and judgment to the court out of which such certificate of naturalization shall have been originally issued. It shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of naturalization, if there be any, upon the records and to notify the Commissioner of the entry of such order and of such cancelation. A person holding a certificate of naturalization or citizenship which has been canceled as provided by this section shall upon notice by the court by which the decree of cancelation was made, or by the Commissioner, surrender the same to the Commissioner.

(g) The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this Act, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court. (8 U.S.C.A. §738).

Certificates of Derivative Citizenship

Sec. 339. A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband, or who is a citizen of the United States by virtue of the provisions of section 1993 of the United States Revised Statutes, or of section 1993 of the United States Revised

Statutes, as amended by section 1 of the Act of May 24, 1934 (c. 344, 48 Stat. 797), or who is a citizen of the United States by virtue of the provisions of section 201 (c), (d), (e), and (g) may apply to the Commissioner for a certificate of citizenship. Upon proof to the satisfaction of the Commissioner that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this chapter of a petitioner for naturalization, such individual shall be furnished by the Commissioner or a Deputy Commissioner with a certificate of citizenship, but only if such individual is at the time within the United States. As amended Jan. 20, 1944, c. 2, Sec. 3, 58 Stat. 4. (8 U.S.C.A. §739).

Revocation of Certificates Issued by the Commissioner or a Deputy Commissioner

Sec. 340. The Commissioner is authorized to cancel any certificate of citizenship or any copy of a declaration of intention or certificate of naturalization heretofore or hereafter issued by the Commissioner or a Deputy Commissioner if it shall appear to the Commissioner's satisfaction that such document was illegally or fraudulently obtained from the Commissioner or a Deputy Commissioner; but the person to whom such document has been issued, shall be given at such person's last known place of address, written notice of the intention to cancel such document with the reasons therefor and shall be given at least sixty days in which to show cause why such document should not be canceled. The cancelation of any such document shall affect only the document and not the citizenship status of the person in whose name the document was issued. (8 U.S.C.A. §740).

Documents and Copies Issued by the Commissioner or a Deputy Commissioner

Sec. 341. (a) A person who claims to have been naturalized in the United States under section 323 of this Act may make application to the Commissioner for a certificate of naturalization. Upon proof to the satisfaction of the Commissioner or a Deputy Commissioner that the applicant is a citizen and that he has been naturalized as claimed in the application, such individual shall be furnished a certificate of naturalization by the Commissioner or a Deputy Commissioner, but only if the applicant is at the time within the United States.

(b) If any certificate of naturalization or citizenship issued to any citizen, or any declaration of intention furnished to any declarant, is lost, mutilated, or destroyed, the citizen or declarant may make application to the Commissioner for a new certificate or declaration. If the Commissioner or a Deputy Commissioner finds that the certificate or declaration is lost, mutilated, or destroyed, he shall issue to the applicant a new certificate or declaration. If the certificate or declaration has been mutilated, it shall be surrendered to the Commissioner or a Deputy Commissioner before the applicant may receive such new certificate or declaration. If the certificate or declaration has been lost, the applicant or any other person who may come into possession of it is hereby required to surrender it to the Commissioner or a Deputy Commissioner.

(c) The Commissioner or a Deputy Commissioner shall issue for any naturalized citizen, on such citizen's application therefor, a special certificate of naturalization for use by such citizen only for the purpose of obtaining recognition as a citizen of the United States by a foreign state. Such certificate when issued shall be furnished to the Secretary of State for transmission to the proper authority in such foreign state.

(d) If the name of any naturalized citizen has, subsequent to naturalization, been changed by order of any court of competent jurisdiction, or by marriage, the citizen may make application for a new certificate of naturalization in the new name of such citizen. If the Commissioner or a Deputy Commissioner finds the name of the applicant to have been changed as claimed, the Commissioner or a Deputy Commissioner shall issue to the applicant a new certificate and shall notify the naturalization court of such action.

(e) The Commissioner or a Deputy Commissioner is authorized to make and issue, without fee, certifications of any part of the naturalition records of any court, or of any certificate of naturalization or citizenship, for use in complying with any statute, State or Federal, or in any judicial proceeding. No such certification shall be made by any clerk of court except upon order of the court. (8 U.S.C.A. §741).

Fiscal Provisions

Sec. 342. (a) The clerk of each and every naturalization court shall charge, collect, and account for the following fees:

(1) For receiving and filing a declaration of intention, and issuing a duplicate and triplicate thereof, $3.

(2) For making, filing, and docketing a petition for naturalization, $8, including the final hearing on such petition, if such hearing be held, and a certificate of naturalization, if the issuance of such certificate is authorized by the naturalization court.

(b) The Commissioner shall charge, collect, and account for the following fees:

(1) For application for record of registry, $18.

(2) For application for a declaration of intention in lieu of a declaration alleged to have been lost, mutilated, or destroyed, $1.

(3) For application for a certificate of naturalization in lieu of a certificate alleged to have been lost, mutilated, or destroyed, $1.

(4) For application for a certificate of citizenship under section 339 of this title, $5.

(5) For application for the issuance of a special certificate of citizenship to obtain recognition, $5.

(6) For application for a certificate of naturalization under section 323, $1.

(7) For application for a certificate of citizenship in changed name, $5.

(8) Reasonable fees, with the approval of the Attorney General, in cases where such fees have not been established by law, to cover the cost of furnishing copies, whether certified or uncertified, or any part of the records, or information from the records, of the Service. Such fees shall not exceed a maximum of 25 cents per folio, with a maximum fee of 50 cents for any one such service, in addition to a fee of $1 for any official certification furnished under seal. No such fee shall be required from officers or agencies of the United States or of any State or any subdivision thereof, for such copies or information furnished for official use in connection with the official duties of such officers or agencies. As amended Jan. 20, 1944, c. 2, Sec. 3, 58 Stat. 5; Sept. 27, 1944, c. 415, 58 Stat. 745. Sept. 28, 1944, c. 446, Secs. 1, 2, 58 Stat. 755. (8 U.S.C.A. §742).

Mail

Sec. 343. All mail matter of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Service by clerks of courts addressed to the Department of Justice or the Service, or any official thereof, and endorsed "Official Business," shall be transmitted free of postage and by registered mail if necessary, and so marked. (8 U.S.C.A. §743).

Textbooks

Sec. 344. Authorization is hereby granted for the publication and distribution of the citizenship textbook described in subsection (c) of section 327, and for the reimbursement of the printing and binding appropriation of the Department of Justice upon the records of the Treasury Department from the naturalization fees deposited in the Treasury through the Service for the cost of such publication and distribution, such reimbursement to be made upon statements by the Commissioner of books so published and distributed. (8 U.S.C.A. §744).

Compilation of Naturalization Statistics

Sec. 345. The Commissioner is authorized and directed to prepare from the records in the custody of the Service a report upon those heretofore seeking citizenship to show by nationalities their relation to the numbers of aliens annually arriving and to the prevailing census populations of the foreign born, their economic, vocational, and other classification, in statistical form, with analytical comment thereon, and to prepare such report annually hereafter. Payment for the equipment used in preparing such compilation shall be made from the appropriation, "Salaries and expenses, Immigration and Naturalization Service." (8 U.S.C.A. §745).

Penal Provisions

Sec. 346. (a) It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship, or otherwise, and whether an employee of the Government of the United States or not—

(1) Knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship.

(2) Knowingly to procure or attempt to procure—

a. The naturalization of any such person, contrary to the provisions of any law; or

b. Documentary or other evidence of naturalization or of citizenship of any such person, contrary to the provisions of any law.

(3) To procure or attempt to procure any documentary or other evidence of naturalization or of citizenship of any person knowing or having reason to believe that such person is not entitled thereto.

(4) To encourage, advise, aid, or assist any person—

a. Not then entitled or qualified under this Act to apply for a declaration of intention, to apply for such declaration of intention, with knowledge or having reason to believe that such person was not then so entitled or qualified; or

b. Not then entitled or qualified under this Act to secure a declaration of intention, to obtain such declaration of intention, with knowledge that such person was not then so entitled or qualified; or

c. Not then entitled or qualified under this Act to apply for naturalization or citizenship, to apply for such naturalization or citizenship, with knowledge that such person was not then so entitled or qualified; or

d. Not then entitled or qualified under this Act to obtain naturalization or citizenship, to obtain such naturalization or citizenship, with knowledge that such person was not then so entitled or qualified; or

e. Not then entitled or qualified under this Act to apply for documentary or other evidence of naturalization or of citizenship, to apply for such documentary or other evidence of naturalization or of citizenship, with knowledge that such person was not then so entitled or qualified; or

f. Not then entitled or qualified under this Act to obtain documentary or other evidence of naturalization or of citizenship, to obtain such documentary or other evidence of naturalization or citizenship, with knowledge that such person was not then so entitled or qualified.

(5) To encourage, aid, advise, or assist any person not entitled thereto to obtain, accept,

or receive any certificate of arrival, declaration of intention, certificate of naturalization, or certificate of citizenship, or other documentary evidence of naturalization or of citizenship—

a. Knowing the same to have been procured by fraud; or

b. Knowing the same to have been procured by the use or means of any false name or false statement given or made with the intent to procure the issuance of such certificate of arrival, declaration of intention, certificate of naturalization, or certificate of citizenship, or other documentary evidence of naturalization or of citizenship; or

c. Knowing the same to have been fraudulently altered in any manner.

(6) Knowingly, in any naturalization or citizenship proceeding, whether as the applicant, declarant, petitioner, witness, or otherwise in such proceeding—

a. To personate another person;

b. To appear falsely in the name of a deceased person, or in an assumed or fictitious name.

(7) Knowingly, contrary to the provisions of this Act—

a. To issue a certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship; or

b. To assist in or be a party to the issuance of a certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(8) Knowingly to possess without lawful authority or lawful excuse, and with intent unlawfully to use the same, any false, forged, antedated, or counterfeited certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, purporting to have been issued under any law of the United States relating to naturalization or citizenship, knowing such certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship to be false, forged, antedated, or counterfeited.

(9) Falsely to make, forge, or counterfeit any oath, notice, affidavit, certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceeding, required or authorized by any law relating to naturalization or citizenship.

(10) To cause or procure to be falsely made, forged, or counterfeited, any oath, notice, affidavit, certificate, certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceeding, required or authorized by any law relating to naturalization or citizenship.

(11) To aid or assist in falsely making, forging, or counterfeiting, any oath, notice, affidavit, certificate, certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceeding, required or authorized by any law relating to naturalization or citizenship.

(12) To utter, sell, dispose of, or use as true or genuine, for any unlawful purpose, any false, forged, antedated, or counterfeited oath, notice, affidavit, certificate, certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, or any order, record, signature, or other instrument, paper, or proceeding, required or authorized by any law relating to naturalization or citizenship.

(13) To sell, or dispose of unlawfully, a declaration of intention, certificate of naturalization, certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(14) Knowingly to use in any manner for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise unlawfully, any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, showing any person to be naturalized or admitted to be a citizen, whether heretofore or hereafter issued or made, which has been unlawfully issued or made.

(15) Knowingly and unlawfully to use, or attempt to use, any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, showing any person to be naturalized or admitted to be a citizen, whether heretofore or hereafter issued or made, which has been issued to or in the name of any other person or in a fictitious name, or in the name of a deceased person.

(16) To use or attempt to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or other documentary evidence of naturalization or of citizenship heretofore or which may hereafter be issued or granted, knowing the same to be forged, counterfeited, or antedated, or to have been procured by fraud or by false evidence, or without appearance or hearing of the applicant in court where such appearance and hearing are required, or otherwise unlawfully obtained.

(17) To aid, assist, or participate in the use of any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship, or other documentary evidence of naturalization or of citizenship heretofore or which may hereafter be issued or granted, knowing the same to be forged, counterfeited, or antedated, or to have been procured

by fraud or by false evidence, or without appearance or hearing of the applicant in court where such appearance and hearing are required, or otherwise unlawfully obtained.

(18) Knowingly to falsely represent himself to be a citizen of the United States without having been naturalized or admitted to citizenship, or without otherwise being a citizen of the United States.

(19) Knowingly, with the intent to avoid any duty or liability imposed or required by law, to deny that he has been naturalized or admitted to be a citizen, after having been so naturalized or admitted.

(20) To engrave, without lawful authority, any plate in the likeness of any plate designed for the printing of a declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(21) To cause or procure to be engraved, without lawful authority, any plate in the likeness of any plate designed for the printing of a declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(22) To assist in engraving, without lawful authority, any plate in the likeness of any plate designed for the printing of a declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship.

(23) To sell any plate in the likeness of any plate designed for the printing of a declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, except by direction of the Commissioner or other proper officer of the United States.

(24) To bring into the United States from any foreign place any plate in the likeness of any plate designed for the printing of a declaration of intention, certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, except by direction of the Commissioner or other proper officer of the United States.

(25) To have in the control, custody, or possession of any such alien or other person, any metallic plate engraved after the similitude of any plate from which any declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, has been or is to be printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such declaration of intention, or certificate of naturalization, or certificate of citizenship, or other documentary evidence or any part thereof.

(26) To bring into the United States from any foreign place, except by direction of the Commissioner or other proper officer of the United States, any declaration of intention, or certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship, printed from any metallic plate engraved after the similitude of any plate from which any declaration of intention, certificate of naturalization, or certificate of citizenship, or any other documentary evidence of naturalization or of citizenship has been or is to be printed.

(27) To have in his possession, without lawful authority, any blank certificate of arrival, blank declaration of intention, or blank certificate of naturalization or of citizenship, provided by the Service, with the intent unlawfully to use the same.

(28) To have in his possession a distinctive paper which has been adopted by the proper officer or agency of the United States for the printing or engraving of any declaration of intention, or certificate of naturalization or of citizenship, with intent unlawfully to use the same.

(29) To print, photograph, make, or execute, or in any manner cause to be printed, photographed, made, or executed, without lawful authority, any print or impression in the likeness of any certificate of arrival, declaration of intention, or certificate of naturalization or of citizenship, or any part thereof.

(30) Knowingly to procure or attempt to procure an alien or other person to violate any of the provisions of this Act.

(31) Failing, after at least sixty days' notice, by the appropriate court or the Commissioner or a Deputy Commissioner, to surrender a certificate of naturalization or citizenship which has been canceled, in accordance with the provisions of this Act, such person having such certificate in his possession or under his control.

(32) Knowingly to certify that an applicant, declarant, petitioner, affiant, witness, deponent, or other person named in an application, declaration, petition, affidavit, deposition, or certificate of naturalization, or certificate of citizenship, or other paper or writing required or authorized to be executed or used under the provisions of this Act, personally appeared before the person making such certification and was sworn thereto or acknowledged the execution thereof, or signed the same, when in fact such applicant, declarant, petitioner, affiant, witness, deponent, or other person, did not personally appear before the person making such certification, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof.

(33) Knowingly to demand, charge, solicit, collect, or receive, or agree to charge, solicit, collect, or receive any other or additional fees or moneys in naturalization or citizenship or other proceedings under this Act than the fees and moneys specified in such Act.

(34) Willfully to neglect to render true accounts of moneys received by any clerk of a naturalization court or such clerk's assistant or any other person under this Act or willfully to neglect to pay over any balance of such

moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, which neglect shall constitute embezzlement of the public moneys.

(b) The provisions of this section shall apply to copies and duplicates of certificates of arrival, of declarations of intention, of certificates of naturalization, of certificates of citizenship, and of other documents required or authorized by the naturalization laws and citizenship laws as well as to the originals of such certificates of arrival, declarations of intention, certificates of naturalization, certificates of citizenship, and other documents, whether issued by any court or by the Commissioner or a Deputy Commissioner.

(c) The provisions of this section shall apply to all proceedings had or taken or attempted to be had or taken, before any court specified in subsection (a) of section 301, or any court, in which proceedings for naturalization may have been or may be commenced or attempted to be commenced, and whether or not such court at the time such proceedings were had or taken was vested by law with jurisdiction in naturalization proceedings.

(d) Any person violating any provision of subsection (a) of this section shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(e) Any person who has been subpoenaed under the provisions of subsection (d) of section 309 to appear on the final hearing of a petition for naturalization, and who shall neglect or refuse to so appear and to testify, if in the power of such person to do so, shall be subject to the penalties prescribed by subsection (d) of this section.

(f) If any person shall use the endorsement "Official Business" authorized by section 343 to avoid payment of postage or registry fee on a private letter, package, or other matter in the mail, such person shall be guilty of a misdemeanor and subject to a fine of $300, to be prosecuted in any court of competent jurisdiction.

(g) No person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

(h) For the purpose of the prosecution of all crimes and offenses against the naturalization or citizenship laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization and citizenship laws shall remain in full force and effect.

(i) It shall be lawful and admissible as evidence in any proceedings founded under this Act, or any of the penal or criminal provisions of the immigration, naturalization or citizenship laws, for any officer or employee of the United States to render testimony as to any statement voluntarily made to such officer or employee in the course of the performance of the official duties of such officer or employee by any defendant at the time of or subsequent to the alleged commission of any crime or offense referred to in this section which may tend to show that such defendant did not or could not have had knowledge of any matter concerning which such defendant is shown to have made affidavit, or oath, or to have been a witness pursuant to such law or laws.

(j) In case any clerk of court shall refuse or neglect to comply with any of the provisions of section 337 (a), (b), (c), or (d), such clerk of court shall forfeit and pay to the United States the sum of $25 in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

(k) If any clerk of court shall fail to return to the Service or properly account for any certificate of naturalization furnished by the Service as provided in subsection (e) of section 337, such clerk of court shall be liable to the United States in the sum of $50, to be recovered in an action of debt, for each and every such certificate not properly accounted for or returned.

(l) The provisions of subsections (a), (b), (d), (g), (h), and (i) of this section shall apply in respect of the application for and the record of registry authorized by section 328, in the same manner and to the same extent, including penalties, as they apply in any naturalization or citizenship proceeding or any other proceeding under section 346. (8 U.S.C.A. §746).

Saving Clauses

Sec. 347. (a) Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization or of citizenship, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect.

(b) Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed. (8 U.S.C.A. §747).

TITLE II

Sec. 601. This Act shall take effect from and after ninety days from the date of its approval. (8 U.S.C.A. §906). (Approved, October 14, 1940).

TITLE III, 1942 AMENDMENT

Persons Serving in the Armed Forces of the United States During the Present War.

Exception from Certain Requirements

Sec. 701. Notwithstanding the provisions of sections 303 and 326 of this Act, any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who shall have been at the time of his enlistment or induction a resident thereof and who (a) was lawfully admitted into the United States, including its Territories and possessions, or (b) having entered the United States, including its Territories and possessions, prior to September 1, 1943, being unable to establish lawful admission into the United States serves honorably in such forces beyond the continental limits of the United States or has so served, may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention, no certificate of arrival for those described in group (b) hereof, and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any educational test; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturalization, if issued: Provided, however, That (1) there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, (2) the service of the petitioner in the military or naval forces of the United States shall be proved by affidavits, forming part of the petition, of at least two citizens of the United States, members or former members during the present war of the military or naval forces of the noncommissioned or warrant officer grade or higher (who may be the witnesses described in clause (1) of this proviso), or by a duly authenticated copy of the record of the executive department having custody of the record of the petitioner's service, showing that the petitioner is or was during the present war a member serving honorably in such armed forces, and (3) the petition shall be filed not later than one year after the termination of the effective period of those titles of the Second War Powers Act, 1942, for which the effective period is specified in the last title thereof. (Sec. 645, Appendix to Title 50). The petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses required by the foregoing proviso shall have appeared before and been examined by a representative of the Immigration and Naturalization Service. Oct. 14, 1940, c. 876, Title III, Sec. 701, as added Mar. 27, 1942, c. 199, Title X, Sec. 1001, 56 Stat. 182; amended, c. 662, §1, 58 Stat. 886, Dec. 22, 1944. (8 U.S.C.A. §1001).

Alien Serving Outside Jurisdiction of Naturalization Court

Sec. 702. During the present war, any person entitled to naturalization under section 701 of this Act, who while serving honorably in the military or naval forces of the United States is not within the jurisdiction of any court authorized to naturalize aliens, may be nautralized in accordance with all the applicable provisions of section 701 without appearing before a naturalization court. The petition for naturalization of any petitioner under this section shall be made and sworn to before, and filed with, a representative of the Immigration and Naturalization Service designated by the Commissioner or a Deputy Commissioner, which designated representative is hereby authorized to receive such petition in behalf of the Service, to conduct hearings thereon, to take testimony concerning any matter touching or in any way affecting the admissibility of any such petitioner for naturalization, to call witnesses, to administer oaths, including the oath of the petitioner and his witnesses to the petition for naturalization and the oath of renunciation and allegiance prescribed by section 335, and to grant naturalization, and to issue certificates of citizenship: Provided, That the record of any proceedings hereunder, together with a copy of the certificate of citizenship shall be forwarded to and filed by the clerk of a naturalization court in the district designated by the petitioner and be made a part of the record of the court. Oct 14, 1940, c. 876, Title III, Sec. 702, as added Mar. 27, 1942, c. 199, Title X, Sec. 1001, 56 Stat. 182; amended, c. 662, §2, 58 Stat. 887, Dec. 22, 1944 (8 U.S.C.A. §1002).

Waiver of Notice to Commissioner in Case of Alien Enemy

Sec. 703. The ninety days' notice required by subsection (b) of section 326 of this Act to be given by the clerk of the naturalization court to the Commissioner may be waived by the Commissioner in his discretion. In any petition in which such notice is waived the Commissioner shall cause the clerk of court to be notified to that effect. Oct. 14, 1940, c. 876, Title III, Sec. 703, as added Mar. 27, 1942, c. 199, Title X, Sec. 1001, 56 Stat. 183. (8 U.S.C.A. §1003).

Persons Excepted from Subchapter; Revocation of Citizenship Upon Dishonorable Discharge

Sec. 704. The provisions of this Title shall not apply to (1) any person who during the present war is dishonorably discharged from the military or naval forces or is discharged therefrom on account of his alienage, or (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform: Provided, That citizenship granted pursuant to this subchapter may be revoked as to any person subsequently dishonorably discharged from the military or naval forces in accordance with section 338 of this Act; and such ground for revocation shall be in addition to any other provided by law. Oct. 14, 1940, c. 876, Title III, Sec. 704, as added Mar. 27, 1942, c. 199, Title X, Sec. 1001, 56 Stat. 183. (8 U.S.C.A. §1004).

Forms, Rules and Regulations

Sec. 705. The Commissioner, with the approval of the Attorney General, shall prescribe and furnish such forms, and shall make such rules and regulations, as may be necessary to carry into effect the provisions of this chapter. Oct. 14, 1940, c. 876, Title III, Sec. 705, as added Mar. 27, 1942, c. 199, Title X, Sec. 1001, 56 Stat. 183. (8 U.S.C.A. §1005).

SERVICEMEN'S READJUSTMENT ACT OF 1944

Act of June 22, 1944, Ch. 268, 58 Stat. 284, Public Law 346, 78th Cong., 2d Sess. (S. 1767); 38 U.S. Code 693; as amended to January, 1946.

This Act may be cited as the "Servicemen's Readjustment Act of 1944." (38 U.S.C.A. §693 note).

TITLE I

Chapter I—Hospitalization, Claims, and Procedures

Sec. 100. The Veterans' Administration is hereby declared to be an essential war agency and entitled to priority equal to the highest granted any department or agency of the Government in personnel, service, space, equipment, supplies, and material under any laws, Executive orders, and regulations pertaining to priorities. The Administrator is authorized, for the purpose of extending benefits to veterans and dependents, and to the extent he deems necessary, to procure the necessary space for administrative, clinical, medical, and outpatient treatment purposes by lease, purchase, or construction of buildings, or by condemnation or declaration of taking, pursuant to existing statutes. (As amended July 6, 1945, c. 280, 59 Stat. 463; December 28, 1945, c. 588, 59 Stat.—; 38 U.S.C.A. §693).

Sec. 101. The Administrator of Veterans' Affairs and the Federal Board of Hospitalization are hereby authorized and directed to expedite and complete the construction of additional hospital facilities for war veterans, and to enter into agreements and contracts for the use by or transfer to the Veterans' Administration of suitable Army and Navy hospitals after termination of hostilities in the present war or after such institutions are no longer needed by the armed services; and the Administrator of Veterans' Affairs is hereby authorized and directed to establish necessary regional offices, sub-offices, branch offices, contact units, or other subordinate offices in centers of population where there is no Veterans' Administration facility, or where such a facility is not readily available or accessible: Provided, That there is hereby authorized to be appropriated the sum of $500,000,000 for the construction of additional hospital facilities. (38 U.S.C.A. §693a).

Sec. 102. The Administrator of Veterans' Affairs and the Secretary of War and Secretary of the Navy are hereby granted authority to enter into agreements and contracts for the mutual use or exchange of use of hospital and domiciliary facilities, and such supplies, equipment, and material as may be needed to operate properly such facilities, or for the transfer,

without reimbursement of appropriations, of facilities, supplies, equipment, or material necessary and proper for authorized care for veterans, except that at no time shall the Administrator of Veterans' Affairs enter into any agreement which will result in a permanent reduction of Veterans' Administration hospital and domiciliary beds below the number now established or approved, plus the estimated number required to meet the load of eligibles under laws administered by the Veterans' Administration, or in any way subordinate or transfer the operation of the Veterans' Administration to any other agency of the Government.

Nothing in the Selective Training and Service Act of 1940, as amended, or any other Act, shall be construed to prevent the transfer or detail of any commissioned, appointed or enlisted personnel from the armed forces to the Veterans' Administration subject to agreements between the Secretary of War or the Secretary of the Navy and the Administrator of Veterans' Affairs: Provided, That no such detail shall be made or extend beyond six months after the termination of the war. (38 U.S.C.A. §693b).

Sec. 103. The Administrator of Veterans' Affairs shall have authority to place officials and employees designated by him in such Army and Navy installations as may be deemed advisable for the purpose of adjudicating disability claims of, and giving aid and advice to, members of the Army and Navy who are about to be discharged or released from active service. (38 U.S.C.A. §693c).

Sec. 104. No person shall be discharged or released from active duty in the armed forces until his certificate of discharge or release from active duty and final pay, or a substantial portion thereof, are ready for delivery to him or to his next of kin or legal representative; and no person shall be discharged or released from active service on account of disability until and unless he has executed a claim for compensation, pension, or hospitalization, to be filed with the Veterans' Administration, or has signed a statement that he has had explained to him the right to file such claim: Provided, That this section shall not preclude immediate transfer to a veterans' facility for necessary hospital care, nor preclude the discharge of any person who refuses to sign such claim or statement: And provided further, That refusal or failure to file a claim shall be without prejudice to any right the veteran may subsequently assert.

Any veteran entitled to a prosthetic appliance shall be furnished such fitting and training, including institutional training, in the use of such appliance as may be necessary, whether in a Veterans' Administration facility, other training institution, or by out-patient treatment, including such service under contract and including necessary travel expenses to and from their homes to such hospital or training institution.

The Administrator may procure any and all items mentioned herein, including necessary services required in the fitting, supplying, and training in use of such items by purchase, manufacture, contract, or in such other manner as the Administrator may determine to be proper without regard to any other provision of law. (As amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. §693d).

Sec. 105. No person in the armed forces shall be required to sign a statement of any nature relating to the origin, incurrence, or aggravation of any disease or injury he may have, and any such statement against his own interest signed at any time, shall be null and void and of no force and effect. (38 U.S.C.A. §693e).

Chapter II—Aid by Veterans' Organizations

Sec. 200. (a) That upon certification to the Secretary of War or Secretary of the Navy by the Administrator of Veterans' Affairs of paid full time accredited representatives of the veterans' organizations specified in section 200 of the Act of June 29, 1936 (Public Law Numbered 844, Seventy-fourth Congress), and other such national organizations recognized by the Administrator of Veterans' Affairs thereunder in the presentation of claims under laws administered by the Veterans' Administration, the Secretary of War and Secretary of the Navy are hereby authorized and directed to permit the functioning in accordance with regulations prescribed pursuant to subsection (b) of this section, of such accredited representatives in military or naval installations on shore from which persons are discharged or released from the active military or naval service: Provided, That nothing in this section shall operate to affect measures of military security now in effect or which may hereafter be placed in effect, nor to prejudice the right of the American Red Cross to recognition under existing statutes.

(b) The necessary regulations shall be promulgated by the Secretary of War and the Secretary of the Navy jointly with the Administrator of Veterans' Affairs to accomplish the purpose of this section, and in the preparation of such regulations the national officer of each of such veterans' organizations who is responsible for claims and rehabilitation activities shall be consulted. The commanding officer of each such military or naval installation shall cooperate fully with such authorized representatives in the providing of available space and equipment for such representatives.

(c) The Administrator is further authorized at his discretion and under such regulations as he may prescribe to furnish, if available, necessary space and suitable office facilities for the use of paid full-time representatives of such organizations. (As amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. 693f).

Chapter III—Reviewing Authority

Sec. 300. The discharge or dismissal by reason of the sentence of a general court martial of any person from the military or naval forces, or the discharge of any such person on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, or as a deserter, or of an officer by the acceptance of his resignation for the good of the service, shall bar all rights of such person, based upon the period of service from which he is so discharged or dismissed, under any laws administered by the Veterans' Administration: Provided, That in the case of any such person, if it be established to the satisfaction of the Administrator that at the time of the commission of the offense such person was insane, he shall not be precluded from benefits to which he is otherwise entitled under the laws administered by the Veterans' Administration: And provided further, That this section shall not apply to any war risk, Government (converted) or national service life-insurance policy. (38 U.S.C.A. §693g).

Sec. 301. The Secretary of War and the Secretary of the Navy, after conference with the Administrator of Veterans' Affairs, are authorized and directed to establish in the War and Navy Departments, respectively, boards of review composed of five members each, whose duties shall be to review, on their own motion or upon the request of a former officer or enlisted man or woman or, if deceased, by the surviving spouse, next of kin, or legal representative, the type and nature of his discharge or dismissal, except a discharge or dismissal by reason of the sentence of a general court martial. Such review shall be based upon all available records of the service department relating to the person requesting such review, and such other evidence as may be presented by such person. Witnesses shall be permitted to present testimony either in person or by affidavit and the person requesting review shall be allowed to appear before such board in person or by counsel: Provided, That the term "counsel" as used in this section shall be construed to include, among others, accredited representatives of veterans' organizations recognized by the Veterans' Administration under section 200 of the Act of June 29, 1936 (Public Law Numbered 844, Seventy-fourth Congress). Such board shall have authority, except in the case of a discharge or dismissal by reason of the sentence of a general court martial, to change, correct, or modify any discharge or dismissal, and to issue a new discharge in accord with the facts presented to the board. The Articles of War and the Articles for the Government of the Navy are hereby amended to authorize the Secretary of War and the Secretary of the Navy to establish such boards of review, the findings thereof to be final subject only to review by the Secretary of War or the Secretary of the Navy, respectively: Provided, That no request for review by such board of a discharge or dismissal under the provisions of this section shall be valid unless filed within fifteen years after such discharge or dismissal or within fifteen years after the effective date of this Act whichever be the later. (38 U.S.C.A. §693h).

Sec. 302. (a) The Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury are authorized and directed to establish, from time to time, boards of review composed of five commissioned officers, two of whom shall be selected from the Medical Corps of the Army or Navy, or from the Public Health Service, as the case may be. It shall be the duty of any such board to review, at the request of any officer retired or released to inactive service, without pay, for physical disability pursuant to the decision of a retiring board, the findings and decision of such retiring board. Such review shall be based upon all available service records relating to the officer requesting such review, and such other evidence as may be presented by such officer. Witnesses shall be permitted to present testimony either in person or by affidavit and the officer requesting review shall be allowed to appear before such board of review in person or by counsel. In carrying out its duties under this section such board of review shall have the same powers as exercised by, or vested in, the retiring board whose findings and decision are being reviewed. The proceedings and decision of each such board of review affirming or reversing the decision of the retiring board shall be transmitted to the Secretary of War, the Secretary of the Navy, or the Secretary of the Treasury, as the case may be, and shall be laid by him before the President for his approval or disapproval and orders in the case.

(b) No request for review under this section shall be valid unless filed within fifteen years after the date of retirement for disability or after the effective date of this Act, whichever is the later.

(c) As used in this section—

(1) the term "officer" means any officer subject to the laws granting retirement for active service in the Army, Navy, Marine Corps, or Coast Guard, or any of their respective components;

(2) the term "counsel" shall have the same meaning as when used in section 301 of this Act. (38 U.S.C.A. §693i).

TITLE II

Chapter IV—Education of Veterans

Sec. 400. (a) Subsection (f) of section 1, title I, Public Law Numbered 2, Seventy-third Congress, added by the Act of March 24, 1943 (38 U.S.C.A. §701), is hereby amended to read as follows:

"(f) Any person who served in the active

military or naval forces on or after September 16, 1940, and prior to the termination of hostilities in the present war, shall be entitled to vocational rehabilitation subject to the provisions and limitations of Veterans Regulation Numbered 1 (a), as amended, part VII, or to education or training subject to the provisions and limitations of part VIII."

(b) Veterans Regulation Numbered 1 (a), is hereby amended by adding a new part VIII as follows:

"Part VIII

"1. Any person who served in the active military or naval service on or after September 16, 1940, and prior to the termination of the present war, and who shall have been discharged or released therefrom under conditions other than dishonorable, and who either shall have served ninety days or more, exclusive of any period he was assigned for a course of education or training under the Army specialized training program or the Navy college training program, which course was a continuation of his civilian course and was pursued to completion, or as a cadet or midshipman at one of the service academies, or shall have been discharged or released from active service by reason of an actual service-incurred injury or disability, shall be eligible for and entitled to receive education or training under this part: Provided, That such course shall be initiated not later than four years after either the date of his discharge or the termination of the present war, whichever is the later: Provided further, That no such education or training shall be afforded beyond nine years after the termination of the present war.

"2. Any such eligible person shall be entitled to education or training at an approved educational or training institution, for a period of one year plus the time such person was in the active service on or after September 16, 1940, and before the termination of the war, exclusive of any period he was assigned for a course of education or training under the Army specialized training program or the Navy college training program, which course was a continuation of his civilian course and was pursued to completion, or as a cadet or midshipman at one of the service academies, but in no event shall the total period of education or training exceed four years: Provided, That his work continues to be satisfactory throughout the period, according to the regularly prescribed standards and practices of the institution: Provided further, That wherever the period of eligibility ends during a quarter or semester and after a major part of such quarter or semester has expired, such period shall be extended to the termination of such unexpired quarter or semester.

"3. (a) Such person shall be eligible for and entitled to such course of education or training, full time or the equivalent thereof in part-time training, as he may elect, and at any approved educational or training institution at which he chooses to enroll, whether or not located in the State in which he resides, which will accept or retain him as a student or trainee in any field or branch of knowledge which such institution finds him qualified to undertake or pursue: Provided, That, for reasons satisfactory to the Administrator, he may change a course of instruction: And provided further, That any such course of education or training may be discontinued at any time, if it is found by the Administrator that, according to the regularly prescribed standards and practices of the institution, the conduct or progress of such person is unsatisfactory.

"(b) Any such eligible person may apply for a short, intensive postgraduate, or training course of less than thirty weeks: Provided, That the Administrator shall have the authority to contract with approved institutions for such courses if he finds that the agreed cost of such courses is reasonable and fair: Provided further, That (1) the limitation of paragraph 5 shall not prevent the payment of such agreed rates, but there shall be charged against the veteran's period of eligibility the proportion of an ordinary school year which the cost of the course bears to $500, and (2) not in excess of $500 shall be paid for any such course.

"(c) Any such eligible person may apply for a course of instruction by correspondence without any subsistence allowance: Provided, That the Administrator shall have authority to contract with approved institutions for such courses if he finds that the agreed cost of such courses is reasonable and fair: Provided further, (1) That the provisions of paragraph 5 shall not apply to correspondence courses; (2) that one-fourth of the elapsed time in following such course shall be charged against the veteran's period of eligibility; and (3) that the total amount payable for a correspondence course or courses for any veteran shall not exceed $500: And provided further, That nothing herein shall be construed to preclude the use of approved correspondence courses as a part of institutional or job training, subject to regulations prescribed by the Administrator. (As amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. ch. 12 note).

"4. From time to time the Administrator shall secure from the appropriate agency of each State a list of the educational and training institutions (including industrial establishments), within such jurisdiction, which are qualified and equipped to furnish education or training (including apprenticeship and refresher or retraining training), which institutions, together with such additional ones as may be recognized and approved by the Administrator, shall be deemed qualified and approved to furnish education or training to such persons as shall enroll under this part: Provided, That wherever there are established State apprenticeship agencies expressly charged by State laws to administer apprentice training, whenever possible, the Administrator shall utilize such existing facilities and services in training on the job when such training is of one year's duration or more.

"5. The Administrator shall pay to the educational or training institution, for each person enrolled in full time or part time course of education or training, the customary cost of tuition, and such laboratory, library, health, infirmary, and other similar fees as are customarily charged, and may pay for books, supplies, equipment, and other necessary expenses, exclusive of board, lodging, other living expenses, and travel, as are generally required for the successful pursuit and completion of the course by other students in the institution: Provided, That in no event shall such payments, with respect to any person, exceed $500 for an ordinary school year unless the veteran elects to have such customary charges paid in excess of such limitation, in which event there shall be charged against his period of eligibility the proportion of an ordinary school year which such excess bears to $500: Provided further, That no payment shall be made to institutions, business or other establishments furnishing apprentice training on the job: And provided further, That any institution may apply to the Administrator for an adjustment of tuition and the Administrator, if he finds that the customary tuition charges are insufficient to permit the institution to furnish education or training to eligible veterans, or inadequate compensation therefor, may provide for the payment of such fair and reasonable compensation as will not exceed the estimated cost of teaching personnel and supplies for instruction; and may in like manner readjust such payments from time to time.

"6. While enrolled in and pursuing a course under this part, such person, upon application to the Administrator, shall be paid a subsistence allowance of $65 per month, if without a dependent or dependents, or $90 per month, if he has a dependent or dependents, including regular holidays and leave not exceeding thirty days in a calendar year. Such person attending a course on a part-time basis, and such person receiving compensation for productive labor performed as part of their apprentice or other training on the job at institutions, business or other establishments, shall be entitled to receive such lesser sums, if any, as subsistence or dependency allowances, as may be determined by the Administrator: Provided, That any such person eligible under this part, and within the limitations thereof, may pursue such full time or part-time course or courses as he may elect, without subsistence allowance. (Amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. ch. 12 note; effective January 1, 1946).

"7. Any such person eligible for the benefits of this part, who is also eligible for the benefit of part VII, may elect either benefit or may be provided an approved combination of such courses: Provided, That the total period of any such combined courses shall not exceed the maximum period or limitations under the part affording the greater period of eligibility. (Amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. ch. 12 note).

"8. No department, agency, or officer of the United States, in carrying out the provisions of this part, shall exercise any supervision or control, whatsoever, over any State educational agency, or State apprenticeship agency, or any educational or training institution: Provided, That nothing in this section shall be deemed to prevent any department, agency, or officer of the United States from exercising any supervision or control which such department, agency, or officer is authorized, by existing provisions of law, to exercise over any Federal educational or training institution, or to prevent the furnishing of education or training under this part in any institution over which supervision or control is exercised by such other department, agency, or officer under authority of existing provisions of law.

"9. The Administrator of Veterans' Affairs is authorized and empowered to administer this title, and, insofar as he deems practicable, shall utilize existing facilities and services of Federal and State departments and agencies on the basis of mutual agreements with them. Consistent with and subject to the provisions and limitations set forth in this title, the Administrator shall, from time to time, prescribe and promulgate such rules and regulations as may be necessary to carry out its purposes and provisions.

"10. The Administrator may arrange for educational and vocational guidance to persons eligible for education and training under this part. At such intervals as he deems necessary, he shall make available information respecting the need for general education and for trained personnel in the various crafts, trades, and professions: Provided, That facilities of other Federal agencies collecting such information shall be utilized to the extent he deems practicable.

"11. As used in this part, the term 'educational or training institutions' shall include all public or private elementary, secondary, and other schools furnishing education for adults, business schools and colleges, scientific and technical institutions, colleges, vocational schools, junior colleges, teachers colleges, normal schools, professional schools, universities, and other educational institutions, and shall also include business or other establishments providing apprentice or other training on the job, including those under the supervision of an approved college or university or any State department of education, or any State apprenticeship agency or State board of vocational education, or any State apprenticeship council or the Federal Apprentice Training Service established in accordance with Public, Numbered 308, Seventy-fifth Congress, or any agency in the executive branch of the Federal Government authorized under other laws to supervise such training. (38 U.S.C.A. ch. 12 note).

"12. For the purposes of this part, the present war shall not be considered as terminating, in the case of any individual, before the termi-

nation of such individual's first period of enlistment or reenlistment contracted within one year after the date of the enactment of the Armed Forces Voluntary Recruitment Act of 1945." (Amended October 6, 1945, c. 190, 59 Stat.—).

Sec. 401. Section 3, Public Law Numbered 16, Seventy-eighth Congress, is hereby amended to read as follows:

"Sec. 3. The appropriation for the Veterans' Administration, 'Salaries and expenses, medical and hospital, and compensation and pensions,' shall be available for necessary expenses under part VII, as amended, or part VIII of Veterans Regulation Numbered 1 (a), and there is hereby authorized to be appropriated such additional amount or amounts as may be necessary to accomplish the purposes thereof. Such expenses may include, subject to regulations issued by the Administrator and in addition to medical care, treatment, hospitalization, and prosthesis, otherwise authorized, such care, treatment, and supplies as may be necessary to accomplish the purposes of part VII, as amended, or part VIII of Veterans Regulation Numbered 1 (a)." (38 U.S.C.A. ch. 12 note).

Sec. 402. Public Law Numbered 16, Seventy-eighth Congress, is hereby amended by adding thereto a new section 4 to read as follows:

"Sec. 4. Any books, supplies, or equipment furnished a trainee or student under part VII or part VIII of Veterans Regulation Numbered 1 (a) shall be deemed released to him: Provided, That if he fail, because of fault on his part to complete the course of training or education afforded thereunder, he may be required, in the discretion of the Administrator, to return any or all of such books, supplies, or equipment not actually expended or to repay the reasonable value thereof: Provided further, That returned books, supplies, or equipment may be turned in to educational or training institutions for credit under such terms as may be approved by the Administrator, or disposed of in such other manner as may be approved by the Administrator." (Amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. ch. 12 note).

Sec. 403. Paragraph 1, part VII,* Veterans Regulation Numbered 1 (a) (Public Law Numbered 16, Seventy-eighth Congress), is hereby amended by inserting after the word "time" the words "on or" and deleting the date "December 6, 1941" and substituting therefor the date "September 16, 1940." (38 U.S.C.A. ch. 12 note).

*Chapter 588, 59 Stat.—, also amends paragraphs 1 and 3, part VII, Veterans Regulation Numbered 1 (a) (Public Law Numbered 16, Seventy-eighth Congress), to read as follows: Paragraph 1 (Proviso): "Provided, That no course of training in excess of a period of four years shall be approved except with the approval of the Administrator, nor shall any training under this part be afforded beyond nine years after the termination of the present war." (Approved December 28, 1945). Paragraph 3: "3. While pursuing training prescribed herein, and for two months after his employability is determined, each veteran shall be paid the amount of subsistence allowance specified in paragraph 6 of part VIII of Veterans Regulation Numbered 1 (a), as amended: Provided, That the minimum payment of such allowance, plus any pension or other benefit, shall be, for a person without a dependent, $105 per month; and for a person with a dependent, $115, plus the following amounts for additional dependents: (1) $10 for one child and $7 additional for each additional child, and (2) $15 for a dependent parent: Provided further, That the rates set out herein shall not be subject to the increases authorized by Public Law Numbered 312, Seventy-eighth Congress, approved May 27, 1944: And provided further, That when the course of vocational rehabilitation furnished to any person as herein provided consists of training on the job by an employer, such employer shall be required to submit monthly to the Administrator a statement in writing showing any wage, compensation, or other income paid by him to such person during the month, directly or indirectly, and based upon such written statements, the Administrator is authorized to reduce the subsistence allowance of such person to an amount considered equitable and just." (Approved December 28, 1945: effective January 1, 1946).

TITLE III—LOANS FOR THE PURCHASE OR CONSTRUCTION OF HOMES, FARMS, AND BUSINESS PROPERTY

Chapter V—General Provisions for Loans

Sec. 500. (a) Any person who shall have served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to the termination of the present war and who shall have been discharged or released therefrom under conditions other than dishonorable after active service of ninety days or more, or by reason of an injury or disability incurred in service in line of duty, shall be eligible for the benefits of this title. Any loan made by such veteran within ten years after the termination of the war for any of the purposes, and in compliance with the provisions, specified in this title, is automatically guaranteed by the Government by this title in an amount not exceeding fifty per centum of the loan: Provided, That the aggregate amount guaranteed shall not exceed $2,000 in the case of non-real-estate loans, nor $4,000 in the case of real-estate loans; or a prorated portion thereof on loans of both types or combination thereof.

(b) Loans guaranteed under this title shall be payable under such terms and conditions as may be agreed upon by the parties thereto, subject to the conditions and limitations of this title and the regulations issued pursuant to section 504: Provided, That the liability under the guaranty within the limitations of this title shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation: Provided further, That loans guaranteed under this title shall bear interest at a rate not exceeding 4 per centum per annum and shall be payable in full in not more than twenty-five years, or in the case of loans on farm realty in not more than forty years: And provided further, That (1) the maturity on a non-real-estate loan shall not exceed ten years; (2) any loan for a term in excess of five years shall be amortized in accordance with established procedure; (3) except as provided in section 505 any real-estate loan, other than for repairs, alterations or improve-

ments, shall be secured by a first lien on the realty, and a non-real-estate loan, except as to working or other capital, merchandise, goodwill and other intangible assets, shall be secured by personalty to the extent legal and practicable.

(c) An honorable discharge shall be deemed a certificate of eligibility to apply for a guaranteed loan. Any veteran who does not have a discharge certificate, or who received a discharge other than honorable, may apply to the Administrator for a certificate of eligibility. Upon making a loan as provided herein, the lender shall forthwith transmit to the Administrator a statement setting forth the full name and serial number of the veteran, amount and terms of the loan, and the legal description of the property, together with the appraisal report made by the designated appraiser. Where the loan is automatically guaranteed, the Administrator shall provide the lender with a loan guaranty certificate or other evidence of the guaranty. He shall also endorse on the veteran's discharge, or eligibility certificate, the amount and type of guaranty used, and the amount, if any, remaining. An amount equivalent to 4 per centum on the amount originally guaranteed shall be paid to the lender by the Administrator out of available appropriations, to be credited upon the loan. Nothing herein shall be deemed to preclude the assignment of any guaranteed loan nor the assignment of the security therefor.

(d) Loans guaranteed hereunder may be made by any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State or Territory, including the District of Columbia. Any loan at least 20 per centum of which is guaranteed under this title may be made by any national bank, or Federal savings and loan association; or by any bank, trust company, building and loan association or insurance company organized or authorized to do business in the District of Columbia; without regard to the limitations and restrictions of any other statute with respect to—

(1) ratio of amount of loan to the value of the property;

(2) maturity of loan;

(3) requirement for mortgage or other security;

(4) dignity of lien; or

(5) percentage of assets which may be invested in real estate loans.

(e) Any loan proposed to be made to an eligible veteran by any lender not of a class specified in subsection (d) may be guaranteed by the Administrator if he finds that it is in accord otherwise with the provisions of this title, as amended. (Amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. §694).

Purchase or Construction of Homes

Sec. 501. Any loan made to a veteran under this title, the proceeds of which are to be used for purchasing residential property or constructing a dwelling to be occupied as his home or for the purpose of making repairs, alterations, or improvements in property owned by him and occupied as his home, is automatically guaranteed if made pursuant to the provisions of this title, including the following:

(1) That the proceeds of such loan will be used for payment of the property purchased or constructed or improved;

(2) That the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and anticipated income and expenses; and that the nature and condition of the property is such as to be suitable for dwelling purposes; and

(3) That the price paid or to be paid by the veteran for such property or for the cost of construction, repairs, or alterations does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator. (Amended December 28, 1945, c. 588, 59 Stat. —, 38 U.S.C.A. §694a).

Purchase of Farms and Farm Equipment

Sec. 502. Any loan made to a veteran under this title, the proceeds of which are to be used for purchasing any lands, buildings, livestock, equipment, machinery, supplies or implements, or for repairing, altering, constructing or improving any land, equipment, or building, including the farmhouse, to be used in farming operations conducted by the veteran involving production in excess of his own needs, or for working capital requirements necessary for such operations, or to purchase stock in a cooperative association where the purchase of such stock is required by Federal statute as an incident to obtaining the loan, is automatically guaranteed if made pursuant to the provisions of this title, including the following:

(1) That the proceeds of such loan will be used for any such purposes in connection with bona fide farming operations conducted by the applicant;

(2) That such property will be useful in and reasonably necessary for efficiently conducting such operations;

(3) That the ability and experience of the veteran, and the nature of the proposed farming operations to be conducted by him, are such that there is a reasonable likelihood that such operations will be successful; and

(4) That the purchase price paid or to be paid by the veteran for such property does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator. (Amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. §694b).

Purchase of Business Property

Sec. 503. Any loan made to a veteran under this title, the proceeds of which are to be used for the purpose of engaging in business or pursuing a gainful occupation, or for the cost of acquiring for such purpose land, buildings, supplies, equipment, machinery, tools, inventory, stock in trade, or for the cost of the construction, repair, alteration or improvement of any realty or personalty used for such purpose, or to provide the funds needed for working capital, is automatically guaranteed if made pursuant to the provisions of this title, including the following:

(1) That the proceeds of such loan will be used for any of the specified purposes in connection with bona fide pursuit of gainful occupation by the veteran;

(2) That such property will be useful in and reasonably necessary for the efficient and successful pursuit of such business or occupation;

(3) That the ability and experience of the veteran, and the conditions under which he proposes to pursue such business or occupation, are such that there is a reasonable likelihood that he will be successful in the pursuit of such business or occupation; and

(4) That the purchase price paid or to be paid by the veteran for such property, or the cost of such construction, alterations, or improvements, does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator. (Amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. §694c).

Regulations

Sec. 504. The Administrator is authorized to promulgate such rules and regulations not inconsistent with this title, as amended, as are necessary and appropriate for carrying out the provisions of this title, and may delegate to subordinate employees authority to issue certificates, or other evidence, of guaranty of loans guaranteed under the provisions of this title, and to exercise other administrative functions hereunder. (Amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. §694d).

Secondary Loans

Sec. 505. (a) In any case wherein a principal loan, for any of the purposes stated in section 501, 502, or 503, is approved by a Federal agency to be made or guaranteed or insured by it pursuant to applicable law and regulations, and the veteran is in need of a second loan to cover the remainder of the purchase price or cost, or a part thereof, the Administrator, subject otherwise to the provisions of this title, may guarantee the full amount of the second loan: Provided, That such second loan shall not exceed 20 per centum of the purchase price or cost: And provided further, That regulations to be promulgated jointly by the Administrator and the head of such agency may provide for servicing of both loans by such agency and for refinancing of the principal loan to include any unpaid portion of the secondary loan with accrued interest, if any, after the curtailment thereon equals twice the amount of the secondary loan.

(b) Any person who is a veteran eligible for the benefits of this title, as provided in section 500 hereof, and who is found by the Secretary of Agriculture, by reason of his ability and experience, including training as a vocational trainee, to be likely to carry out successfully undertakings required of him under a loan which may be made under the Bankhead-Jones Farm Tenant Act, shall be eligible for the benefits of such Act, to the same extent as if he were a farm tenant. (Amended December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. §694e).

Procedure on Default

Sec. 506. In the event of default in the payment of any loan guaranteed under this title, the holder of the obligation shall notify the Administrator who shall thereupon pay to such holder the guaranty not in excess of the pro rata portion of the amount originally guaranteed, and shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid on the guaranty: Provided, That prior to suit or foreclosure the holder of the obligation shall notify the Administrator of the default, and within thirty days thereafter the Administrator may, at his option, pay the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive an assignment of the loan and security: Provided further, That (1) nothing herein shall be construed to preclude any forbearance for the benefit of the veteran as may be agreed upon by the parties to the loan and approved by the Administrator; and (2) the Administrator may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease. (Amendment added December 28, 1945, c. 588, 59 Stat.—).

Loans on Delinquent Indebtedness

Sec. 507. Any loan made to a veteran, the proceeds of which are to be used to refinance any indebtedness of the veteran which is secured of record on property to be used or occupied by the veteran as a home or for farming purposes, or indebtedness incurred by him in the pursuit of a gainful occupation which he is pursuing or which he proposes in good faith to pursue, or any delinquent taxes or assessments on such property or business, is automatically guaranteed if made pursuant to the provisions of this title, including the following:

(1) Such loan became in default or the delinquency occurred not later than ten years after the termination of the war;

(2) Such refinancing will aid the veteran in his economic readjustment; and

(3) The amount of the guaranteed loan does not exceed the reasonable value of the property

or business, as determined by proper appraisal made by an appraiser designated by the Administrator. (Amendment added December 28, 1945, c. 588, 59 Stat.—).

Insurance of Loans

Sec. 508. (a) Any loans which might be guaranteed under the provisions of this title, when made or purchased by any financial institution subject to examination and supervision by an agency of the United States or of any State or Territory, including the District of Columbia, may, in lieu of such guaranty, be insured by the Adminstrator under an agreement whereby he will reimburse any such institution for losses incurred on such loan up to 15 per centum of the aggregate of loans so made or purchased by it.

(b) Loans insured hereunder shall be made on such other terms, conditions, and restrictions as the Administrator may prescribe within the limitations set forth in this title. The Administrator may fix the maximum rate of interest payable on any class of non-real-estate loans insured hereunder at a figure not in excess of a 3 per centum discount rate or an equivalent straight interest rate on nonamortized loans.

(c) The Administrator shall pay the same amount on each loan insured hereunder as he would be required to pay under the sixth sentence of section 500 (c) hereof if the loan were guaranteed rather than insured. (Amendment added December 28, 1945, c. 588, 59 Stat.—).

Powers of Administrator

Sec. 509. (a) With respect to matters arising by reason of this title as now or hereafter amended and, notwithstanding the provisions of any other law, the Administrator may—

(1) Sue and be sued in his official capacity in any court of competent jurisdiction, State or Federal;

(2) Subject to specific limitations in this Act, consent to the modification, with respect to rate of interest, time of payment of principal or interest or any portion thereof, security or other provisions of any note, contract, mortgage or other instrument securing a loan which has been guaranteed or insured hereunder;

(3) Pay, or compromise, any claim on, or arising because of, any such guaranty or insurance;

(4) Pay, compromise, waive or release any right, title, claim, lien or demand, however acquired, including any equity or any right of redemption;

(5) Purchase at any sale, public or private, upon such terms and for such prices as he determines to be reasonable, and take title to, property, real, personal or mixed; and similarly sell, at public or private sale, exchange, assign, convey, or otherwise dispose of any such property; and

(6) Complete, administer, operate, obtain and pay for insurance on, and maintain, renovate, repair, modernize, lease, or otherwise deal with any property acquired or held pursuant to this title: Provided, That the acquisition of any such property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction of, on, or over such property (including power to tax) or impair the rights under the State or local law of any persons on such property.

(b) The powers by this section granted may be exercised by the Administrator without regard to any other provisions of law not enacted expressly in limitation hereof, which otherwise would govern the expenditure of public funds: Provided, That section 3709 of the Revised Statutes shall apply to any contract for services or supplies on account of any property acquired pursuant to this section if the amount of such contract exceeds $1,000.

(c) The financial transactions of the Administrator incident to, or arising out of, the guaranty of loans pursuant to this title, and the acquisition, management, and disposition of property, real, personal or mixed, as incident to such activities and pursuant to this section, shall be final and conclusive upon all officers of the Government. (Amendment added December 28, 1945, c. 588, 59 Stat.—).

Effective Date

Sec. 510. This title, as amended, shall be effective from the date of enactment: Provided, That any application for guaranty of a loan filed within ninety days after such date may be approved under the title as it existed prior to amendment: And provided further, That nothing herein shall be construed to affect any contractual right under any certificate of guaranty issued thereunder. (Amendment added December 28, 1945, c. 588, 59 Stat.—).

TITLE IV

Chapter VI—Employment of Veterans

Sec. 600. (a) In the enactment of the provisions of this title Congress declares as its intent and purpose that there shall be an effective job counseling and employment placement service for veterans, and that, to this end, policies shall be promulgated and administered, so as to provide for them the maximum of job opportunity in the field of gainful employment. For the purpose there is hereby created to cooperate with and assist the United States Employment Service, as established by the provisions of the Act of June 6, 1933, a Veterans' Placement Service Board, which shall consist of the Administrator of Veterans' Affairs, as

Chairman, the Director of the National Selective Service System, and the Administrator of the Federal Security Agency, or whoever may have the responsibility of administering the functions of the United States Employment Service. The Board shall determine all matters of policy relating to the administration of the Veterans' Employment Service of the United States Employment Service.

(b) The Chairman of the Board shall have direct authority and responsibility for carrying out its policies through the veterans' employment representatives in the several States or through persons engaged in activities authorized by subsection (g) of section 8 of the Selective Service Act of 1940 (Public Law 783, Seventy-sixth Congress, approved September 16, 1940, as amended (U.S.C., title 50, sec. 308). The Chairman may delegate such authority to an executive secretary who shall be appointed by him and who shall thereupon be the Chief of the Veterans' Employment Service of the United States Employment Service.

(c) The public records of the Veterans' Personnel Division, National Selective Service System, and the Veterans' Employment Service of the United States Employment Service shall be available to the Board. (38 U.S.C.A. §695).

Sec. 601. The United States Employment Service shall assign to each of the States a veterans' employment representative, who shall be a veteran of the wars of the United States separated from active service under honorable conditions, who at the time of appointment shall have been a bona fide resident of the State for at least two years, and who shall be appointed, subject to the approval of the Board, in accordance with the civil-service laws, and whose compensation shall be fixed in accordance with the Classification Act of 1923, as amended. Each such veterans' employment representative shall be attached to the staff of the public employment service in the State to which he has been assigned. He shall be administratively responsible to the Board, through its executive secretary, for the execution of the Board's veterans' placement policies through the public employment service in the State. In cooperation with the public employment service staff in the State, he shall—

(a) be functionally responsible for the supervision of the registration of veterans in local employment offices for suitable types of employment and for placement of veterans in employment;

(b) assist in securing and maintaining current information as to the various types of available employment in public works and private industry or business;

(c) promote the interest of employers in employing veterans;

(d) maintain regular contact with employers and veterans' organizations with a view of keeping employers advised of veterans available for employment and veterans advised of opportunities for employment; and

(e) assist in every possible way in improving working conditions and the advancement of employment of veterans. (38 U.S.C.A. §695a).

Sec. 602. Where deemed necessary by the Board, there shall be assigned by the administrative head of the employment service in the State one or more employees, preferably veterans, of the staffs of local employment service offices, whose services shall be primarily devoted to discharging the duties prescribed for the veterans' employment representative. (38 U.S.C.A. §695b).

Sec. 603. All Federal agencies shall furnish the Board such records, statistics, or information as may be deemed necessary or appropriate in administering the provisions of this title, and shall otherwise cooperate with the Board in providing continuous employment opportunities for veterans. (38 U.S.C.A. §695c).

Sec. 604. The Federal agency administering the United States Employment Service shall maintain that service as an operating entity and, during the period of its administration, shall effectuate the provisions of this title. (38 U.S.C.A. §695d).

Sec. 605. (a) The Board through its executive secretary shall estimate the funds necessary for the proper and efficient administration of this title; such estimated sums shall include the annual amounts necessary for salaries, rents, printing and binding, travel, and communications. Sums thus estimated shall be included as a special item in the annual budget of the United States Employment Service. Any funds appropriated pursuant to this special item as contained in the budget of the United States Employment Service shall not be available for any purpose other than that for which they were appropriated, except with the approval of the Board.

(b) The War Manpower Commission shall from its current appropriation allocate and make available sufficient funds to carry out the provisions of this title during the current fiscal year. (38 U.S.C.A. §695e).

Sec. 606. The term "United States Employment Service" as used in this title means that Bureau created by the provisions of the Act of June 6, 1933, or such successor agencies as from time to time shall perform its functions and duties, as now performed by the War Manpower Commission. (38 U.S.C.A. §695f).

Sec. 607. The term "veteran" as used in this title shall mean a person who served in the active service of the armed forces during a period of war in which the United States has been, or is, engaged, and who has been discharged or released therefrom under conditions other than dishonorable. (38 U.S.C.A. §695f).

TITLE V

Chapter VII—Readjustment Allowances for Former Members of the Armed Forces Who are Unemployed

Sec. 700. (a) Any person who shall have served in the active military or naval service of the United States at any time after September 16, 1940, and prior to the termination of the present war, and who shall have been discharged or released from active service under conditions other than dishonorable, after active service of ninety days or more, or by reason of an injury or disability incurred in service in line of duty, shall be entitled, in accordance with the provisions of this title and regulations issued by the Administrator of Veterans' Affairs pursuant thereto, to receive a readjustment allowance as provided herein for each week of unemployment, not to exceed a total of fifty-two weeks, which (1) begins after the first Sunday of the third calendar month after the date of enactment hereof, and (2) occurs not later than two years after discharge or release or the termination of the war, whichever is the later date: Provided, That no such allowance shall be paid for any period for which he receives increased pension under part VII of Veterans Regulation 1 (a) or a subsistence allowance under part VIII of such regulation: Provided further, That no readjustment allowance shall be payable for any week commencing more than five years after the termination of hostitlities in the present war.

(b) Such person shall be deemed eligible to receive an allowance for any week of unemployment if claim is made for such allowance and the Administrator finds with respect to such week that—

(1) the person is residing in the United States at the time of such claim;

(2) the person is completely unemployed, having performed no service and received no wages, or is partially unemployed in that services have been performed for less than a full work week and the wages for the week are less than the allowance under this title plus $3;

(3) the person is registered with and continues to report to a public employment office, in accordance with its regulations;

(4) the person is able to work and available for suitable work: Provided, That no claimant shall be considered ineligible in any period of continuous unemployment for failure to comply with the provisions of this subparagraph if such failure is due to an illness or disability which occurs after the commencement of such period. (38 U.S.C.A. §696).

(c) For the purposes of this title, neither the present war nor hostilities therein shall be considered as terminating, in the case of any individual, before the termination of such individual's first period of enlistment or re-enlistment contracted within one year after the date of the enactment of the Armed Forces Voluntary Recruitment Act of 1945. (Amendment added October 6, 1945, c. 393, §11(c), 59 Stat.—).

Chapter VIII—Disqualifications

Sec. 800. (a) Notwithstanding the provisions of section 700, a claimant shall be disqualified from receiving an allowance if—

(1) he leaves suitable work voluntarily, without good cause, or is suspended or discharged for misconduct in the course of employment;

(2) he, without good cause, fails to apply for suitable work to which he has been referred by a public employment office, or to accept suitable work when offered him; or

(3) he, without good cause, does not attend an available free training course as required by regulations issued pursuant to the provisions of this title.

(b) Notwithstanding the provisions of section 700, a claimant shall also be disqualified from receiving an allowance for any week with respect to which it is found that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: Provided, That this subsection shall not apply if it is shown that—

(1) he is not participating in or directly interested in the labor dispute which causes the stoppage of work; and

(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute: Provided, however, That if in any case separate branches of work, which are commonly conducted as separate business in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

(c) (1) If a claimant is disqualified under the provisions of subsection (a) of this section, he shall be disqualified to receive any readjustment allowance for the week in which the cause of his disqualification occurred and for not more than four immediately following weeks.

(2) In addition to the disqualification prescribed in paragraph (1) above, the Administrator may, in cases of successive disqualifications under the provisions of subsection (a) of this section, extend the period of disqualification for such additional period as the Administrator may prescribe, but not to exceed eight additional weeks in the case of any one disqualification.

(d) (1) In determining under subsection (a) of this section the suitability of work or the existence of good cause with respect to a

claimant, the conditions and standards prescribed by the unemployment compensation laws of the State in which he files his claim shall govern: Provided, That the Administrator may prescribe conditions and standards for applicants in any State having no applicable statute.

(2) In determining under subsection (a) of this section the suitability of work, no work shall be deemed suitable for an individual if—

(A) the position offered is vacant due directly to a strike, lock-out, or other labor dispute; or

(B) the wages, hours, or other conditions of the work offered are substantially less favorable to him than those prevailing for similar work in the locality. (38 U.S.C.A. §696a).

Chapter IX—Amount of Allowance and Payment

Sec. 900. (a) The allowance for a week shall be $20 less that part of the wages payable to him for such week which is in excess of $3: Provided, That where the allowance is not a multiple of $1, it shall be computed to the next highest multiple of $1.

(b) The number of weeks of allowances to which each eligible veteran shall be entitled shall be determined as follows: For each calendar month or major fraction thereof of active service during the period stated in section 700 the veteran shall be entitled to four weeks of allowances, but in no event to exceed the maximum provided in section 700: Provided, That the allowance for the qualifying ninety days service shall be eight weeks for each such month. (38 U.S.C.A. §696b).

Sec. 901. (a) Readjustment allowances shall be paid at the intervals prescribed by the unemployment compensation law of the State in which the claim was made: Provided, That if none are so prescribed readjustment allowances shall be paid at such reasonable intervals as may be determined by the Administrator.

(b) Any allowances remaining unpaid upon the death of a claimant shall not be considered a part of the assets of the estate of the claimant, or liable for the payment of his debts, or subject to any administration of his estate, and the Administrator may make payment thereof to such person or persons he finds most equitably entitled thereto. (38 U.S.C.A. §696c).

Sec. 902. (a) Any person qualified under subsection (a) of section 700, and residing in the United States who is self-employed for profit in an independent establishment, trade, business, profession, or other vocation shall be eligible for readjustment allowances under this title within the time periods applicable, and not in excess of the total amount provided in this title.

(b) Upon application by the veteran showing, in accordance with rules prescribed by the Administrator, that he has been fully engaged in such self-employment and that his net earnings in a trade, business, profession, or vocation, have been less than $100 in the previous calendar month, the veteran shall be entitled to receive, subject to the limitations of this title as to time and amount, the difference (adjusted to the next highest multiple of $1), between $100 and his net earnings for such month.

(c) Payment of such allowance shall be made by the Administrator to each eligible veteran at the time and in the manner other payments are made directly to veterans by the Administrator.

(d) Subsection (b) of section 700 and section 800 shall not apply in determining the eligibility for allowances of a claim under this section. (38 U.S.C.A. §696d).

Chapter X—Adjustment of Duplicate Benefits

Sec. 1000. Where an allowance is payable to a claimant under this title and where, for the same period, either an allowance or benefit is received under any Federal or State unemployment or disability compensation law, the amount received or accrued from such other source shall be subtracted from the allowance payable under this title (except that this section shall not apply to pension, compensation, or retired pay paid by the Veterans' Administration); and the resulting allowances, if not a multiple of $1, shall be readjusted to the next higher multiple of $1. (38 U.S.C.A. §696e).

Chapter XI—Administration

Sec. 1100. (a) The Administrator of Veterans' Affairs is authorized to administer this title and shall, insofar as possible, utilize existing facilities and services of Federal and State departments or agencies on the basis of mutual agreements with such departments or agencies. Such agreements shall provide for the filing of claims for readjustment allowances with the Administrator through established public employment offices and State unemployment-compensation agencies. Such agencies, through agreement, shall also be utilized in the processing, adjustment, and determination of such claims and the payment of such allowances. To facilitate the carrying out of agreements with State departments or agencies and to assist in the discharge of the Administrator's duties under this title, a representative of the Administrator, who shall be a war veteran separated from active service under honorable conditions and who at the time of appointment shall have been a bona fide resi-

dent of the State for at least two years, shall be located in each participating State department or agency.

(b) The Administrator, consistent with the provisions of this title, shall prescribe such rules and regulations and require such records and reports as he may find necessary to carry out its purposes: Provided, however, That cooperative rules and regulations relating to the performance by Federal or State departments, or agencies, of functions under agreements made therewith may be made by the Administrator after consultation and advisement with representatives of such departments or agencies.

(c) The Administrator may delegate to any officer or employee of his own or of any cooperating department or agency of any State such of his powers and duties, except that of prescribing rules and regulations, as the Administrator may consider necessary and proper to carry out the purposes of this title.

(d) Allowances paid by the cooperating State agencies shall be repaid upon certification by the Administrator. The Secretary of the Treasury, through the Division of Disbursement of the Treasury, and without the necessity of audit and settlement by the General Accounting Office, shall pay monthly to the departments, agencies, or individuals designated, the amounts so certified.

(e) The Administrator shall from time to time certify to the Secretary of the Treasury for payment in advance or otherwise such sums as he estimates to be necessary to compensate any Federal department or agency for its administrative expenses under this title. Such sums shall cover periods of no longer than six months.

(f) The Administrator shall also from time to time certify to the Social Security Board such State departments or agencies as may be participating in the administration of this title, and the amount of the administrative expense incurred or to be incurred by a State under agreements made pursuant to this section. Upon such certification the Social Security Board shall certify such amount to the Secretary of the Treasury, in addition to the amount, if any, payable by said Board under the provisions of section 302 (a) of the Social Security Act, as amended, and the additional amount so certified shall be paid to each State by the Secretary of the Treasury out of the appropriation for the Veterans' Administration.

(g) Any money paid to any cooperating agency or person, which is not used for the purpose for which it was paid shall, upon termination of the period covered by such payment or the agreement with such agency or person, be returned to the Treasury and credited to the current appropriation for carrying out the purpose of this title, or, if returned after the expiration of period covered by this title, shall be covered into the Treasury as miscellaneous receipts. (38 U.S.C.A. §696f).

Sec. 1101. (a) No person designated by the Administrator as a certifying officer shall, in the absence of gross negligence, or intent to defraud the United States, be liable with respect to the payment of any allowance certified by him under this title.

(b) No disbursing officer shall, in the absence of gross negligence, or intent to defraud the United States, be liable with respect to any payment by him under this title if it was based upon a voucher signed by a certifying officer designated by the Administrator. (38 U.S.C.A. §696g).

Sec. 1102. Any claimant whose claim for an allowance has been denied shall be entitled to a fair hearing before an impartial tribunal of the State agency or such other agency as may be designated by the Administrator. The representative of the Administrator located in each State shall be the final appellate authority in regard to contested claims arising in such State, subject to review by the Administrator. (38 U.S.C.A. §696h).

Sec. 1103. In the case of any veteran eligible under the provisions of this title who either at the time of application for the benefits herein provided is a "qualified employee" as defined in section 3 of the Railroad Unemployment Insurance Act, as amended, or was last employed prior to such application by an employer as defined in section 1 (a) of the said Act, claim may be made through an office operated by or a facility designated as a free employment office by the Railroad Retirement Board pursuant to the provisions of said Act. In such cases, the conditions and standards as to suitability of work or existence of good cause, the intervals for making claim for and payment of benefits, and the administrative and appellate procedures prescribed by or under said Act shall govern, if not in conflict with the provisions of this title, the appellate procedures being subject to final appeal to the Administrator. In such cases, a reference in this title to a cooperating State agency shall be deemed to include the Railroad Retirement Board. (38 U.S.C.A. §696i).

Chapter XII—Decisions and Procedures

Sec. 1200. The authority to issue subpoenas and provisions for invoking aid of the courts of the United States in case of disobedience thereto, to make investigations, and to administer oaths, as contained in title III of the Act of June 29, 1936 (49 Stat. 2033-34; U.S.C., title 38, secs. 131-133), shall be applicable in the administration of this title. (38 U.S.C.A. §696j).

Chapter XIII—Penalties

Sec. 1300. Any claimant who knowingly accepts an allowance to which he is not entitled shall be ineligible to receive any further allowance under this title. (38 U.S.C.A. §696k).

Sec. 1301. (a) Whoever, for the purpose of causing an increase in any allowance authorized under this title, or for the purpose of causing any allowance to be paid where none is authorized under this title, shall make or cause to be made any false statement or representation as to any wages paid or received, or whoever makes or causes to be made any false statement of a material fact in any claim for any allowance under this title, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) Whoever shall obtain or receive any money, check, or allowance under this title, without being entitled thereto and with intent to defraud the United States, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both. (38 U.S.C.A. §696L).

Chapter XIV—Definitions

Sec. 1400. As used in this title—

(a) The term "week" means such period or periods of seven consecutive calendar days as may be prescribed in regulations by the Administrator.

(b) The term "wages" means all remuneration for services from whatever sources, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. (38 U.S.C.A. §696m).

TITLE VI

Chapter XV—General Administrative and Penal Provisions

Sec. 1500. Except as otherwise provided in this Act, the administrative, definitive, and penal provisions under Public, Numbered 2, Seventy-third Congress, as amended, and the provisions of Public, Numbered 262, Seventy-fourth Congress, as amended (38 U.S.C. 450, 451, 454a and 556a), shall be for application under this Act. For the purpose of carrying out any of the provisions of Public, Numbered 2, as amended, and this Act, the Administrator shall have authority to accept uncompensated services, and to enter into contracts or agreements with private or public agencies, or persons, for necessary services, including personal services, as he may deem practicable. (38 U.S.C.A. §697).

Sec. 1501. Except as otherwise specified, the appropriations for the Veterans' Administration are hereby made available for expenditures necessary to carry out the provisions of this Act and there is hereby authorized to be appropriated such additional amounts as may be necessary to accomplish the purposes of this Act. (38 U.S.C.A. 697a).

Sec. 1502. Wherever used in this Act, unless the context otherwise requires, the singular includes the plural; the masculine includes the feminine; the term "Administrator" means the Administrator of Veterans' Affairs; the term "United States" used geographically means the several States, Territories and possessions, and the District of Columbia; the term "State" means the several States, Territories and possessions, and the District of Columbia; and the phrases "termination of hostilities in the present war," "termination of the present war," and "termination of the war," mean termination of the war as declared by Presidential proclamation or concurrent resolution of the Congress. (38 U.S.C.A. §697b).

Sec. 1503. A discharge or release from active service under conditions other than dishonorable shall be a prerequisite to entitlement to veterans' benefits provided by this Act or Public Law Numbered 2, Seventy-third Congress, as amended. (38 U.S.C.A. §697c).

Sec. 1504. The Administrator shall transmit to the Congress annually a report of operations under this Act. If the Senate or the House of Representatives is not in session, such reports shall be transmitted to the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be. (38 U.S.C.A. §697d).

Sec. 1505. (Repealed December 28, 1945, c. 588, 59 Stat.—, 38 U.S.C.A. §697e).

Sec. 1506. Persons who served in the active military or naval service of any government allied with the United States in World War II and who at time of entrance into such active service were citizens of the United States shall, by virtue of such service, and if otherwise qualified, be entitled to the benefits of titles II, III, IV, and V of this Act or of Public Law 16, Seventy-eighth Congress, in the same manner and to the same extent as persons who served in the active military or naval service of the United States: Provided, That any such benefit shall not be extended to any person who is not a resident of the United States at time of filing claim or to any person who has applied for and received the same or similar benefit from the government of the nation in whose active military or naval service he served. (Amendment added December 28, 1945, c. 588, 59 Stat.—).

Sec. 1507. Notwithstanding the provisions of section 1503, any person while on terminal leave, or while hospitalized pending final discharge, may be afforded the benefits of titles

II and III of this Act, or vocational rehabilitation training under Public Law 16, Seventy-eighth Congress, as amended, subject to all conditions thereof except actual discharge: Provided, That no subsistence allowance shall be paid in such cases under title II of this Act or Public Law 16, Seventy-eighth Congress. This section shall be effective from June 22, 1944. (Amendment added December 28, 1945, c. 588, 59 Stat.—).

VETERANS' PREFERENCE ACT OF 1944

Act of June 27, 1944, Ch. 287, 58 Stat. 387, Public Law 359, 78th Cong., 2d Sess. (H.R. 4115); 5 U.S. Code 851; as amended to January, 1946.

This Act may be cited as the "Veterans' Preference Act of 1944." (5 U.S.C.A. §851 note).

Sec. 2. In certification for appointment, in appointment, in reinstatement, in reemployment, and in retention in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order; and (d) the civil service of the District of Columbia, preference shall be given to (1) those ex-service men and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable conditions and who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the War Department or the Navy Department; (2) the wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for any civil-service appointment; (3) the unmarried widows of deceased ex-servicemen who served on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions; and (4) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions. (5 U.S.C.A. §851).

Sec. 3. In all examinations to determine the qualifications of applicants for entrance into the service ten points shall be added to the earned ratings of those persons included under section 2 (1), (2), and (3), and five points shall be added to the earned ratings of those persons included under section 2 (4) of this Act: Provided, That in examinations for the positions of guards, elevator operators, messengers, and custodians competition shall be restricted to persons entitled to preference under this Act as long as persons entitled to preference are available and during the present war and for a period of five years following the termination of the present war as proclaimed by the President or by a concurrent resolution of the Congress for such other positions as may from time to time be determined by the President. (5 U.S.C.A. §852).

Sec. 4. In examinations where experience is an element of qualification, time spent in the military or naval service of the United States shall be credited in a veteran's rating where his or her actual employment in a similar vocation to that for which he or she is examined was interrupted by such military or naval service. In all examinations to determine the qualifications of a veteran applicant, credit shall be given for all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether any compensation was received therefor. (5 U.S.C.A. §853).

Sec. 5. In determining qualifications for examination, appointment, promotion, retention, transfer, or reinstatement, with respect to preference eligibles, the Civil Service Commission or other examining agency shall waive requirements as to age, height, and weight, provided any such requirement is not essential to the performance of the duties of the position for which examination is given. The Civil Service Commission or other examining agency, after giving due consideration to the recommendation of any accredited physician, shall waive the physical requirements in the case of any veteran, provided such veteran is, in the opinion of the Civil Service Commission, or other examining agency physically able to discharge efficiently the duties of the position for which the examination is given. No minimum educational requirement will be prescribed in any civil-service examination except for such scientific, technical, or professional positions the duties of which the Civil Service Commission decides cannot be performed by a person who does not have such education. The Commission shall make a part of its public records its reasons for such decision. (5 U.S.C.A. §854).

Sec. 6. Preference eligibles shall not be subject to the provisions of section 9 of the Civil Service Act concerning two or more members of a family in the service, or to the provisions of section 2 of that Act concerning apportionment of appointments in the Government departments in the District of Columbia among the several States and Territories according to population, but may be required to furnish evidence of residence and domicile. (5 U.S.C.A. §855).

Sec. 7. The names of preference eligibles shall be entered on the appropriate registers or lists of eligibles in accordance with their respective augmented ratings, and the name of a preference eligible shall be entered ahead of all others having the same rating: Provided, That, except for positions in the professional and scientific services for which the entrance salary is over $3,000 per annum, the names of all qualified preference eligibles, entitled to ten points in addition to their earned ratings shall be placed at the top of the appropriate civil-service register or employment list, in accordance with their respective augmented ratings. (5 U.S.C.A. §856).

Sec. 8. When, in accordance with civil-service laws and rules, a nominating or appointing officer shall request certification of eligibles for appointment purposes, the Civil Service Commission shall certify, from the top of the appropriate register of eligibles, a number of names sufficient to permit the nominating or appointing officer to consider at least three names in connection with each vacancy. The nominating or appointing officer shall make selection for each vacancy from not more than the highest three names available for appointment on such certification, unless objection shall be made, and sustained by the Commission, to one or more of the persons certified, for any proper and adequate reason, as may be prescribed in the rules promulgated by the Civil Service Commission: Provided, That an appointing officer who passes over a veteran eligible and selects a non-veteran shall file with the Civil Service Commission his reasons in writing for so doing, which shall become a part of the record of such veteran eligible, and shall be made available upon request to the veteran or his designated representative; the Civil Service Commission is directed to determine the sufficiency of such submitted reasons and, if found insufficient, shall require such appointing officer to submit more detailed information in support thereof; the findings of the Civil Service Commission as to the sufficiency or insufficiency of such reasons shall be transmitted to and considered by such appointing officer, and a copy thereof shall be sent to the veteran eligible or to his designated representative upon request therefor: Provided, further, That if, upon certification, reasons deemed sufficient by the Civil Service Commission for passing over his name shall three times have been given by an appointing officer, certification of his name for appointment may thereafter be discontinued, prior notice of which shall be sent to the veteran eligible. Whenever in the Postal Service two or more substitutes are appointed on the same day, they shall be promoted to the regular force in the order in which their names appeared on the civil-service register from which they were originally appointed, whenever there are substitutes of the required sex who are eligible and will accept, unless such vacancies are filled by transfer or reinstatement. (5 U.S.C.A. §857).

Sec. 9. In the unclassified Federal, and District of Columbia, civil service, and in all other positions and employment hereinbefore referred to in (c) of section 2 hereof, the nominating or appointing officer or employing official shall make selection from the qualified applicants in accordance with the provisions of this Act. (5 U.S.C.A. §858).

Sec. 10. The Civil Service Commission is authorized and directed to hold an examination, during the next succeeding quarterly period, for any position to which any appointment has been made within the preceding three years, for any person included under section 2 (1), (2), and (3) of this Act upon application for examination for any such position. (5 U.S.C.A. §859).

Sec. 11. The Civil Service Commission is hereby authorized to promulgate appropriate rules and regulations for the administration and enforcement of the provisions of this Act. (5 U.S.C.A. §860).

Sec. 12. In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: Provided, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: Provided further, That preference employees whose efficiency ratings are "good" or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below "good" shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: And provided further, That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions. (5 U.S.C.A. §861).

Sec. 13. Any preference eligible who has resigned or who has been dismissed or furloughed may, at the request of any appointing officer, be certified for, and appointed to, any position for which he may be eligible in the civil service, Federal, or District of Columbia, or in any establishment, agency, bureau, administration, project, or department, temporary or permanent. (5 U.S.C.A. §862).

Sec. 14. No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation,

or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: Provided, That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of same to the appellant or to his designated representative: Provided further, That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 15 hereof. (5 U.S.C.A. §863).

Sec. 15. Any preference eligible, who has been furloughed, or separated without delinquency or misconduct, upon request, shall have his name placed on all appropriate civil-service registers and/or on all employment lists, for every position for which his qualifications have been established, as maintained by the Civil Service Commission, or as shall be maintained by any agency or project of the Federal Government, or of the District of Columbia, in the order as provided in section 7 hereof, and shall then be eligible for recertification and reappointment in the order and according to the procedure as provided for in sections 7 and 8 hereof. No appointment shall be made from an examination register of eligibles, except of ten-point preference eligibles, when there are three or more names of preference eligibles on any appropriate reemployment list for the position to be filled. (5 U.S.C.A. §864).

Sec. 16. Any preference eligible who has resigned shall, upon request to the Civil Service Commission, have his name again placed on all proper civil-service registers for which he may have been qualified, in the order as provided for in section 7 hereof, and shall then be eligible for recertification and reappointment in the order, and according to the procedure, as provided for in sections 7 and 8 hereof. (5 U.S.C.A. §865).

Sec. 17. The term "Civil Service Commission" or "Commission" as used in this Act shall mean the present United States Civil Service Commission or any body or person who may by law succeed to its powers and duties, or any of them, or which or who may be designated by law to perform any specific duty and possess any specific power concerning matters covered by this Act. (5 U.S.C.A. §866).

Sec. 18. All Acts and parts of Acts inconsistent with the provisions hereof are hereby modified to conform herewith, and this Act shall not be construed to take away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, of any department of the Government or officer thereof. (5 U.S.C.A. §867).

Sec. 19. It shall be the authority and duty of the Civil Service Commission in all cases under the classified civil service to make and enforce appropriate rules and regulations to carry into full effect the provisions, intent, and purpose of this Act and such Executive orders as may be issued pursuant thereto and in furtherance thereof. (5 U.S.C.A. §868).

Sec. 20. Nothing contained in this Act is intended to apply to any position in or under the legislative or judicial branch of the Government or to any position or appointment which by the Congress is required to be confirmed by, or made with, the advice and consent of the United States Senate: Provided, however, That the provisions of this Act shall apply to appointments under Public Law Numbered 720, Seventy-fifth Congress, third session, approved June 25, 1938. (5 U.S.C.A. §869).

Sec. 21. If any part of this Act shall be found to be unconstitutional, the rest of it shall be considered as in full force and effect. (5 U.S.C.A. §851 note).