

ORGANIC ACT

An Act to Provide a Government for the Territory of Hawaii

(Act of April 30, 1900, c 339, 31 Stat 141)

CHAPTER I.
GENERAL PROVISIONS

§1. Definitions. That the phrase "the laws of Hawaii," as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii, in force on the twelfth day of August, eighteen hundred and ninety-eight, at the time of the transfer of the sovereignty of the Hawaiian Islands to the United States of America.

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

This is the Act, as since amended, of April 30, 1900, c 339, 31 Stat 141 (2 Supp. R.S. 1141), prepared and recommended by a commission appointed by the President under the Joint Resolution of Annexation of July 7, 1898, 30 Stat 750 (2 Supp. R.S. 895). The formal transfer of sovereignty under that resolution took place Aug. 12, 1898, and this Organic Act, creating the Territory, took effect June 14, 1900. See Joint Resolution, RLH 1955, page 13, with notes thereto, for application of Federal Constitution and laws to Hawaii between annexation and establishment of territorial government. For decisions under this Organic Act, see notes to sections thereof.

For note relating to act of Congress, presidential proclamations, and executive orders, see the Chronological Note, RLH 1955, page 9.

The volumes mentioned in the second paragraph of this § did not contain all the laws then in force referred to in the first paragraph, nor were all the laws therein contained then in force. The Civil Laws and Penal Laws were compilations, not enacted by the legislature. These laws were in general continued in force by Congress with certain exceptions and modifications: §§6, 7, below: 23 Ops. 539; 114 Fed. 852, affirming 1 U.S.D.C. Haw. 75; 122 Fed. 587. Referred to in 16 H. 245; 22 H. 251. See also, as to continuation of Hawaiian laws, notes to other §§, especially §§5, 6 and 7, and to Joint Resolution of Annexation, RLH 1955, page 13.

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

The Hawaiian group consists of the following islands: Hawaii, Maui, Oahu, Kauai, Molokai, Lanai, Niihau, Kahoolawe, Molokini, Lehua, Kaula, Nihoa, Necker, Laysan, Gardiner, Lisiansky, Ocean, French Frigates Shoal, Palmyra, Brooks Shoal, Pearl and Hermes Reef, Gambia Shoal and Dowsett and Maro Reef. The first nineteen were listed in the Commission report transmitted to Congress by the message of the President, Senate Doc. 16, 55th Congress, 3d Session, 1898. U.S. Misc. Pub. 1898.

For history of Palmyra see 133 F.2d 743; 156 F.2d 756; 331 U.S. 256. It has been a question whether Midway was acquired by Hawaii on July 5, 1859, and so is a part of the Territory, or was acquired by the United States independently on August 28, 1867; the latter was assumed in 182 U.S. 304. See 1933 report of Hawaiian Historical Society, paper read by P. C. Morris, Dec. 14, 1933. It was assumed by Congress that Midway was not part of the Territory in the Act of August 13, 1940, c 662, 54 Stat 784, extending jurisdiction of United States District Court for Hawaii to include Midway Islands, also Wake, Johnston, Sand, and Jarvis Islands.

Territorial jurisdiction includes the military and naval reservations within the exterior boundaries of the Territory. 19 Haw. 200; 23 Haw. 61; cf 4 U.S.D.C. Haw. 62.

By the Act of April 19, 1930, the Hawaii National Park was removed from territorial jurisdiction except for certain purposes therein stated. This Act is set out in full following the U.S. Constitution.

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

By this Act Hawaii acquired the status of an incorporated Territory: 182 U.S. 305; and became an integral part of the United States: 190 U.S. 197.

While a territory is not a municipality or quasimunicipality (27 Ops. 486), or a municipal corporation (18 H. 255), and is not liable as a municipal corporation for torts (13 H. 481; 14 H. 484), and sustains a relation to the Federal government analogous to that of a county to a state (17 H. 181; 101 U.S. 133), and is not a state as that term is generally used in the Constitution (258 U.S. 111) or so as to render unconstitutional the federal opium law as an invasion of the police power of the Territory (4 U.S.D.C. Haw. 202); but is a state as that term is generally used in treaties (133 U.S. 258; 182 U.S. 262, 270); it has been referred to as an inchoate state (20 Fed. 305) or as having a quasi-state government (194 U.S. 491) and is sufficiently sovereign to be exempt from suit without its consent, differing in that respect from the District of Columbia (205 U.S. 349; 13 H. 478), and so that a statute of limitations does not run against it (18 H. 252; 21 H. 600), and so as to have preference over its subjects as to claims against an insolvent estate (26 H. 688). This Territory is said to be in the position of a state as respects its courts and in all other particulars except sovereignty (4 U.S.D.C. Haw. 467, and cases there cited). Referred to in 108 Fed. 113; 23 Ops. 416; 13 H. 21.

On the status of Hawaii between annexation and the establishment of territorial government, see note to Joint Resolution of Annexation, RLH 1955, page 13.

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

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

This section was supplemented by the Act of July 2, 1932, 47 Stat 571, amended by the Act of July 1, 1940, 54 Stat 707, providing that for purposes of Act of Sept. 22, 1922, 46 Stat 1511, women born in Hawaii prior to June 14, 1900 deemed U.S. citizens at birth. But Act of Sept. 22, 1922 was repealed by Act of Oct. 14, 1940, 54 Stat 1137, which in turn was repealed by Act of June 27, 1952, 66 Stat 166 (McCarran-Walter Act), and the present provisions are contained in 8 U.S.C.A. 1435(a).

Under Art. 17, §1, of the Const. of 1894 (adapted from the 14th Am. of the U.S. Const.) all persons born or naturalized in the Hawaiian Islands and subject to the jurisdiction of the Republic of Hawaii were citizens thereof. Between 1842 and 1892, 731 Chinese and three Japanese were naturalized in Hawaii; since 1892, none. Birth certificates by the Territory of Hawaii are not controlling, and persons applying for admission to the United States with such certificates may be detained by immigration officers for the purpose of determining citizenship, 35 Ops. 69. The secretary of Hawaii may issue to persons born in Hawaii certificates of Hawaiian birth, which are prima facie evidence: HRS §§338-41 to 44, see also former law: L. 1905, c. 64; am. L. 1907, c. 79; rep. L. 1909, c. 15; R.L. 1915, p. 1487; R.L. 1925, c. 21; R.L. 1935, c. 247. A person born in the Kingdom of Hawaii of British parents domiciled there was held to be a citizen of the Republic of Hawaii although he was registered at birth at the British consulate and had never renounced allegiance to the British crown nor sworn allegiance to the Hawaiian government: 11 H. 166. On citizenship of persons born in the United States of alien parents, see 169 U.S. 649. Mere residence in foreign state after majority does not expatriate, 31 F.2d 738. But son of naturalized Hawaiian citizen became expatriated through residence in foreign country of birth. 89 F.2d 489, cert. den. 301 U.S. 682, reh'g den. 301 U.S. 713. Naturalization as Hawaiian citizen did not occur under Const. of 1894 by issuance of certificate of Minister of Interior where allegiance to native land not renounced and court order not obtained. 117 F.2d 588, reh'g den. 120 F.2d 760, aff'd by divided court, 315 U.S. 783.

Chinese who were Hawaiian citizens on Aug. 12, 1898, by either birth or naturalization, whether under the monarchy or the republic, became American citizens under this §: 23 Ops. 509; 1 U.S.D.C. Haw. 118; and their wives and children were thereafter entitled to enter the Territory; 23 Ops. 345; and such a citizen could take oath that he was such, and obtain an American register for a vessel which had a Hawaiian register on that date and was then owned and continued to be owned by a Hawaiian citizen until purchased by such Chinese; 23 Ops. 352. Son of Chinese, naturalized Hawaiian citizen, born in China in 1894 and remaining there through minority, did not become citizen and not entitled to enter U.S. 69 F.2d 681. Chinese held for deportation may set up American citizenship in habeas corpus or deportation proceedings, but the burden is on them to prove such citizenship: 1 U.S.D.C. Haw. 6; 1 U.S.D.C. Haw. 44; 1 U.S.D.C. Haw. 104; 1 U.S.D.C. Haw. 113; 1 U.S.D.C. Haw. 234; 270 Fed. 57.

Habeas corpus lies to protect immigrant's right to have question of citizenship determined; 160 Fed. 842, affirming 3 U.S.D.C. Haw. 168. See also §§100 and 101, and notes thereto; also note to Joint Resolution of Annexation, RLH 1955, page 13.

Woman of Chinese ancestry, born in Hawaii in 1894 but married to Chinese alien in 1910, could not be naturalized under the Acts cited in first paragraph of this note as they stood prior to 1940 amendment, because of her nonresidence on July 2, 1932, 88 F.2d 88.

For decisions generally on immigration and citizens see notes to §§100 and 101, and note to RLH 1955, §57-43; also, presumptions: arising from findings of Board of inquiry or certificate of identity, 29 F.2d 500; 30 F.2d 516; 49 F.2d 19 and 24; may be rebutted, 30 F.2d 65; lack of, prima facie supports right to deport, 36 F.2d 563; fraud must be alleged in complaint, 63 F.2d 375 and 377. Delay for depositions may be a matter of right, 33 F.2d 236. Proof of Chinese descent shifts burden of proof: 104 F.2d 21, 111 F.2d 707. Finding of citizenship on previous entry not binding: 124 F.2d 21; but see 188 F.2d 975.

Under the treaty with Spain and Acts of Congress, a Puerto Rican, residing in Puerto Rico on April 11, 1899, and a year thereafter, who did not declare his decision to preserve his allegiance to Spain, did not lose his political status by removing to Hawaii in 1901, but became a citizen of the United States under a subsequent Act of Congress and hence entitled to vote in Hawaii: 24 H. 21.

Although §8(a)(1) of the Act of March 24, 1934, c 84, 48 Stat 456, 462, provides that Filipinos shall be placed on the quota basis as aliens, it is specifically made inapplicable to Hawaii and immigration is determined by the Interior Dept. on basis of industrial needs.

Referred to in 13 H. 21, 556; 162 Fed. 470.

Filipino national in Hawaii became alien by proclamation of Philippine Independence, 183 F.2d 795.

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§5. United States Constitution. That the Constitution, and, except as otherwise provided, all the laws of the United States, including laws carrying general appropriations, which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States; Provided, That sections 1841 to 1891, inclusive, 1910 and 1912, of the Revised Statutes, and the amendments thereto, and an act entitled "An act to prohibit the passage of local or special laws in the Territories of the United States, to limit Territorial indebtedness, and for other purposes," approved July 30, 1886, and the amendments thereto, shall not apply to Hawaii. [Am May 27, 1910, c 258, §1, 36 Stat 443; April 12, 1930, c 136, 46 Stat 160; June 6, 1932, c 209, §116(b), 47 Stat 205]

Compare U.S. Rev. Sts. §1891.

The federal Constitution and laws were first formally extended to Hawaii by this §, 190 U.S. 197. See also the note to §3. On the application of these to Hawaii after enactment of Org. Act, see, 121 Fed. 772; 13 H. 590; 1 U.S.D.C. Haw. 294; 20 H. 483; 327 U.S. 304. Construction tending toward unconstitutionality is to be avoided if possible, 62 F.2d 13; 52 F.2d 411; 36 H. 206, 230. A person not affected cannot raise invalidity: 24 H. 100; 33 H. 194; 36 H. 661, 709; 39 H. 67. Acceptance of benefits of law as estoppel of claim of invalidity: 33 H. 813. Burden is on party asserting unconstitutionality: 35 H. 855, aff'd 130 F.2d 786. Constitutional questions decided only where necessary for decision of cases: 33 H. 180; 38 H. 346; waiver: 33 H. 813. Time of raising constitutional questions: 39 H. 287.

In general, while the legislative power of Congress over a territory, whether exercised directly or through a territorial legislature, is often said to be plenary, and is not limited by such specific provisions as the apportionment clause in respect of direct taxation and the uniformity clause in respect of indirect taxation, which control legislation for national purposes, yet the power is subject to some constitutional limitations, but just what provisions of the Constitution are operative in such cases is not fully determined; inhibitions which go to the root of the power of Congress to act at all, irrespective of time or place, such as that no bill of attainder or ex post facto law or law respecting the establishment of a religion shall be passed, apply; also fundamental limitations respecting personal and property rights apply by inference and the general spirit of the Constitution rather than expressly or directly: 136 U.S. 1, 44; 182 U.S. 244, 277, 291, 294; 195 U.S. 138, 146; the trial and grand jury provisions, as well as doubtless other provisions, apply to territory incorporated but not to territory unincorporated as an integral part of the United States--the status being determined by statute or treaty: 258 U.S. 298, 304-5, 313, and cases there cited. See also 258 U.S. 101, 112. Congressional delegation of taxing power to territorial legislature, see note to §55.

Art. III, §2, or Art. I, §8, U.S. Const. not violated by workmen's compensation act as applied to injury on ship by workman under non-maritime contract, 26 H. 737.

Interstate Commerce, merchandise licenses, 13 H. 286. Not involved when Congress has validated the territorial law. 305 U.S. 306, affg. 96 F.2d 412 and 33 H. 890. Taxation by Territory of radio station not encroachment upon commerce clause, 40 H. 121, aff. 216 F.2d 700.

Art. IV, full faith and credit, 24 H. 239.

1st Amendment. Riot and unlawful assembly law, valid, 37 H. 625; questioned 82 F. Supp. 104.

4th Amendment. Searches and seizures: 20 H. 71; 22 H. 597; questioned 26 H.

336; 23 H. 250; 26 H. 331; 28 H. 173. If officer was violating 4th Amendment this would not justify homicide. 35 H. 232, aff'd 119 F.2d 936, CCA holding there was no violation of the Constitution.

5th Amendment. Applies to Territory. 273 U.S. 284; 28 H. 43; 28 H. 88. (See, 30 H. 526; 31 H. 678, 696; 35 H. 855, aff. 130 F.2d 786.)

Territory may not regulate food prices, 24 H. 485, but see 256 U.S. 170.

A physician's license fee law, invalid, 17 H. 389; veterinary license fees, invalid, 19 H. 99; banking license fees, valid, 19 H. 262; auctioneer's license fees, valid, 19 H. 651, aff. 226 U.S. 184, 191, 57 L. ed. 180; chauffeur's license not ex post facto, 22 H. 103. Beer licenses: 1 U.S.D.C. Haw. 206. Artesian wells, 30 H. 912. Foreign language school law invalid, 7 F.2d 710, 273 U.S. 284, 71 L. ed. 646. Guardianship of minors, 32 H. 479. Health, disbaring physician sustained, 31 H. 625, aff. 52 F.2d 411. Laundries, 4 H. 335; 10 H. 491; 27 H. 253. Loitering law of 1929 invalid, 31 H. 459, aff. 48 F.2d 171. Photographers: 33 H. 397. Public utilities: 34 H. 52; 305 U.S. 306, affg. 96 F.2d 412, and 33 H. 890. Fisheries: 35 H. 608. Hit and run driving: 36 H. 32. Mutual benefit societies, 36 H. 206, 230. Ordinance, 28 H. 222. Sanitation, 21 H. 314.

Law against employer deducting wages, etc., valid, 23 H. 176. Workmen's compensation law, valid, 24 H. 97; see also, 26 H. 737; 28 H. 383. Law against trading stamps, invalid, 17 H. 331. Emigrant agents, 20 H. 483; cutting trees, regulation, invalid, 13 H. 272, but see limitation of damages, 19 H. 468.

Taxation: Taxable value assessed to lessee of public land, 23 H. 621; double taxation not necessarily invalid, 16 H. 603. General tax exemption, repealable, 19 H. 193; stamp tax 1 U.S.D.C. Haw. 86; 14 H. 431. Inheritance tax classifications: 19 H. 531. Inheritance tax: 31 H. 196. Weight tax: 31 H. 726, affd 54 F.2d 313. Taxing salaries of federal employees: 130 F.2d 786, affg. 35 H. 855. Tax appeal does not raise constitutional law issue (prior to amendment of statute): 34 H. 515. A tax is not an assessment of benefits: 305 U.S. 306, affg. 96 F.2d 412, and 33 H. 890.

Assessments for street improvements, valid, 24 H. 524; 25 H. 69; 25 H. 180; 28 H. 298.

Subdivision of property: 29 H. 62.

Eminent domain, compensation must be reasonable, 1 U.S.D.C. Haw. 183; for private use, invalid, 13 H. 215. Payment to grantor where a deed was given pending condemnation does not violate am., 31 H. 781 also 787, aff. 61 F.2d 896. See 182 F.2d 172. No constitutional right to jury trial, 188 F.2d 459.

Criminal cases: "Twice in jeopardy" 27 H. 270. Privilege against incrimination, 40 H. 65. Incrimination, waived, 24 H. 621, see also, 3 U.S.D.C. Haw. 491. Confession: 188 F.2d 54. Trivial offense: 27 H. 844. Manslaughter: 29 H. 7. Confrontation: 36 H. 42. Compulsory fingerprinting: 34 H. 459. Conviction for embezzlement under charge of larceny, invalid, 26 H. 725. Systematic discrimination in drawing of jury violates due process clause: 118 F.2d 667. Provisions relating to persons present at gambling games do not violate due process clause, 40 H. 257.

6th Amendment. As to juries and jury trials see §83 and note. "Public trial" applicable, 28 H. 431. "Speedy trial," 16 H. 751. Confrontation, testimony at former trial, 23 H. 421. Confrontation may be waived, 33 F.2d 396; 36 H. 42. Commitment of insane without jury is valid, 19 H. 346, 535, 576, 647. Waiver of jury in felony case: 33 H. 113; 33 H. 813 (waiver of constitutional issues). Insufficient indictment: 35 H. 324, 334. Validity of accusation, 152 F.2d 933.

7th Amendment. Unanimity of jury waived, 13 H. 705. This amendment is in force in Hawaii, 21 H. 229; 30 H. 860. See 228 U.S. 364. Guardianship proceedings in insanity cases not suits at common law where value is in

controversy, 39 H. 39. Not applicable to suits in equity, 40 H. 269.

8th Amendment. Imprisonment in county jail for contempt not "cruel and unusual," 1 U.S.D.C. Haw. 69; nor is imprisonment there for misdemeanors "infamous," 17 H. 428. Compelling such to work in public in jail uniform is infamous, 17 H. 168. Whipping as "cruel" etc. see 31 H. 982.

13th Amendment. Restraint for purposes of prostitution is "involuntary servitude," 1 U.S.D.C. Haw. 434.

14th Amendment. 13 H. 590, 598; does not invalidate law prohibiting minors in places where liquor is sold, 15 H. 607. Fish laws, 28 H. 43. Punishment, 28 H. 88. Unwarranted delegation of power, 28 H. 534. Taxation, ironclad uniformity not required, 30 H. 685 and 795, aff. 36 F.2d 159. Also see cases under 5th Am. supra. Foreign language schools, 11 F.2d 710, 273 U.S. 284. General demurrer does not raise issue of discrimination through grant of an exemption, 33 H. 180. See 130 F.2d 786, affg. 35 H. 855, as to charge of discrimination in taxation. Police power: 33 H. 397; 34 H. 459 (fingerprinting). Due process: (taxes) 34 H. 52; 35 H. 608. (Rulings of court) 160 F.2d 289.

Courts-Martial: have jurisdiction under 2nd and 12th Art. of War to try soldier under 96th Art. of War with violating a territorial statute, 13 F.2d 348.

National banking laws apply to Hawaii but not to banks existing in Hawaii prior to this act: 23 Ops. 177. Prohibition of organization of national bank with capital less than \$200,000 in city with population over 50,000 does not apply to Schofield Barracks having a less population although it is part of a city and county having a greater population: 31 Ops. 120. Shipping Act conferred on Shipping Board, to exclusion of territorial public utilities commission, jurisdiction to regulate rates of common carriers by water between territorial ports: 24 H. 136; similar ruling as to jurisdiction of Interstate Commerce Commission over telephone rates in Hawaii: 26 H. 508. But P.U.C. has investigatory powers over water carriers notwithstanding Shipping Act: 305 U.S. 306, affg. 96 F.2d 412 and 33 H. 890.

Honolulu is a "port or place in the United States" within meaning of 46 U.S.C.A. 289, forbidding transportation of passengers by foreign vessel. 36 Ops. Atty. Gen. 352.

First Federal Employer's Liability Act, being separable, was valid in territories though not in states: 215 U.S. 87; but otherwise as to child labor law, because inseparable: 33 Ops. 374. Agricultural Marketing Act (46 Stat 11) extends to Hawaii, 36 Ops. 326; but certain acts relating to agricultural experiment stations do not, 35 Ops. 54. Federal law disqualifying district judges applies to Hawaii although not strictly workable as to procedure: 4 U.S.D.C. Haw. 1. The Edmunds Act is applicable to Hawaii and adultery is punishable under either the Federal or Territorial laws: 3 U.S.D.C. Haw. 262; 3 U.S.D.C. Haw. 517; but an acquittal or conviction in either the federal or the territorial court will bar a trial in the other: 3 U.S.D.C. Haw. 295. Extension of Edmunds Act to Hawaii did not repeal local law against fornication: 19 H. 201.

White Slave Traffic Act applies to Hawaii since it applies to territories, though Hawaii not enumerated in definition of "territory" in the Act, 125 F.2d 95. See 42 C. Cls. R. 57, on application to Hawaii, before this § was amended, of federal laws relating to territories generally. Federal liquor prohibition laws in effect in Hawaii repealed Mar. 26, 1934, c 88, 48 Stat 467. For application of other provisions of the Federal Constitution and laws to Hawaii, see note to Joint Resolution of Annexation, RLH 1955, page 13, and notes to other sections of this act, especially §§4, 6, 10, 45, 55, 73, 81, 83, 86, 101. Referred to also in 13 H. 20, 556, 706; 16 H. 253; 18 H. 255, 539; 19 H.

17; 21 H. 241; 25 H. 688; 108 Fed. 113; 114 Fed. 849; 122 Fed. 587, 776; 23
Ops. 177, 346; 1 U.S.D.C. Haw. 49, 88, 91; 3 U.S.D.C. Haw. 66.

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§6. Laws of Hawaii. That the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.

Re meaning of "laws of Hawaii" see section 1 and note.

Pursuant to section 73(c) certain land laws are not subject to repeal or amendment by legislature without approval of Congress.

All parts of this Act must be considered in determining what Hawaiian laws were continued in force: 197 U.S. 354. A judicial constitution of a statute before annexation is continued as a part of the statute: 210 U.S. 153; 114 Fed. 852; 16 H. 776. The local law against fornication is not repealed by the extension of the Edmunds Act to Hawaii: 19 H. 201. As in a state, a person might be liable under the local law against adultery, notwithstanding that he might be liable also for the same offense under the Edmunds Act: 3 U.S.D.C. Haw. 262; Id. 517. But, not as in a state, a conviction or acquittal under either law would bar a subsequent jeopardy under the other law: Id. 295. See 133 U.S. 333.

A Hawaiian corporation chartered before annexation is not a "corporation organized by authority of any laws of Congress" within the meaning of an Act of Congress forbidding contributions for election purposes, but, obiter dictum, contra as to corporations chartered (except those incorporated without official consent by filing articles of association) after annexation, whether before or after the establishment of territorial government: 3 U.S.D.C. Haw. 299. Referred to in 13 H. 481, 706; 14 H. 269, 432; 15 H. 117, 329; 16 H. 245, 266, 401; 18 H. 539; 21 H. 250 (Ann. Cas. 1916A, 1136); 188 U.S. 313; 205 U.S. 354; 217 U.S. 244; 108 Fed. 113; 114 Fed. 849; 122 Fed. 587; 1 U.S.D.C. Haw. 88, 91; 23 Ops. 542. See notes to §§3, 5, and 55.

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

Civil Laws: Sections two and three, Promulgation of laws; chapter five, Flag and seal; sections thirty to thirty-three, inclusive, Tenders for supplies; chapter seven, Minister of Foreign Affairs; chapter eight, Diplomatic and consular agents; section one hundred and thirty-four and one hundred and thirty-five, National museum; chapter twelve, Education of Hawaiian youths abroad; sections one hundred and fifty to one hundred and fifty-six, inclusive, Aid to board of education; chapter fourteen, Minister of the Interior; sections one hundred and sixty-six to one hundred and sixty-eight, inclusive, one hundred and seventy-four and one hundred and seventy-five, Government lands; section one hundred and ninety, Board of commissioners of public lands; section four hundred and twenty-four, Bureau of agriculture and forestry; chapter thirty-one, Agriculture and manufactures; chapter thirty-two, Ramie; chapter thirty-three, Taro flour; chapter thirty-four, Development of resources; chapter thirty-five, Agriculture; section four hundred and seventy-seven, Brands; chapter thirty-seven, Patents; chapter thirty-eight, Copyrights; sections five hundred and fifty-six and five hundred and fifty-seven, Railroad subsidy; chapter forty-seven, Pacific cable; chapter forty-eight, Hospitals; chapter fifty-one, Coins and currency; chapter fifty-four, Consolidation of public debt; chapter fifty-six, Post-office; chapter fifty-seven, Exemptions from postage; chapter fifty-eight, Postal savings banks; chapter sixty-five, Import duties; chapter sixty-six, Imports; chapter sixty-seven, Ports of entry and collection districts; chapter sixty-eight, Collectors; chapter sixty-nine, Registry of vessels; section one thousand and eleven, Customs-house charges; section eleven hundred and two, Elections; section eleven hundred and thirty-two, Appointment of magistrate; last clause of first subdivision and fifth subdivision of section eleven hundred and forty-four, first subdivision of section eleven hundred and forty-five, Jurisdiction; sections eleven hundred and seventy-three to eleven hundred and seventy-eight, inclusive, Translation of decisions; section eleven hundred and eighty-eight, Clerks of court; sections thirteen hundred and twenty-nine, thirteen hundred and thirty-one, thirteen hundred and thirty-two, thirteen hundred and forty-seven to thirteen hundred and fifty-four, inclusive, Juries; sections fifteen hundred and nine to fifteen hundred and fourteen, inclusive, Maritime matters; chapter one hundred and two, Naturalization; section sixteen hundred and seventy-eight, Habeas corpus; chapter one hundred and eight, Arrest of debtors; subdivisions six, seven, ten, twelve to fourteen of section seventeen hundred and thirty-six, Garnishment; sections seventeen hundred and fifty-five to seventeen hundred and fifty-eight, inclusive, Liens on vessels; chapter one hundred and sixteen, Bankruptcy, and sections eighteen hundred and twenty-eight to eighteen hundred and thirty-two, inclusive, Water rights.

Penal Laws: Chapter six, Treason; sections sixty-five to sixty-seven, inclusive, Foot binding; chapter seventeen, Violation of postal laws; section three hundred and fourteen, Blasphemy; sections three hundred and seventy-one to three hundred and seventy-two, inclusive, Vagrants; sections four hundred and eleven to four hundred and thirteen, inclusive, Manufacture of liquors; chapter forty-three, Offenses on the high seas and other waters; sections five hundred and ninety-five and six hundred and two to six hundred and five, inclusive, Jurisdiction; section six hundred and twenty-three, Procedure; sections seven hundred and seven hundred and one, Imports; section seven

hundred and fifteen, Auction license; section seven hundred and forty-five, Commercial travelers; sections seven hundred and forty-eight to seven hundred and fifty-five, inclusive, Firearms; sections seven hundred and ninety-six to eight hundred and nine, inclusive, Coasting trade; sections eight hundred and eleven and eight hundred and twelve, Peddling foreign goods; sections eight hundred and thirteen to eight hundred and fifteen, inclusive, Importation of livestock; section eight hundred and nineteen, Imports; sections eight hundred and eighty-six to nine hundred and six, inclusive, Quarantine; section eleven hundred and thirty-seven, Consuls and consular agents; chapter sixty-seven, whale ships; sections eleven hundred and forty-five to eleven hundred and seventy-nine, inclusive, and twelve hundred and four to twelve hundred and nine, inclusive, Arrival, entry and departure of vessels; chapters sixty-nine to seventy-six, inclusive, Navigation and other matters within the exclusive jurisdiction of the United States; sections thirteen hundred and forty-seven and thirteen hundred and forty-eight, Fraudulent exportation; chapter seventy-eight, Masters and servants; chapter ninety-three, Immigration; sections sixteen hundred and one, sixteen hundred and eight, and sixteen hundred and twelve, Agriculture and forestry; chapter ninety-six, Seditious offenses; and chapter ninety-nine, Sailing regulations.

Session Laws: Act fifteen, Elections; Act twenty-six, Duties; Act twenty-seven, Exemptions from duties; Act thirty-two, Registry of vessels; section four of Act thirty-eight, Importation of livestock; Act forty-eight, Pacific cable; Act sixty-five, Consolidation of public debt; Act sixty-six, Ports of entry; and Act sixty-eight, Chinese immigration.

Referred to in 15 H. 329, 413, 606; 16 H. 245, 253; 19 H. 209, 210, 213, 214; 197 U.S. 354; 217 U.S. 244; 108 Fed. 113; 1 U.S.D.C. Haw. 88, 91; 3 U.S.D.C. Haw. 299. See §§1, 5 and 6 and notes thereto.

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

Referred to in 15 H. 115, 274; 16 H. 245. See §§9, 66, 68, 71-79.

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

Referred to in 16 H. 245, 400. Compare Laws of 1893-4, Act 1, and Const. of 1894, Art. 92, §2.

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

That all contracts made since August twelfth, eighteen hundred and ninety-eight, by which persons are held for service for a definite term, are hereby declared null and void and terminated, and no law shall be passed to enforce said contracts in any way; and it shall be the duty of the United States marshal to at once notify such persons so held of the termination of their contracts. [Am June 27, 1952, c 477, §403(a), 66 Stat 279]

Compare Const. of 1894, Art. 92, §§1-3. Admiralty cases were included in "other proceedings" under this §, and those then pending continued in the jurisdiction of the territorial courts, though subsequent ones could be brought only in the federal court, and no appeal lay in such pending cases to the federal circuit court of appeals: 13 H. 174; 108 Fed. 113; 183 U.S. 545; 187 U.S. 309. A petition in 1904 for the removal of a guardian appointed in 1899 is in a proceeding pending in 1899: 197 U.S. 354. An action by the Territory for taxes due the Republic is not barred: 18 H. 255. Imprisonment, for contempt, to compel an administrator to pay creditors pro rata is not imprisonment for debt: 19 H. 234; but the execution of a writ of ne exeat, in assumpsit, to obtain security for a judgment that might be recovered would be such imprisonment: 15 H. 413.

Inhibition against suit on contract for personal service except for damages for breach, does not prevent injunction against exhibition or dealing in moving pictures in violation of contract: 22 H. 550; nor does this provision apply to a contract to have one cultivate on shares land in sugar cane for three crops in a husbandlike manner to the satisfaction of another: 25 H. 558. Or contract labor laws, see note to Joint Resolution of Annexation RLH 1955, page 13. On applicability to Hawaii of Federal laws against introduction of contract labor, see 27 Ops. 479. Referred to in 16 H. 245, 255; 18 H. 539; 20 H. 487; 22 H. 587; 197 U.S. 354; 1 U.S.D.C. Haw. 41.

§11. Style of process. That the style of all process in the Territorial courts shall hereafter run in the name of "The Territory of Hawaii," and all prosecutions shall be carried on in the name and by the authority of the Territory of Hawaii. [Rep L Sp 1959 1st, c 5, §8]

Cf. Const. of 1894, Art. 92, §3. Prosecutions under county ordinances should be in name of Territory: 17 H. 185. Likewise prosecutions in Territorial courts under national prohibition: 27 H. 240. Referred to in 16 H. 245.

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CHAPTER II.
THE LEGISLATURE

C II of this act (§§12-62), excepting §15, was taken, with some modifications, from Const. of 1894; see also, RL 1905, p 51, and RL 1915, p 29. See 16 H. 242, 253.

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

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

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

Referred to in 16 H. 245; 22 H. 250.

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

Although legislature is authorized by §85, as amended, to amend election laws of Territory, it cannot change time for holding elections of members of legislature prescribed by this §14 of the Org. Act, by providing that a candidate receiving a majority at direct primary shall be thereby elected: 22 H. 247. But such provision is valid and operative as to county supervisor notwithstanding that there are more than one to be elected: 22 H. 520. Referred to in 15 H. 266; 16 H. 245; 20 H. 295. See §85, election of delegate; §64.

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

This prevents secretary of Territory and courts from passing on eligibility of a candidate for the legislature except when it is clearly their duty to do so: 14 H. 145; 15 H. 329, 332. The supreme court formerly had exclusive jurisdiction in election cases: Const. of 1894, Art. 40; 15 H. 328. Referred to in 15 H. 266; 16 H. 245; 20 H. 312.

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§16. Disqualification of legislators. That no member of the legislature shall, during the term for which he is elected, be appointed or elected to any office of the Territory of Hawaii: Provided, That nothing in this Act shall prevent a member of the legislature from serving as a delegate to a constitutional convention. [Am Oct. 26, 1940, c 752, 63 Stat 926]

Office of a supervisor of city and county of Honolulu is not an office of Territory, and hence a member of legislature may be elected to such office: 25 H. 669. Referred to in 16 H. 245.

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

Notaries and similar officers were held within inhibition of somewhat similar provision of Const. of 1887; to be eligible, officer must resign before election: 8 H. 561. Office of supervisor of city and county of Honolulu is an office by authority of the Territory, and hence acceptance of such office by member of the legislature vacates his office as such member: 25 H. 669. Referred to in 16 H. 245.

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

Referred to in 13 H. 19; 16 H. 245; 17 H. 13, 18, 248; 18 H. 140.

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

I solemnly swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii (as the case may be).

Attorneys at law are not required to take this oath: 15 H. 383.

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

The clerk of the house is an officer within meaning of a Federal statute forbidding officers to destroy public records (vouchers of house expense): 2 U.S.D.C. Haw. 20.

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

§§21-24, with many other §§, are referred to in 16 H. 245.

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

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

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

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

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

Does not prevent garnishment of senator's salary under territorial law: 19 H. 428.

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§26. Compensation of members. The members of the legislature shall receive for their services, in addition to mileage to and from general sessions at the rate of 20 cents a mile each way, the sum of \$1,000 for each general session, payable in three equal installments, on and after the first, thirtieth, and fiftieth days of such session, to be appropriated by Congress from any moneys in the Treasury not otherwise appropriated, based upon regular estimates submitted through the Secretary of the Interior. The sums authorized to be appropriated from the Federal Treasury for mileage and salary of members for general sessions shall constitute the only sums to be appropriated by the Congress for legislative expenses. Members shall receive from the Treasury of the Territory \$500 as compensation for any special session held under the provisions of existing law. The Territory of Hawaii is hereby authorized to enact such laws as it may deem appropriate for the payment from the Treasury of the Territory for compensation and mileage to such members for budget sessions and for the payment of additional compensation to such members for general sessions and special sessions. [Am May 27, 1910, c 258, §2, 36 Stat 443; July 9, 1921, c 42, §301, 42 Stat 115; June 27, 1930, c 647, 46 Stat 823; Aug. 20, 1958, Pub L 85-690, §4, 72 Stat 684]

Between 1909 and 1930, appropriations by Congress for Hawaiian legislative expenses contained proviso that legislators should not receive compensation or mileage for any session held under §54.

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

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

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

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THE SENATE

§30. Senate; Number; Term. The senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts for a term of four years beginning with their election and ending on the day of the second general election after their election: Provided, however, That (1) senators elected at the general election of 1956 shall continue to hold office until the expiration of the terms for which they were elected and shall be deemed to have been elected from the new senatorial district in which they resided at the time of their election; and (2) that at the first session of the legislature subsequent to the general election of 1958, the legislature shall so assign the senators to long or short terms, that as nearly as possible one half of them, including the holdover senators, shall hold office for two years and the remaining senators shall hold office for four years. In the event that the legislature fails to make the necessary assignments of short and long terms for senators as herein required, the Governor shall do so. [Am Aug. 1, 1956, c 851, §1, 70 Stat 903]

Referred to in 13 H. 19; 16 H. 245. Congress apportioned the senators elected at the first election, on failure of the legislature to do so: 32 Stat 200. See §55 on reapportionment of senators and representatives on the basis of number of citizens as determined by the census.

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

Referred to, with §32 and many other §§, in 16 H. 245.

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§32. Senatorial Districts. For the purpose of representation in the senate, the Territory is divided into the following senatorial districts, namely:

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

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

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

Fourth senatorial district: That portion of the island of Oahu lying east and south of Nuuanu Street and Pali Road and the upper ridge of the Koolau Range from the Nuuanu Pali to Makapuu Point and all other islands not specifically enumerated;

Fifth senatorial district: That portion of the island of Oahu lying west and north of the fourth senatorial district; and Sixth senatorial district: The islands of Kauai and Niihau. [Am Aug. 1, 1956, c 851, §2, 70 Stat 903]

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§33. Apportionment of Senators. The electors in the said senatorial districts shall be entitled to elect senators as follows:

In the first senatorial district, five;

In the second senatorial district, two;

In the third senatorial district, five;

In the fourth senatorial district, five;

In the fifth senatorial district, five;

In the sixth senatorial district, three. [Am Aug. 1, 1956, c 851, §3, 70 Stat 903]

On reapportionment of senators after the census, see §55; see also note to §30. Referred to in 16 H. 245.

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§34. Qualifications of senators. That in order to be eligible to election as a senator a person shall--
Be a citizen of the United States;
Have attained the age of thirty years;
Have resided in the Hawaiian Islands not less than three years and be qualified to vote for senators in the district from which he is elected. [Am Sept. 15, 1922, c 315, 42 Stat 844]

This § does not invalidate the law requiring nominations to be filed within a prescribed time: 19 H. 227. Referred to in 13 H. 21; 16 H. 245; 25 H. 689.

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THE HOUSE OF REPRESENTATIVES

§35. House of Representatives; Number. The house of representatives shall be composed of fifty-one members, who shall be elected by the qualified voters of the respective representative districts. [Am Aug. 1, 1956, c 851, §4, 70 Stat 903]

Referred to in 16 H. 245, 253.

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

Referred to in 22 H. 250; also, with §§37, 38 and many other §§, in 16 H. 245.

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

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§38. Representative Districts. For the purpose of representation in the house of representatives, the Territory is divided into the following representative districts:

First representative district: That portion of the island of Hawaii known as Puna;

Second representative district: That portion of the island of Hawaii known as South Hilo;

Third representative district: That portion of the island of Hawaii known as North Hilo and Hamakua;

Fourth representative district: That portion of the island of Hawaii known as Kau and South Kona and that portion of North Kona, for convenience herein referred to as Keauhou, more particularly described as follows: (1) from a point at the seashore between the lands of Holauloa 1 and 2 and Puapuaa 2 running northeasterly along the boundary of Holauloa 1 and 2 to Puu Laalaaui; (2) easterly in a straight line to a point called Naohueleelua being the common corner of the lands of Puuanahulu, Kaohe and Keauhou 2d; (3) southeasterly along the common boundary between Hamakua and North Kona Districts to the summit of Mauna Loa; (4) westerly along the common boundary between Kau and North Kona Districts to the easterly boundary of South Kona District; (5) northerly and westerly along the boundary between North and South Kona Districts to the seashore; and (6) northerly along the seashore to the point of beginning;

Fifth representative district: That portion of the island of Hawaii known as Kohala and that portion of North Kona not included in the fourth representative district;

Sixth representative district: The islands of Molokai and Lanai;

Seventh representative district: The islands of Maui and Kahoolawe;

Eighth representative district: That portion of the island of Oahu known as Koolaupoko and Koolauloa;

Ninth representative district: That portion of the island of Oahu known as Waialua and Wahiawa;

Tenth representative district: That portion of the island of Oahu known as Ewa and Waianae;

Eleventh representative district: That portion of the island of Oahu, for convenience herein referred to as Kalihi, more particularly described as follows: (1) from the intersection of Kalihi and Auiki Streets running westerly along Auiki Street to Mokauea Street; (2) southwesterly along Mokauea Street extension extended to a point on the outer edge of the reef; (3) westerly along the outer edge of the reef to a point on the Moanalua-Halawa boundary; (4) northerly and northeasterly along the Moanalua-Halawa boundary to the top of Koolau Range; (5) southeasterly along the top of Koolau Range to a place called "Puu Lanihuli"; (6) southwesterly along the top of the ridge between the lands of Kalihi, Kapalama and Nuuanu to Kalihi Street; and (7) southwesterly along Kalihi Street to the point of beginning;

Twelfth representative district: That portion of the island of Oahu, for convenience herein referred to as Upper Nuuanu, more particularly described as follows: (1) from the intersection of King and Kalihi Streets running northeasterly along Kalihi Street to the ridge between the lands of Kalihi, Kapalama and Nuuanu; (2) northeasterly along the top of said ridge to a point on the Koolau Range called Puu Lanihuli; (3) easterly along the top of said range to Pali Road at the Nuuanu Pali; (4) southwesterly along Pali Road to Nuuanu Avenue and southwesterly along Nuuanu Avenue to School Street; (5) northwesterly along School Street to the centerline of the Kapalama drainage canal (Waikiki Branch); (6) southwesterly along said canal to the centerline of the main Kapalama drainage canal; (7) southwesterly along said canal to King

Street; and (8) northwesterly along King Street to the point of beginning.

Thirteenth representative district: That portion of the island of Oahu for convenience herein referred to as Kapalama, more particularly described as follows: (1) from the junction of the Honolulu Harbor Channel and the reef running westerly along the outer edge of the reef to Mokauea Street extension extended; (2) northeasterly along Mokauea Street extension extended to Sand Island Road; (3) northeasterly along Mokauea Street extension to Auiki Street; (4) easterly along Auiki Street to Kalihi Street; (5) northeasterly along Kalihi Street to King Street; (6) southeasterly along King Street to the center line of the Main Kapalama drainage canal; (7) northerly along said canal to the center line of the Kapalama drainage canal (Waikiki Branch); (8) northeasterly along said canal to School Street; (9) southeasterly along School Street to Nuuanu Avenue; (10) southwesterly along Nuuanu Avenue to the sea, and (11) southwesterly along the middle of Honolulu Harbor and Honolulu Harbor Channel to the point of beginning.

Fourteenth representative district: That portion of the island of Oahu, for convenience herein referred to as Pauoa, more particularly described as follows: (1) from the junction of the Honolulu Harbor Channel and the outer edge of the reef running northeasterly along the middle of Honolulu Harbor Channel and Honolulu Harbor to the intersection of Queen Street and Nuuanu Avenue; (2) northeasterly along Nuuanu Avenue to Pali Road and northeasterly along Pali Road to the top of Koolau Range at the Nuuanu Pali; (3) easterly and southerly along the top of the Koolau Range to a point called Puu Konahuanui; (4) southwesterly along the top of the ridge between the lands of Nuuanu, Pauoa and Manoa to a mountain peak called Puu Ohia or Tantalus; (5) southwesterly along the top of the ridge between the lands of Makiki and Kalawahine to the intersection of Nehoa Street and Lewalani Drive; (6) southerly along Lewalani Drive and Piikoi Street to Wilder Avenue; (7) easterly along Wilder Avenue to Punahou Street; (8) southerly along Punahou Street to King Street; (9) westerly along King Street to Kalakaua Avenue; (10) southerly along Kalakaua Avenue to the center line of the Ala Wai Canal; (11) westerly along said canal and along the line of said canal extended to the outer edge of the reef; and (12) westerly along the outer edge of the reef to the point of beginning.

Fifteenth representative district: That portion of the island of Oahu, for convenience herein referred to as Manoa and Waikiki, more particularly described as follows: (1) from the intersection of Kalakaua Avenue and the center line of the Ala Wai Canal running northerly along Kalakaua Avenue to King Street; (2) easterly along King Street to Punahou Street; (3) northerly along Punahou Street to Wilder Avenue; (4) westerly along Wilder Avenue to Piikoi Street; (5) northerly along Piikoi Street to Lewalani Drive; (6) northerly along Lewalani Drive to Nehoa Street; (7) northeasterly along the top of the ridge between the lands of Makiki and Kalawahine to a mountain peak called Puu Ohia or Tantalus; (8) northeasterly along the top of the ridge between the lands of Pauoa, Manoa and Nuuanu to a point on the Koolau Range called Puu Konahuanui; (9) southeasterly along the top of said range to a place called Mountain Olympus; (10) southwesterly along the top of Waahila Ridge to the top edge of Palolo Valley; (11) southwesterly along the top edge of said valley to the forest reserve boundary; (12) southwesterly along the southeasterly boundary of Saint Louis Heights tract, series 2 (file plan 464) to the southerly boundary of said tract one hundred feet southeasterly from Alencastre Street; (13) southwesterly parallel to and one hundred feet from Alencastre Street and Saint Louis Drive to Waialae Avenue; (14) westerly along Waialae Avenue to Kapahulu Avenue extended; (15) southerly across Waialae Avenue and along Kapahulu Avenue to Kalakaua Avenue; (16) westerly along Kapahulu Avenue extended to the outer edge of the reef; (17) northwesterly

along the outer edge of the reef to a point on the line extended of the center line of the Ala Wai Canal; and (18) easterly along said line to the point of beginning;

Sixteenth representative district: That portion of the island of Oahu, for convenience herein referred to as Kaimuki and Kapahulu, more particularly described as follows: (1) from a point at the seacoast at a place called Black Point running westerly along the seacoast to Kapahulu Avenue extended to the sea; (2) easterly across Kalakaua Avenue and easterly and northerly along Kapahulu Avenue to Waiialae Avenue; (3) easterly along Waiialae Avenue to a point one hundred feet easterly of Saint Louis Drive; (4) northeasterly across Waiialae Avenue then parallel to and one hundred feet from Saint Louis Drive and Alencastre Street to the southerly boundary of Saint Louis Heights tract, series 2 (file plan numbered 464); (5) northeasterly along the southeasterly boundary of said tract to the forest reserve boundary; (6) northeasterly along the top ridge of Palolo Valley to the top of Waahila Ridge; (7) northeasterly along the top of Waahila Ridge to a point on Koolau Range called Mount Olympus; (8) easterly along the top of the Koolau Range to the top of the ridge between the lands of Waiialae Nui and Palolo; (9) southwesterly along the top of said ridge to a place called Kalepeamoa; (10) southwesterly along Mauumae Ridge to Sierra Drive; (11) southwesterly along Sierra Drive to Waiialae Avenue; (12) easterly along Waiialae Avenue to Thirteenth Avenue; (13) southwesterly along Thirteenth Avenue and Ocean View Drive to Kilauea Avenue; (14) westerly along Kilauea Avenue to Makapuu Avenue; (15) southwesterly along Makapuu Avenue to Diamond Head Road; and (16) southeasterly along Diamond Head Road to the military road and along the military road extended to the point of beginning;

Seventeenth representative district: That portion of the island of Oahu not included in any other representative district on the island of Oahu, together with all other islands not included in any other representative district;

Eighteenth representative district: The islands of Kauai and Niihau. Wherever a roadway or intersection of one or more roadways is designated as a boundary in any of the above descriptions, the centerline of such roadway or intersection is intended as such boundary. [Am Aug. 1, 1956, c 851, §5, 70 Stat 904]

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§39. Apportionment of Representatives. The electors in said representative districts shall be entitled to elect representatives as follows, prior to the first reapportionment: First, one; second, four; third, one; fourth, one; fifth, one; sixth, one; seventh, five; eighth, two; ninth, two; tenth, two; eleventh, three; twelfth, three; thirteenth, three; fourteenth, five; fifteenth, six; sixteenth, four; seventeenth, three; eighteenth, four. [Am Aug. 1, 1956, c 851, §6, 70 Stat 906]

On reapportionment of representatives after the census, see §55. Referred to in 16 H. 245.

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

Have attained the age of twenty-five years;

Be a citizen of the United States;

Have resided in the Hawaiian Islands not less than three years and shall be qualified to vote for representatives in the district from which he is elected. [Am Sept. 15, 1922, c 315, 42 Stat 844]

This § does not invalidate the law requiring nominations to be filed within a prescribed time: 19 H. 227. Referred to in 13 H. 21; 14 H. 146; 25 H. 689.

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LEGISLATION

§41. Sessions of the legislature. (a) Regular sessions of the legislature shall be held in odd number years and additional regular sessions may, if so provided by act of the legislature be held in even number years. All such sessions shall commence at 10 o'clock antemeridian, on the third Wednesday in February. Regular sessions in odd number years shall be known as general sessions and those in even number years shall be known as budget sessions.

(b) At budget sessions the legislature shall be limited to the consideration and enactment of (1) the general appropriation bill for the succeeding fiscal year, (2) bills to authorize proposed capital expenditures, (3) revenue bills necessary therefor, (4) bills calling elections, (5) proposed constitutional amendments, (6) bills to provide for the expenses of such session, and (7) matters relating to the impeachment or removal of officers. [Am Aug. 20, 1958, Pub L 85-690, §1, 72 Stat 684]

Referred to in 16 H. 245.

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

Referred to, with §43 and many other §§, in 16 H. 245.

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§43. (a) General sessions shall be limited to a period of sixty days and budget sessions and special sessions to a period of thirty days, but the Governor may extend any session for not more than thirty days. Sundays and holidays shall be excluded in computing the number of days in any session.

(b) The Governor may convene the legislature, or the Senate alone, in special session. All sessions shall be held at the capital of the Territory. In case the capital shall be unsafe, the Governor may direct that any session shall be held at some other place in the Territory of Hawaii. [Am Aug. 20, 1958, Pub L 85-690, §2, 72 Stat 684]

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§44. Enacting clause-English language. That the enacting clause of all laws be, "Be it enacted by the legislature of the Territory of Hawaii."
All legislative proceedings shall be conducted in the English language.

Whether joint resolution without this enacting clause may have force of law, see message of governor to legislature relating to House J.R. No. 8, session of 1911. Referred to in 16 H. 245.

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§45. Title of laws. That each law shall embrace but one subject, which shall be expressed in its title.

This provision is mandatory: 3 H. 661; 22 H. 307; 35 H. 203. Does not apply to titles of subdivisions of a code: 12 H. 120. Should be liberally construed, it being satisfied if the provisions of the act are naturally connected and expressed in a general way in the title: 9 H. 171; 15 H. 299; 17 H. 201; 35 H. 203. All the provisions need not be referred to in title: 3 H. 675; 16 H. 771, 780 (county act). A revision covering many subjects may be enacted as a whole by a separate short act: 17 H. 567; 25 H. 640. Court should, if possible, avoid holding an act invalid on ground that its title is too narrow: 18 H. 406; 17 H. 354. Portion not covered by title may be void and rest stand: 9 H. 171; 40 H. 604; but not if the void portion is an essential part: 15 H. 365. Title may be broader but not narrower than the act and hence a proviso relating to taxes is void where title relates only to licenses: 22 H. 307. Title referring to general subject matter of amendments did not violate section, 48 H. 370, 405 P.2d 772.

The title has greater weight in the construction of an act under a provision of this kind: 15 H. 331. Title of a subdivision of this act was considered in construing a subdivision: 42 C. Cls. R. 55. An act described in its title as an amendment of a preceding act, but which expressly repeals the preceding act, is not itself repealed: 9 H. 171. The purposes of this provision are set forth in 7 H. 78; applied in 7 H. 508; 40 H. 604. As to title of municipal ordinance, see 20 H. 559; 21 H. 19. As to whether a J.R. without a title expressing its subject may have force of law, see message of governor to legislature relative to House J.R. No. 8, session of 1911. Referred to in 16 H. 245, 771; 22 H. 202. Cited: 35 H. 550; 41 H. 219.

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§46. Reading of bills. That a bill in order to become a law shall, except as herein provided, pass three readings in each house, on separate days, the final passage of which in each house shall be by a majority vote of all the members to which such house is entitled, taken by ayes and noes and entered upon its journal.

A revision may be enacted by a separate short act without itself being read:
17 H. 567. Referred to in 15 H. 298, 366; 16 H. 245; 20 H. 600.

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

The clerk is an "officer." See note to §20. Referred to in 16 H. 245.

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

Referred to in 16 H. 245, 253.

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VETO

Pocket veto: where legislature passed bill and presents it to governor less than ten days before sine die adjournment, but is convened in special session on the last day allowed the governor to consider the bill. 43 H. 216.

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

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

Clerk is an "officer." See note to §20. See note to next § re taking effect of law. Whether J.R. may be vetoed, see message of governor to legislature relating to House J.R. No. 8, Session of 1911. Referred to in 16 H. 245; 19 H. 12.

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§50. Procedure upon receipt of veto. That upon the receipt of a veto message from the governor each house of the legislature shall enter the same at large upon its journal and proceed to reconsider such bill, or part of a bill, and again vote upon it by ayes and noes, which shall be entered upon its journal.

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

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

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

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

The first paragraph of this § was taken, by the commission which drafted this act, from the Hawaiian Const. of 1894 (§69), and the second paragraph was added by Congress, from the Federal Const. (Art. 1, §7). The latter giving twelve days, including Sundays, in which to return a bill, probably controls the former, and apparently this was recognized by the legislature in the case of L. 1911, c. 143. In several instances bills have been signed by the governor after the adjournment of the legislature but within ten days after their passage. Referred to in 16 H. 245.

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APPROPRIATIONS

§52. That appropriations, except as herein otherwise provided, shall be made by the legislature. [Am May 27, 1910, c 258, §3, 36 Stat 444]

Referred to in 15 H. 364, 535; 16 H. 245; 20 H. 518; see note to §54.

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§53. The Governor shall submit to the legislature, at each regular session, estimates for appropriations for the succeeding biennial period or, if provision be made in accordance with section 41 of this Act for additional regular sessions of the legislature, for the succeeding fiscal year. [Am Aug. 20, 1958, Pub L 85-690, §3, 72 Stat 684]

Referred to in 15 H. 364, 535; 16 H. 245; see note to §54.

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

The legislature in extra session under this § may divide the biennial period, covering a portion of it by one appropriation bill and the rest by another: 15 H. 361. The objects for which appropriations may be made in such extra session are not limited to "necessary current expenses," etc.: 15 H. 514, 663. When a complete appropriation bill was passed for the first six months of the biennial period and only an incomplete one for the last eighteen months because the remainder of the expenses were expected to be provided for by counties, and the county act turned out to be void, there was a "failure" within the meaning of this section, but the "last appropriation bills" to be resorted to were those of the previous biennial period and not those of the first six months of the period in question: 15 H. 532. Referred to in 16 H. 245.

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LEGISLATIVE POWER

§55. That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable. The legislature shall not grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the approval of Congress; nor shall it grant private charters, but it may by general act permit persons to associate themselves together as bodies corporate for manufacturing, agriculture, and other industrial pursuits, and for conducting the business of insurance, savings banks, banks of discount and deposit (but not of issue), loan, trust, and guaranty associations, for the establishment and conduct of cemeteries, and for the construction and operation of railroads, wagon roads, vessels, and irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association. No divorce shall be granted by the legislature, nor shall any divorce be granted by the courts of the Territory unless the applicant therefor shall have resided in the Territory for two years next preceding the application, but this provision shall not affect any action pending when this Act takes effect; nor shall any lottery or sale of lottery tickets be allowed; nor shall spiritous or intoxicating liquors be sold except under such regulations and restrictions as the Territorial legislature shall provide; nor shall any public money be appropriated for the support or benefit of any sectarian, denominational, or private school, or any school not under the exclusive control of the government; nor shall the government of the Territory of Hawaii, or any political or municipal corporation or subdivision of the Territory, make any subscription to the capital stock of any incorporated company, or in any manner lend its credit for the use thereof; nor shall any debt be authorized to be contracted by or on behalf of the Territory, or any political or municipal corporation or subdivision thereof, except to pay the interest upon the existing indebtedness, to suppress insurrection, or to provide for the common defense, except that in addition to any indebtedness created for such purposes the legislature may authorize loans by the Territory, or any such subdivision thereof, for the erection of penal, charitable, and educational institutions, and for public buildings, wharves, roads, harbors, and other public improvements, but the total indebtedness of the Territory shall not at any time be extended beyond 10 per centum of the assessed value of the property in the Territory and the total indebtedness of any such subdivision shall not at any time be extended beyond 5 per centum of the assessed value of property in the subdivision, as shown by the then latest assessments for taxation, whether such assessments are made in either case by the Territory or subdivision, but nothing in this Act shall prevent the refunding of any indebtedness at any time; nor shall any such loan be made upon the credit of the public domain or any part thereof; nor shall any bond or other instrument of any such indebtedness be issued unless made payable in not more than thirty years from the date of the issue thereof; nor shall any issue of bonds or other instruments of any such indebtedness be made after July 1, 1926, other than such bonds or other instruments of indebtedness in serial form maturing in substantially equal annual instalments, the first instalment to mature not later than five years from the date of the issue of such series, and the last instalment not later than thirty years from the date of such issue; nor shall any such bond or indebtedness be issued or incurred until approved by the President of the United States: Provided, That the legislature may by general act provide for the condemnation of property for public uses, including the

condemnation of rights of way for the transmission of water for irrigation and other purposes.

On or before June 1 of the year 1959, and of each tenth year thereafter, the governor shall reapportion the members of the house of representatives in the following manner: The total number of representatives shall first be reapportioned among four basic areas; namely, (1) the island of Hawaii, (2) the islands of Maui, Molokai, Lanai and Kahoolawe, (3) the island of Oahu and all other islands not specifically enumerated, and (4) the islands of Kauai and Niihau, on the basis of the number of voters registered at the last preceding general election in each of such basic areas and computed by the method known as the method of equal proportions, no basic area to receive less than one member. Upon the determination of the total number of representatives to which each basic area is entitled, such total shall be reapportioned among the one or more representative districts within each basic area on the basis of the number of voters registered at the last preceding general election within each of such representative districts and computed by the method known as the method of equal proportions no representative district to receive less than one member. Upon any reapportionment, should the total number of voters registered in any representative district be less than one-half of the quotient obtained by dividing the total number of voters registered in the Territory by the total number of members to which the house is entitled, then, as part of such reapportionment, the basic area within which such representative district lies shall be redistricted by the governor in such manner that the total number of voters registered in each new representative district therein shall be more than one-half of such quotient.

The governor shall thereupon issue a proclamation showing the results of such reapportionment, and such reapportionment shall be effective for the election of members to such house for the next five succeeding legislatures.

Original jurisdiction is hereby vested in the supreme court of the Territory to be exercised on the application of any registered voter, made within thirty days following the date specified above, to compel, by mandamus or otherwise, the governor to perform the above duty; and made within thirty days following the date of such proclamation, to compel, by mandamus or otherwise, the correction of any error made in such reapportionment. [Am May 27, 1910, c 258, §4, 36 Stat 444; July 9, 1921, c 42, §302, 42 Stat 116; June 9, 1926, c 512, §§1, 2, 44 Stat 710; Aug. 1, 1956, c 851, §7, 70 Stat 907; Aug. 20, 1958, Pub L 85-690, §3, 72 Stat 684]

General Notes

Congress, from time to time, has ratified territorial bond acts and has authorized particular issues. For the years 1933 to 1942 inclusive, see the Acts of July 15, 1935, August 3, 1935, May 28, 1937, July 10, 1937 (four Acts), May 13, 1938, August 7, 1939, November 21, 1941, and May 5, 1942 cited in the Chronological Note of Acts Affecting Hawaii, RLH 1955, page 9; see also 48 U.S.C.A. 562a to j, and the list of loan fund acts in the appendix, note 6, RLH 1955, p. 1731.

Before §55 was amended, a county could not issue bonds unless it had the power of taxation: 19 H. 9. Legislation substantially lessening the security for payment of county bonds by reducing county revenue might be invalid as an impairment of contract obligations: 19 H. 17. Limitation on indebtedness of municipality applies to indebtedness imposed by legislature on, as well as that incurred by, the municipality: 25 H. 335. Street improvement bonds to be financed by assessments not municipal "indebtedness", 33 H. 731.

For construction with reference to delegation of power, of bond statute which

in terms was to take effect on the President's approval, see note to §50.

Other territories: Compare this §55 of the Org. Act with Rev. Sts., §§1851, 1889; 23 Stat 348; 24 Stat 170; 25 Stat 336; 29 Stat 136, covering similar subjects in relation to territories in general, all of which may have been by implication inapplicable to Hawaii before the amendment of §5 and were made inapplicable expressly by that amendment. See note to §56.

By this § full congressional legislative power within its terms was delegated to the territorial legislature, 54 F.2d 313. While the power of Congress to legislate for a territory, directly or through a local legislature, is derived from the Constitution (195 U.S. 140), it is derived, not from the enumerated specific powers, but from the general power to make "needful rules and regulations respecting the territory or other property belonging to the United States" or by implication from the power to acquire and hold territory and the fact that there is no other legislative power over such territory, or from both these sources (136 U.S. 42-44); (182 U.S. 290; 195 U.S. 140; 118 U.S. 380). Hence such legislative power over territories is not subject to the limitations applicable to the power of Congress over the states, except as set forth in the note to §5 of this Act, but in general is the equivalent of the combined federal and state legislative power over a state and extends to "all rightful subjects of legislation." 175 U.S. 168; 239 U.S. 365; 137 U.S. 684; 152 U.S. 48; 201 U.S. 308; 251 U.S. 406; 171 Fed. 488; 86 Fed. 456. Congress may abrogate territorial laws or legislate directly for the territories. 305 U.S. 306, affg. 96 F.2d 412, and 33 H. 890.

Pursuant to section 73(c), certain land laws are not subject to repeal or amendment by the legislature without the approval of Congress.

By the Act of April 19, 1930, the Hawaii National Park was removed from territorial jurisdiction except for certain purposes therein stated. This Act is set out following the U.S. Constitution.

As to military and naval reservations see the note to section 2. As to taxation see the following Acts of general application throughout the United States: Act of June 16, 1936 known as Hayden-Cartwright Act, c 582, §10, 49 Stat 1518, 1521, as amended October 9, 1940, c 787, §7, 54 Stat 1059, 1060, construed in 38 Ops. 519; Act of October 9, 1940, known as the Buck Act, c 787, 54 Stat 1059.

As to juries and jury trials see §83 and note.

As to application of Constitution see §5 and note. Constitutional construction adopted, if possible, 36 H. 206, 230.

The legislature has never carried out the provisions for reapportionment, but legislation is not thereby invalidated, not a justifiable question: 36 H. 32.

The provisions of this § against granting special franchises and private charters do not apply to grants of powers to municipal corporations: 19 H. 176; nor do they prevent the imposition of a license fee for fishing for profit with boats exceeding a certain width: 19 H. 643; 27 H. 7. See 40 H. 604.

Claim of special privilege through the grant of an exemption not raised by general demurrer, 33 H. 196. Through grant of certificate of public convenience and necessity, not raised where benefits of law had been accepted, 33 H. 813. Certificate of public convenience and necessity not a franchise, 34 H. 52.

On status of corporations formed before and after annexation, with reference to their being corporations organized by authority of federal laws, see note to §6.

For ratification of franchises granted between annexation and the establishment of territorial government, see §73 and note thereto. For franchises granted by the territorial legislature and approved, with amendments, by Congress, see note 3 in Appendix of RLH 1945, page 1676, and

list of acts in Chronological Note of Acts Affecting Hawaii in RLH 1955, page 9. Certificate of public convenience, 34 H. 52.

As to rightful subjects of legislation and extent of the legislative power, see 23 Ops. 539, 16 H. 266; 38 H. 188, and note to §81, on judiciary. 121 Fed. 772; 13 H. 600; 14 H. 432; 1 U.S.D.C. Haw. 95; 1 U.S.D.C. Haw. 298; 21 H. 597, 600; 23 H. 64, 359; 23 H. 437; 33 H. 278, and 33 H. 731 (street improvement bonds); 28 H. 298, (special assessments); 226 U.S. 184; 54 Fed. 2d 313, cert. den. 286 U.S. 543; 130 Fed. 2d 789; 38 Ops. 519; 39 Ops. 316, on taxation, 20 H. 483; 22 H. 103, 107; 37 H. 314 aff. 174 F.2d 21; 38 H. 188, on taxation and police power. 27 Ops. 485, on special tax on incomes in excess of \$4000 for assisting immigration. 26 H. 737, validity of workmen's compensation act where contract is nonmaritime although injury occurred while workman was incidentally engaged in maritime work on ship in navigable water of United States. 205 U.S. 354, and 13 H. 481, on exemption of the Territory from suit without its consent. 21 H. 222 (Ann. Cas. 1916A 1136) on validity of statute prohibiting judge from commenting on evidence, etc. 23 H. 376, 35 H. 461, 37 H. 223, 38 H. 261, provision requiring two years' residence for applicant for divorce is mandatory and jurisdictional, but member of armed forces may become domiciled; 16 H. 777, and 17 H. 174, on creation of municipal corporations. 21 H. 31; 21 H. 41 (Ann. Cas. 1915A 1155); 21 H. 631, protection of fish. 24 H. 485, power to regulate food prices belongs to Congress as a war power and not to the states or territories, but see 256 U.S. 170. 21 H. 314, 326, improvement of insanitary lands. 34 H. 52, regulation of public utilities. 33 H. 397, photography. 38 H. 310, on statehood.

The legislature cannot after a pardon refund a fine paid before the pardon, for that would be an invasion of the judicial and pardoning powers and a diversion of public funds to private uses: 20 H. 518; the appropriation of public funds to discharge a moral obligation is a rightful subject of legislation: 20 H. 600; but there is no obligation to refund license fees lawfully collected, 20 H. 600, nor part of the sale price of public land on the assumption that the appraisal was too high, 26 H. 104. Likewise as to reimbursement for improvement, after forfeiture of special homestead agreement, in excess of appraised value of improvement: 25 H. 406. Contractor's losses: 29 H. 343. Power of legislature to provide for further judicial proceedings. *Pope vs. U.S. Sup. Ct.* U.S. Nov. 6, 1944.

The legislature may authorize the garnishment of a legislator's salary: 19 H. 428. Street railways are subject to regulation directly by the legislature or by delegation, as to details, to administrative bodies, and perhaps, as in a state, by delegation to the courts: 211 U.S. 291.

The legislature may delegate to municipalities and local boards of health power to enact health regulations, but it cannot delegate to administrative officers the power of taxation, e.g. the power to fix sewer rates: 20 H. 411.

The absence of legislation for licenses to clubs to sell liquor is no defense for a club selling without a license; 16 H. 509; nor has an ex-licensee such a vested right as will entitle him to sell his stock of liquor after the expiration of his license: 18 H. 406. Congress provided by Joint Resolution of April 26, 1910 (36 Stat 878) for a special election on prohibition, at which election the vote was against prohibition. See also the Act of May 23, 1918, c 84, 40 Stat 560, which was followed by the National Prohibition Act, made applicable to Hawaii by §3 of Act of Nov. 23, 1921, c 134, 42 Stat 223. All federal liquor prohibition laws in effect in Hawaii were repealed by the Act of Mar. 26, 1934, c 88, 48 Stat 467.

The legislature may appropriate money for a hospital conducted for indigent sick without distinction as to nationality, creed, etc.: 15 H. 663. The clause in regard to aid to sectarian schools is referred to in 17 H. 292; 19 H.

148; 206 U.S. 206, 215 U.S. 554.

Insurance statute does not supersede contract between the parties. 9 F.2d 340. Power to regulate foreign language schools is controlled by constitution, 11 F.2d 710, 273 U.S. 284. Legislative control over qualifications of physicians, 31 H. 625, aff. 52 F.2d 411.

Condemnation for irrigation project: 74 F.2d 596, cert. den. 296 U.S. 570, rev'd. on other grounds 298 U.S. 342.

Referred to in 13 H. 706; 18 H. 539, 41 H. 37, 461. See also note to §5.

Conflict of a territorial statute with an executive agreement. 41 H. 565. Action for declaratory judgment on reapportionment of legislature moot when Congress by amendment ordered reapportionment. 256 F.2d 728. See also 138 F. Supp. 220. Power to enact Fair Trade Act. 43 H. 103. On rightful subjects of legislation. 43 H. 103. Acts in discharge of a moral obligation; are rightful subjects of legislation; are not grants of special or exclusive privileges. 44 H. 100, 352 P.2d 835.

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TOWN, CITY, AND COUNTY GOVERNMENT

§56. That the legislature may create counties and town and city municipalities within the Territory of Hawaii and provide for the government thereof, and all officials thereof shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislature of the Territory. [Am Mar. 3, 1905, c 1465, 33 Stat 1035]

The federal statutes prohibiting territories from enacting special laws concerning municipal corporations were superseded as to Hawaii by this § even before the amendment to §5, which expressly declared such statutes inapplicable to Hawaii: 19 H. 176; 16 H. 777. Congress did not intend that §16 should control this § as to who might be appointed or elected to city or county offices: 25 H. 678, 687, 688. A county ordinance was held unauthorized because its subject matter was covered by a territorial statute: 18 H. 624, but now see 21 H. 19; 21 H. 30; 21 H. 206. A county ordinance prescribing fire limits is not operative against the Territory whose legislature created the county: 23 H. 678. Board of water supply, 31 H. 216. Referred to in 16 H. 773, 779 (appointment or election of county officers and transfers of powers and duties from territorial to county officers); 17 H. 176 (power to make ordinances). For county act of 1905, and city and county act of 1907, see HRS cc. 52, 54, 61 to 67, 70. Cf. 20 Stat 101; 25 Stat 336.

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ELECTIONS

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

Referred to, with §§58, 59, and many other §§, in 16 H. 245.

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

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

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

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§60. Qualifications of voters for representatives. That in order to be qualified to vote for representatives a person shall--

First. Be a citizen of the United States.

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

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

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

Fifth. Be able to speak, read and write the English or Hawaiian language. [Am June 26, 1930, c 620, 46 Stat 818]

This applies to the first territorial election to the exclusion of R.S. §1859; 13 H. 17. Residence in the Territory for a year means in the Hawaiian Islands and is not limited to the time subsequent to the establishment of territorial government: 13 H. 17; a person who lives on a steamer engaged in interisland trade is not a resident of a particular precinct, though the steamer docks at such precinct when at Honolulu and that is her home port: 13 H. 22. This § and §62 control as to qualifications of voters in city and county elections: 19 H. 178. Referred to in 14 H. 146; 15 H. 266; 16 H. 245; 19 H. 227. See also, on qualifications of voters, §§18, 62, 63; on citizenship, §§4, 100; on registration, §64.

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§61. Method of voting for senators. That each voter for senator may cast one vote for each senator to be elected from the senatorial district in which he is entitled to vote.

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

Referred to in 16 H. 245.

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§62. Qualifications of voters for senators and in all other elections.

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

An election under a county act is one of the "other elections" referred to in this section; in such case the registration list for the last previous general election shall be used: 15 H. 265. Referred to in 16 H. 245; 19 H. 227. See also 19 H. 178, referred to in note to §60.

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

Cf. U.S. Rev. Sts. §1860, subd. 3, 48 U.S.C.A. 1460. Domicile of member of armed forces: 35 H. 461.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In section one hundred and twelve strike out "interior department" and insert in lieu thereof "office of the secretary of the Territory."

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

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

registration be made.

Referred to in 14 H. 146, 283; 15 H. 326, 328; 16 H. 245; 17 H. 247; 18 H. 140; 19 H. 178, 227, 228; 22 H. 250, 251.

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

On change of districts, see also §§32 and 38, above.

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CHAPTER III.
THE EXECUTIVE

§66. The executive power. That the executive power of the government of the Territory of Hawaii shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall be not less than thirty-five years of age; shall be a citizen of the Territory of Hawaii; shall have resided therein for at least three years next preceding his appointment; shall be commander in chief of the militia thereof, and may grant pardons or reprieves for offenses against the laws of said Territory and reprieves for offenses against the laws of the United States until the decision of the President is made known thereon. [Am July 9, 1921, c 42, §303, 42 Stat 116]

Legislature cannot exercise pardoning power: 20 H. 518. Pardon restores all civil rights, including right to be heard as a witness: 35 H. 827, 832. Referred to in 23 Ops. 138. Cf. U.S. Rev. Sts. §1841 (48 U.S.C.A. 1453).

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

Referred to in 16 H. 266; 1 U.S.D.C. Haw 95; Cf. Const. of 1894, Art. 31. See 10 H. 29, questioned 327 U.S. 319, on martial law. Privilege of writ of habeas corpus was suspended and Territory placed under martial law on the afternoon of December 7, 1941. Proclamation of martial law modified September 2, 1942 and February 8, 1943. Martial law terminated and privilege of writ restored by Presidential Proclamation 2627, October 18, 1944, effective October 24, 1944, 9 F.R. 12831, and Governor's proclamation of October 24, 1944. For military powers thereafter see Executive Order 9489, October 18, 1944, effective October 24, 1944, 9 F.R. 12831. See 30 Cal. L.R. 371; 55 Harv. L.R. 1253; 17 Journ. of State Bar of Calif. 185, 199; 30 Cal. L.R. 599; 29 A.B.A. Journ. 698; 31 Cal. L.R. 477; 44 Colum. L.R. 639; Executive Order 8987, 6 F.R. 6675.

A person detained by the military authorities in Hawaii, after an inquiry into his loyalty, held not entitled to writ of habeas corpus after the proclamation of December 7, 1941: 132 F.2d 442, cert. den. 319 U.S. 744 (moot). See also Application of Walter Glockner, U.S.D.C. Haw., H.C. No. 295 (moot); Application of Erwin R. Seifert, U.S.D.C. Haw., H.C. No. 296 (moot). Persons convicted in provost courts after proclamation of December 7, 1941 and before Proclamation No. 2627 held not entitled to writ of habeas corpus: Application of Lloyd C. Duncan, C.C.A. 9th, November 1, 1941, rev'g U.S.D.C. Haw., H.C. No. 298; Application of Harry E. White, C.C.A. 9th, November 1, 1941, rev'g U.S.D.C. Haw., H.C. No. 300; Application of Fred Spurlock, C.C.A. 9th, November 6, 1944, rev'g U.S.D.C. Haw., H.C. No. 301; as to foregoing three cases see proceedings on petitions for certiorari; see 327 U.S. 304, rev'g 146 F.2d 576, 652.

See as to military commissions, 317 U.S. 1; trial under 56 Stat 173 for violation of military order (curfew), 320 U.S. 81.

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

Referred to in 15 H. 115; 16 H. 245; 24 Ops. 603. See 17 H. 30.

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

The secretary may, with the approval of the governor, designate some other officer of the government of the Territory of Hawaii to act as secretary during his temporary absence or during his illness. Such designation and approval shall be in writing and shall be filed in the office of the governor, and a copy thereof, certified by the governor, shall be filed in the office of the Secretary of the Interior of the United States. Such person so designated shall, during the temporary absence or illness of the secretary, be known as the acting secretary of the Territory of Hawaii, and shall have and exercise all the powers and duties of the secretary, except those provided for by section 70 of this Act (U.S.C., title 48, §535). Such acting secretary shall serve without additional compensation, but the secretary shall be responsible and liable on his official bond for all acts done by the acting secretary in the performance of his duties as acting secretary. [Am July 2, 1932, c 389, 47 Stat 565; Aug. 21, 1958, Pub L 85-714, 72 Stat 707]

Referred to in 23 Ops. 138. Cf. U.S. Rev. Sts. §§1843, 1844 (48 U.S.C.A. 1454, 1455).

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

Cf. U.S. Rev. Sts., §1843.

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§71. Attorney-general. That there shall be an attorney-general, who shall have the powers and duties of the attorney-general and those of the powers and duties of the minister of the interior which relate to prisons, prisoners, and prison inspectors, notaries public, and escheat of lands under the laws of Hawaii, except as changed by this Act and subject to modification by the legislature.

Referred to in 16 H. 245, 16 H. 773, 779; 26 H. 570.

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

Referred to in 15 H. 274, 719; 16 H. 245, 773; 20 H. 601.

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§73. Commissioner of public lands. (a) That when used in this section--

(1) The term "commissioner" means the commissioner of public lands of the Territory of Hawaii;

(2) The term "land board" means the board of public lands, as provided in subdivision (1) of this section;

(3) The term "public lands" includes all lands in the Territory of Hawaii classed as government or crown lands previous to August 15, 1895, or acquired by the government upon or subsequent to such date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; except (1) lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, (2) lands set apart or reserved by Executive order by the President, (3) lands set aside or withdrawn by the governor under the provisions of subdivision (q) of this section, (4) sites of public buildings, lands used for roads, streets, landings, nurseries, parks, tracts reserved for forest growth or conservation of water supply, or other public purposes, and (5) lands to which the United States has relinquished the absolute fee and ownership, unless subsequently placed under the control of the commissioner and given the status of public lands in accordance with the provisions of this Act, the Hawaiian Homes Commission Act, 1920, or the Revised Laws of Hawaii of 1915; and

(4) The term "person" includes individual, partnership, corporation, and association.

(b) Any term defined or described in section 347 or 351 of the Revised Laws of Hawaii of 1915, except a term defined in subdivision (a) of this section, shall, whenever used in this section, if not inconsistent with the context or any provision of this section, have the same meaning as given it by such definition or description.

(c) The laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide. Subject to the approval of the President, all sales, grants, leases, and other dispositions of the public domain, and agreements concerning the same, and all franchises granted by the Hawaiian government in conformity with the laws of Hawaii, between the 7th day of July, 1898, and the 28th day of September, 1899, are hereby ratified and confirmed. In said laws "land patent" shall be substituted for "royal patent"; "commissioner of public lands," for "minister of the interior," "agent of public lands," and "commissioners of public lands," or their equivalents; and the words "that I am a citizen of the United States," or "that I have declared my intention to become a citizen of the United States, as required by law," for the words "that I am a citizen by birth (or naturalization) of the Republic of Hawaii," or "that I have received letters of denization under the Republic of Hawaii," or "that I have received a certificate of special right of citizenship from the Republic of Hawaii."

(d) No lease of the surface of agriculture lands or of undeveloped and public land which is capable of being converted into agricultural land by the development, for irrigation purposes, of either the underlying or adjacent waters, or both, shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than sixty-five years. Each such lease shall be sold at public auction to the highest bidder after due notice as provided in subdivision (i) of this section and the laws of the Territory of Hawaii. Each such notice shall state all the terms and conditions of the sale. The land, or any part thereof so leased, may at anytime during the term of the lease be withdrawn from the operation thereof for homestead or public purposes, upon the payment of just compensation for such withdrawal. Every such lease shall contain a provision to that effect: Provided, That the commissioner may, with the approval of the governor and at least two-thirds of the members of the land board, omit such withdrawal provision from, or limit the same in, the lease of any lands whenever he deems it advantageous to the

Territory of Hawaii, and land so leased shall not be subject to such right of withdrawal, or shall be subject only to a right of withdrawal as limited in the lease.

(e) All funds arising from the sale or lease or other disposal of public land shall be appropriated by the laws of the government of the Territory of Hawaii and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July 7, 1898.

(f) No person shall be entitled to receive any certificate of occupation, right of purchase lease, cash freehold agreement, or special homestead agreement who, or whose husband or wife, has previously taken or held more than ten acres of land under any such certificate, lease, or agreement made or issued after May 27, 1910, or under any homestead lease or patent based thereon; or who, or whose husband or wife, or both of them, owns other land in the Territory, the combined area of which and the land in question exceeds eighty acres; or who is an alien, unless he has declared his intention to become a citizen of the United States as provided by law. No person who has so declared his intention and taken or held under any such certificate, lease, or agreement shall continue so to hold or become entitled to a homestead lease or patent of the land, unless he becomes a citizen within five years after so taking.

(g) No public land for which any such certificate, lease, or agreement is issued after May 27, 1910, or any part thereof, or interest therein or control thereof, shall, without the written consent of the commissioner and governor, thereafter, whether before or after a homestead lease or patent has been issued thereon, be or be contracted to be in any way, directly or indirectly, by process of law or otherwise, conveyed, mortgaged, leased, or otherwise transferred to, or acquired or held by or for the benefit of, any alien or corporation; or before or after the issuance of a homestead lease or before the issuance of a patent to or by or for the benefit of any other person; or, after the issuance of a patent, to or by or for the benefit of any person who owns, or holds, or controls, directly or indirectly, other land or the use thereof, the combined area of which and the land in question exceeds eighty acres. The prohibitions of this paragraph shall not apply to transfers or acquisitions by inheritance or between tenants in common.

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

(i) The persons entitled to take under any such certificate, lease, or agreement shall be determined by drawing or lot, after public notice as hereinafter provided; and any lot not taken or taken and forfeited, or any lot or part thereof surrendered with the consent of the commissioner, which is hereby authorized, may be disposed of upon application at not less than the advertised price by any such certificate, lease, or agreement without further notice. The notice of any sale, drawing, or allotment of public land shall be by publication for a period of not less than sixty days in one or more newspapers of general circulation published in the Territory: Provided, however, That (1) lots may be sold for cash or on an extended time basis, as

the Commissioner may determine, without recourse to drawing or lot and forthwith patented to any citizen of the United States applying therefor, possessing the qualifications of a homesteader as now provided by law, and who has qualified for and received a loan under the provisions of the Bankhead-Jones Farm Tenant Act, as amended or as may hereafter be amended, for the acquisition of a farm, and (2) with or without recourse to drawing or lot, as the commissioner may determine, lots may be leased with or without a right of purchase, or may be sold for cash or on an extended time basis and forthwith patented, to any citizen of the United States applying therefor if such citizen has not less than two years' experience as a farm owner, farm tenant, or farm laborer: And provided further, That any patent issued upon any such sale shall contain the same restrictive provisions as are now contained in a patent issued after compliance with a right of purchase lease, cash freehold agreement, or special homestead agreement.

The Commissioner may include in any patent, agreement, or lease a condition requiring the inclusion of the land in any irrigation project formed or to be formed by the Territorial agency responsible therefor and making the land subject to assessments made or to be made for such irrigation project, which assessment shall be a first charge against the land. For failure to pay the assessments or other breach of the condition the land may be forfeited and sold pursuant to the provisions of this Act, and, when sold, so much of the proceeds of sale as are necessary therefor may be used to pay any unpaid assessments.

(j) The commissioner, with the approval of the governor, may give to any person (1) who is a citizen of the United States or who has legally declared his intention to become a citizen of the United States and hereafter becomes such, and (2) who has, or whose predecessors in interest have, improved any parcel of public lands and resided thereon continuously for the ten years next preceding the application to purchase, a preference right to purchase so much of such parcel and such adjoining land as may reasonably be required for a home, at a fair price to be determined by three disinterested citizens to be appointed by the governor. In the determination of such purchase price the commissioner may, if he deems it just and reasonable, disregard the value of the improvements on such parcel and adjoining land. If such parcel of public lands is reserved for public purposes, either for the use of the United States or the Territory of Hawaii, the commissioner may with the approval of the governor grant to such person a preference right to purchase public lands which are of similar character, value, and area, and which are situated in the same land district. The privilege granted by this paragraph shall not extend to any original lessee or to an assignee of an entire lease of public lands.

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

(l) No sale of lands for other than homestead purposes, except as herein provided, and no exchange by which the Territory shall convey lands exceeding either forty acres in area or \$15,000 in value shall be made. Leases may be made by the commissioner of public lands, with the approval of two-thirds of the members of the board of public lands, for the occupation of lands for general purposes, or for limited specified purposes (but not including leases of minerals or leases providing for the mining of minerals), for terms up to but not in excess of sixty-five years. There shall be a board of public lands, the members of which are to be appointed by the governor as provided in section 80 of this Act, and until the legislature shall otherwise provide said board

shall consist of six members, and its members be appointed for a term of four years: Provided, however, That the commissioner shall, with the approval of said board, sell to any citizen of the United States, or to any person who has legally declared his intention to become a citizen, for residence purposes lots not exceeding three acres in area; but any lot not sold after public auction, or sold and forfeited, or any lot or part thereof surrendered with the consent of the commissioner, which consent is authorized, may upon application be sold without further public notice or auction within the period of two years immediately subsequent to the day of the public auction, at the advertised price if the sale is within the period of six months immediately subsequent to the day of the public auction, and at the advertised price or the price fixed by a reappraisal of the land, whichever is greater, if the sale is within the period subsequent to the said six months but prior to the expiration of the said two years: and that sales of Government lands or any interest therein may be made upon the approval of said board for business uses or other undertakings or uses, except those which are primarily agricultural in character, whenever such sale is deemed to be in the interest of the development of the community or area in which said lands are located, and all such sales shall be limited to the amount actually necessary for the economical conduct of such business use or other undertaking or use: Provided further, That no exchange of Government lands shall hereafter be made without the approval of two-thirds of the members of said board, and no such exchange shall be made except to acquire lands directly for public uses: Provided further, That in case any lands have been or shall be sold pursuant to the provisions of this paragraph for any purpose above set forth and/or subject to any conditions with respect to the improvement thereof or otherwise, and in case any said lands have been or shall be used by the United States of America, including any department or agency thereof, whether under lease or license from the owner thereof or otherwise, for any purpose relating to war or the national defense and such use has been or shall be for a purpose other than that for which said lands were sold and/or has prevented or shall prevent the performance of any conditions of the sale of said lands with respect to the improvement thereof or otherwise, then, notwithstanding the provisions of this paragraph or of any agreement, patent, grant, or deed issued upon the sale of said lands, such use of said lands by the United States of America, including any department or agency thereof, shall not result in the forfeiture of said lands and shall result in the extension of the period during which any conditions of the sale of said lands may be complied with for an additional period equal to the period of the use of said lands by the United States of America, including any department or agency thereof.

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

homesteading until any crops growing thereon shall have been harvested.

(n) It shall be the duty of the commissioner to cause to be surveyed and opened for homestead entry a reasonable amount of desirable agricultural lands and also of pastoral lands in the various parts of the Territory for homestead purposes on or before January 1, 1911, and he shall annually thereafter cause to be surveyed for homestead purposes such amount of agricultural lands and pastoral lands in various parts of the Territory as there may be demand for by persons having the qualifications of homesteaders. In laying out any homestead the commissioner shall include in the homestead lands sufficient to support thereon an ordinary family, but not exceeding eighty acres of agricultural lands and two hundred and fifty acres of first-class pastoral lands or five hundred acres of second-class pastoral lands; or in case of a homestead, including pastoral lands only, not exceeding five hundred acres of first-class pastoral lands or one thousand acres of second-class pastoral lands. All necessary expenses for surveying and opening any such lands for homesteads shall be paid for out of any funds of the territorial treasury derived from the sale or lease of public lands, which funds are hereby made available for such purposes.

(o) The commissioner, with the approval of the governor, may by contract or agreement authorize any person who has the right of possession, under a general lease from the Territory, of agricultural or pastoral lands included in any homestead, to continue in possession of such lands after the expiration of the lease until such time as the homesteader takes actual possession thereof under any form of homestead agreement. The commissioner may fix in the contract or agreement such other terms and conditions as he deems advisable.

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

(q) All lands in the possession, use, and control of the Territory shall hereafter be managed by the commissioner, except such as shall be set aside for public purposes as hereinafter provided; all sales and other dispositions of such land shall, except as otherwise provided by the Congress, be made by the commissioner or under his direction, for which purpose, if necessary, the land may be transferred to his department from any other department by direction of the governor, and all patents and deeds of such land shall issue from the office of the commissioner, who shall countersign the same and keep a record thereof. Lands conveyed to the Territory in exchange for other lands that are subject to the land laws of Hawaii, as amended by this Act, shall, except, as otherwise provided, have the same status and be subject to such laws as if they had previously been public lands of Hawaii. All orders setting aside lands for forest or other public purposes, or withdrawing the same, shall be made by the governor, and lands while so set aside for such purposes may be managed as may be provided by the laws of the Territory; the provisions of this paragraph may also be applied where the "public purposes" are the uses and purposes of the United States, and lands while so set aside may be managed as may be provided by the laws of the United States. The commissioner is hereby authorized to perform any and all acts, prescribe forms of oaths, and, with the approval of the governor and said board, make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this section

and the land laws of Hawaii into full force and effect.

All officers and employees under the jurisdiction of the commissioner shall be appointed by him, subject to the Territorial laws of Hawaii relating to the civil service of Hawaii, and all such officers and employees shall be subject to such civil service laws.

Within the meaning of this section, the management of lands set aside for public purposes may, if within the scope of authority conferred by the legislature, include the making of leases by the Hawaii aeronautics commission with respect to land set aside to it, on reasonable terms, for carrying out the purposes for which such land was set aside to it, such as for occupancy of land at an airport for facilities for carriers or to serve the traveling public. No such lease shall continue in effect for a longer term than fifty-five years. If, at the time of the execution of any such lease, the governor shall have approved the same, then and in that event the governor shall have no further authority under this or any other Act to set aside any or all of the lands subject to such lease for any other public purpose during the term of such lease.

(r) Whenever any remnant of public land shall be disposed of, the commissioner of public lands shall first offer it to the abutting landowner for a period of three months at a reasonable price in no event to be less than the fair market value of the land to be sold, to be determined by a disinterested appraiser or appraisers, but not more than three, to be appointed by the governor; and, if such owner fails to take the same, then such remnant may be sold at public auction at no less than the amount of the appraisal: Provided, That if the remnant abuts more than one separate parcel of land and more than one of the owners of these separate parcels are interested in purchasing said remnant, the remnant shall be sold to the owner making the highest offer above the appraised value.

The term "remnant" shall mean a parcel of land landlocked or without access to any public highway, and, in the case of an urban area, no larger than five thousand square feet in size, or, in the case of a suburban or rural area, no larger than one and one-half acres in size.

Any person or persons holding an unpatented homestead under a special homestead agreement, entered into prior to the effective date of this paragraph, excluding those homesteads under the control of the Hawaiian Homes Commission as provided in section 203 of the Hawaiian Homes Commission Act, 1920, shall be entitled to a reamortization of the indebtedness due the Territory of Hawaii on account of such special homestead agreement upon filing an application for the reamortization of said indebtedness with the commissioner within six months after the effective date of this paragraph. Upon the filing of any such application, the commissioner shall determine the balance due the Territory in the following manner: The amount of the principal which would have been paid during the full period of payment provided for in the special homestead agreement had the agreement been duly performed according to its terms and the amount of the interest which would have been paid under the special homestead agreement prior to the effective date of this paragraph had the agreement been duly performed according to its terms shall be computed and added together; from the sum of these amounts there shall be deducted all moneys that have been actually paid to the Territory on account of the special homestead agreement, whether as principal or as interest. The balance thus determined shall be the total amount remaining due and payable for the homestead covered by such special homestead agreement, any other terms, conditions, or provisions in any of said agreements, or any provisions of law to the contrary notwithstanding: Provided, however, That nothing herein contained shall be deemed to excuse the payment of taxes and other charges and

assessments upon unpatented homestead lands as provided in said agreements, nor to excuse or modify any term, condition, or provision of said agreements other than such as relate to the principal and interest payable to the Territory. The total amount remaining due, determined as hereinabove provided, shall be payable in fifteen equal biennial installments. Simple interest at the rate of three per centum per annum shall be charged upon the unpaid balance of such installments, whether matured or unmatured, said interest to be computed from the effective date of this paragraph and to be payable semi-annually. The first payment on account of principal shall be due two years subsequent to the effective date of this paragraph, and thereafter the due dates of principal payments shall be at regular two-year periods; the first payment on account of interest shall be due six months subsequent to the effective date of this paragraph, and thereafter the due dates of interest payments shall be at regular six-month periods. In case of default in payments of principal or interest on the due dates as hereby fixed the commissioner may, with the approval of the governor, with or without legal process, notice, demand, or previous entry, take possession of the land covered by any such special homestead agreement and thereby determine the estate created by such agreement as hereby modified, whereupon liability for payment of any balance then due under such special homestead agreement shall terminate. When the aforesaid payments have been made to the Territory of Hawaii, and all taxes, charges, and assessments upon the land have been paid as provided by said agreements, and all other conditions therein stipulated have been complied with, except as herein excused or modified, the said special homestead agreements shall be deemed to have been performed by the holders thereof, and land-patent grants covering the land described in such agreements shall be issued to the parties mentioned therein, or their heirs or assigns, as the case may be.

Neither the Territory of Hawaii nor any of its officers, agents or representatives shall be liable to any holder of any special homestead agreement, past or present, whether or not a patent shall have issued thereon, or to any other person, for any refund or reimbursement on account of any payment to the Territory in excess of the amount determined as provided by the preceding paragraph, and the legislature shall not recognize any obligation, legal or moral, on account of such excess payments. [Am April 2, 1908, c 124, 35 Stat 56; May 27, 1910, c 258, §5, 36 Stat 444; July 9, 1921, c 42, §§304 to 311, 42 Stat 116; July 27, 1939, c 383, 53 Stat 1126; June 12, 1940, c 336, 54 Stat 345; Aug. 21, 1941, c 394, 55 Stat 568; Sept. 26, 1941, c 426, 55 Stat 734; Aug. 7, 1946, c 771, 60 Stat 871; July 9, 1952, cc 616, 617, 66 Stat 514, 515; April 6, 1956, c 180, §1 and c 185, §1, 70 Stat 102, 104; Aug. 1, 1956, c 820, §1 and c 859, 70 Stat 785, 918; July 18, 1958, Pub L 85-534, §1, 72 Stat 379; Aug. 14, 1958, Pub L 85-650, §2, 72 Stat 606; Aug. 21, 1958, Pub L 85-718, 72 Stat 709; Aug. 28, 1958, Pub L 85-803 §§1, 2, 72 Stat 971; L 1959, JR 21, §1 am and rat L 1960, c 15, §2]

Note

The effective date of the last two paragraphs was June 12, 1940.

Exemptions From Section 73

(1) The Act of July 10, 1937, c 484, 50 Stat 508, (48 U.S.C.A. 562g) provides in part:

"That the Legislature of the Territory of Hawaii may create a public corporate authority to engage in slum clearance, or housing undertakings, or both, within such Territory. ***The legislature*** may, without regard to any

federal Acts restricting the disposition of public lands of the Territory, authorize the commissioner of public lands, the Hawaiian homes commissioners, and any other officers of the Territory having power to manage and dispose of its public lands, to grant, convey, or lease to such authority parts of the public domain, and may provide that any of the public domain or other property acquired by such authority may be mortgaged by it as security for its bonds.***"

(2) The Act of February 27, 1920, c 89, 41 Stat 452, (16 U.S.C.A. 392) provided that the provisions of section 73 relating to exchanges should not apply with respect to the acquisition of privately owned lands within Hawaii National Park.

(3) The Act of August 7, 1946, c 787, 60 Stat 884, provided that the provisions relating to exchange should not apply to the acquisition of certain lands in Hilo.

(4) See Act of August 24, 1954, c 888, 68 Stat 781, authorizing the commissioner of public lands to sell public lands to certain lessees, permittees and others.

General Notes

The amendments of July 9, 1921, are part of the "Hawaiian Homes Commission Act, 1920," the homes commission proper part of which is set forth in full hereinafter, following the Organic Act. See Joint Resolution of Annexation and the note thereto, RLH 1955, page 13, in regard to the cession of public lands to the United States, their status, disposition thereof, application of the proceeds thereof, and grants of franchises, between annexation and the establishment of territorial government; see Chronological Note of Acts Affecting Hawaii for Acts of Congress, Presidential proclamations and Executive orders relating to public lands, RLH 1955, page 9ff, see also the note to section 91; also §§75, 89, 91, 95, 97 and 99 of this act on public lands; also laws in this Revision relating to public lands. As to shores, harbors, etc. see §106. Quaere, whether the federal statute (29 Stat 618, 8 U.S.C.A. 71-77) relating to disabilities of aliens to hold land in territories in general applies to Hawaii.

Under this § and §91, the public lands are under the territorial laws, but the President may set aside such as he deems proper for the uses of the United States, 24 Ops. 600. Lands reserved by Executive order in the Territory for use of War Department may be returned by Executive order when purposes for which they were set aside have been served, 35 Ops. 205. The Territory may acquire private lands by exchange, and these may then be so set aside by the President: 24 Ops. 600.

Surplus water rights pass to owner of ili kupo on which lies source, 31 H. 376, aff. 52 F.2d 356.

The legislature may add to the duties of the commissioner of public lands: 18 H. 490. Before the amendment of May 27, 1910, the commissioner's powers were subject to those of the superintendent of public works in respect of certain classes of lands under §75: 17 H. 540 et seq. (town lots); 18 H. 226, 231 (power of exchange).

The title of the government to crown lands cannot be questioned by the courts: 18 H. 645. Quaere, whether continuing the Hawaiian land laws in force until Congress otherwise provides, makes them federal laws so as to permit an appeal to the federal supreme court on the ground that a federal question is involved: 211 U.S. 442. Leasehold interest in public land may be assessed at value of fee; quaere whether that provision of the tax law was continued in force by this § as part of laws relating to public lands: 23 H. 624.

Provision for reimbursement of homesteader for appraised value of improvements, on forfeiture, was continued in force by this § (before its am.) and legislature cannot appropriate additional amount on theory that appraisement was too low: 25 H. 409. Likewise legislature cannot appropriate money to reimburse purchaser in part on theory that purchase price was appraised too high: 26 H. 106. Assignment of mortgage is within inhibition against transfers without written consent of commissioner and governor: 27 H. 4. A franchise granted by the legislature on the day (July 7, 1898) the joint resolution of annexation was passed by Congress, whether ratified or not by this §, is not a federal franchise exempt from territorial taxation: 18 H. 18, 20; 211 U.S. 142, the latter holding also that a franchise granted July 7, 1898, was not excluded from the franchises granted between that day and a later date, which were ratified by this §. See §55 on grants of franchises by the territorial legislature.

Referred to in 16 H. 245; 21 H. 137; 30 H. 210; 32 H. 310; 40 H. 675.

See RLH 1955, cc 99 to 99D, 103A.

Discretionary powers given to commissioner not unlawful delegation. 41 H. 461.

Land laws of Hawaii, including section 73, will continue as state laws, notwithstanding section 15 of the Admission Act prescribing a cut-off date. Att. Gen. Op. 61-68. But laws relating to management and disposition of public lands were repealed by L. 1962, c 32, §3.

Other Related Legislation

a. Federal Acts:

(1) Act of April 6, 1956, c 184, 70 Stat 104, and Act of Aug. 29, 1958, Pub L 85-694, 72 Stat 686, authorizing the amendment of certain patents of government lands by removing the conditions therein restricting use of such lands.

(2) Act of August 18, 1958, Pub L 85-677, 72 Stat 628, grants status of public lands to certain reef lands. See also RLH 1955 c 99D, HRS c 173.

(3) Act of August 21, 1958, Pub L 85-713, 72 Stat 707, authorizes exchange of public lands for private lands of equal value required for highway purposes.

(4) Act of August 28, 1958, Pub L 85-834, 72 Stat 987, permits certain sales and exchanges of public lands to persons who suffered substantial real property losses due to tidal wave of March 9, 1957.

b. Territorial Acts: Effective upon approval by Congress of legislation making the acts valid without approval by Congress, or upon ratification by the state legislature.

(1) L. 1957, c. 39, permits holders of certain public lands to mortgage the land without necessity of obtaining governor's consent.

(2) L. 1959, c. 180, s. 2, amends the second paragraph of section 73(r) to read: "The term 'remnant' shall mean a parcel of land unsuitable for development as a separate unit, and, in case of an urban area, no larger than five thousand square feet in size, or in case of a suburban or rural area, no larger than one and one-half acres in size."

(3) L. 1959, c. 269, authorizes the subdivision, improvement and leasing of public lands for residential purposes to qualified persons selected by drawing without public auction.

(4) L. 1959, J.R. 2, s. 1, amends section 73(g) by adding to the first sentence the proviso to read: "Provided, That if consent be given to a mortgage or other transfer for security purposes to an established lending agency and such agency be the Federal Housing Administration or other similar federal or territorial agency or a corporation authorized to do business as a

lending agency in the Territory or elsewhere in the United States, no further consent shall be required for: (1) any subsequent assignment or reassignment made by such agency or assignee thereof to a like lending agency for refinancing or other security purposes; or (2) any transfer made at a foreclosure sale held pursuant to the provisions of said mortgage or transfer for security purposes; or (3) any subsequent transfer made by the purchaser at said foreclosure sale if the transferor shall be such agency or assignee thereof, provided that all other or further disposition shall be made only in accordance with the provisions of this act."

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

Referred to in 16 H. 245.

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

Referred to in 15 H. 298, 367; 16 H. 245; 23 H. 680. See note to §73, citing 17 H. 540 and 18 H. 226, as to powers of superintendent of public works over certain classes of public lands before the ams. of 1910.

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

It shall be the duty of the United States Commissioner of Labor to collect, assort, arrange, and present in reports in nineteen hundred and five, and every five years thereafter, statistical details relating to all departments of labor in the Territory of Hawaii, especially in relation to the commercial, industrial, social, educational, and sanitary condition of the laboring classes, and to all such other subjects as Congress may by law direct. The said Commissioner is especially charged to ascertain the highest, lowest, and average number of employees engaged in the various industries in the Territory, to be classified as to nativity, sex, hours of labor, and conditions of employment, and to report the same to Congress. [Am April 8, 1904, c 948, 33 Stat 164]

Referred to in 16 H. 245. The duties of the United States Commissioner of Labor above referred to are now performed by the United States Commissioner of Labor Statistics. See U.S.C.A. sections, cited to the text.

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§77. Comptroller and Deputy Comptroller. There shall be a comptroller and deputy comptroller, who shall have the powers and duties conferred upon and required by the auditor-general and deputy auditor-general, respectively, by Act thirty-nine of the session laws as amended by this Act, subject to modification by the legislature. In said Act "officer" shall be substituted for "minister" where used without other designation. [Am Aug. 1, 1956, c 862, §1, 70 Stat 920]

Provision of the audit law permitting suspension of auditor by the governor, was repealed by implication by §80 of this act: 15 H. 114. Referred to with §78, etc., in 16 H. 245.

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§77A. Post-Auditor. There shall be a post-auditor who shall be appointed by the Governor by and with the advice and consent of the Senate, who shall serve for a term of eight years and until a successor shall have been duly appointed. He shall have such powers and duties relating to the post-audit of Territorial and county accounts and appropriations as may be prescribed by law. The legislature, by a two-thirds vote of the members in joint session, may remove the post-auditor at any time for cause. [Add Aug. 1, 1956, c 862, §2; rep L Sp 1959 1st, c 14, §2]

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

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

Referred to in 14 H. 283; 15 H. 367, 494; 16 H. 245.

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§80. Appointment, removal, tenure, and salaries of officers. The President shall nominate and, by and with the advice and consent of the Senate, appoint the chief justice and justices of the supreme court, who shall hold office for the term of seven years unless sooner removed by the President, and the judges of the circuit courts who shall hold office for the term of six years, unless sooner removed by the President; and the governor shall nominate and, by and with the advice and consent of the senate of the Territory of Hawaii, appoint the attorney-general, treasurer, commissioner of public lands, commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, surveyor, high sheriff, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration and inspectors of election, and any other boards of a public character that may be created by law, except for the board of trustee of the employees' retirement system; and he may make such appointments when the senate is not in session by granting commissions, which shall, unless such appointments are confirmed, expire at the end of the next session of the senate. He may, by and with the advice and consent of the senate of the Territory of Hawaii, remove from office any of such officers. All such officers shall hold office for four years and until their successors are appointed and qualified, unless sooner removed, except the commissioners of public instruction and the members of said boards, whose term of office shall be as provided by the laws of the Territory of Hawaii.

The manner of appointment of members of the board of trustees of the employees' retirement system shall be as provided for by section 6-61, Revised Laws of Hawaii, 1955.

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

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

All officers appointed under the provisions of this section shall be citizens of the Territory of Hawaii and shall have resided therein for at least three years next preceding their appointment.

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

Provided, however, That nothing in this section shall be construed to conflict with the authority and powers conferred by section fifty-six of this Act as herein amended. [Am March 3, 1905, c 1465, §2, 33 Stat 1035; July 9, 1921, c 42, §312, 42 Stat 119; May 9, 1956, c 237, §1, 70 Stat 130; Aug. 28, 1958, Pub L 85-793, 72 Stat 957]

Appointive power, 34 H. 12.

The governor cannot suspend an officer appointable and removable by him with the consent of the senate and whose term of office is four years, unless sooner removed: 15 H. 114. A board of medical examiners appointed by the treasurer under the Hawaiian statute and not by the governor with the consent of the senate under this §, was held to be at least a de facto board. 15 H. 273. The validity of an income tax law cannot be attacked by one not affected thereby on the ground that it would effect a diminution of judges' salaries contrary to the provisions of this §: 13 H. 594; 121 Fed. 772. The words "and until their

successors are appointed and qualified" apply to officers appointed by the President as well as to those appointed by the governor under this §: 42 C. Cls. R. 54. This § does not invalidate a territorial statute authorizing the chief justice to designate a circuit judge of one circuit to sit in place of a circuit judge of another circuit who is absent, disqualified: 26 H. 557, 290 Fed. 146. This § is controlled by §56, which authorizes the appointment and election of officers of municipal corporations in other ways: 16 H. 779. Salaries of members of supreme court, not taxable: 25 H. 607. But see 307 U.S. 277. Referred to in 14 H. 222, 283; 15 H. 298, 366, 367; 16 H. 245; 23 Ops. 138. On appointment of members of supreme court, see also §82.

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CHAPTER IV.
THE JUDICIARY

On validity of jury lists, see 82 F. Supp. 65; 105 F. Supp. 727; see also 103 F. Supp. 1.

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

The Organic Act is in the nature of a constitution to the territorial legislature, but it confers on the legislature the power to organize the courts and fix their jurisdiction and the number of the circuit judges, although such judges are appointed by the President and paid by the United States: 23 Ops. 539; 16 H. 667. The circuit courts may be regarded as constitutional courts from the standpoint of the Territory: 14 H. 222; 14 H. 269. Circuit court not court of the United States within meaning of Norris-La Guardia Act, 37 H. 404. This § did not abrogate the jurisdiction of circuit judges at chambers in equity and probate matters: 16 H. 242 (referring also to many other §§ of this act), 197 U.S. 352. Nor does it prevent the legislature from confining original jurisdiction in habeas corpus cases to the supreme court, its justices and circuit judges, to the exclusion of circuit courts as such: 16 H. 266; but see HRS c 660 habeas corpus. Several sessions of the same circuit court may be held at the same time and only one judge may preside over each: 16 H. 667; 16 H. 747.

Indeterminate sentence law does not infringe on judicial power and discretion: 22 H. 534. The circuit courts were held to have jurisdiction in naturalization cases even before the Naturalization Act of June 29, 1906: 17 H. 296, 299. Local statute that successive disagreements of two juries operates as acquittal, nor applicable to Federal court: 4 U.S.D.C. Haw. 466. Territorial courts have jurisdiction in fornication cases under local laws notwithstanding the Edmunds Act: 19 H. 208 (see also references to 3 U.S.D.C. Haw. 262, 295, 517, in notes to §§5, 6). See §83 and note as to: grand and petty juries; nonliability of circuit judge in damages.

This § was held to continue the jurisdiction of local courts over offenses against local laws on the naval reservation: 19 H. 201 (see also 4 U.S.D.C. Haw. 62; 23 H. 63). But by the Act of April 19, 1930, the Hawaii National Park was removed from territorial jurisdiction except for certain purposes therein stated. This Act is set out following the U.S. Constitution. Referred to in 17 H. 430; 18 H. 539. A provision for a commission to hear claims against the Territory and render final judgments, is not void on the theory that the legislature cannot create an inferior court of final jurisdiction: 14 H. 489. A board of liquor license commissioners is not a court within the meaning of this §: 18 H. 402; nor is an act void which provides for final decisions of a commission on appeals from magistrates in insanity cases: 19 H. 538.

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§82. Supreme Court. That the supreme court shall consist of a chief justice and two associate justices, who shall be citizens of the Territory of Hawaii and shall be appointed by the President of the United States, by and with the advice and consent of the Senate of the United States, and may be removed by the President: Provided, That any vacancy or vacancies occurring within the court, whether by reason of disqualification, disability, death, resignation, removal, absence from the Territory or inability to attend, or for any other reason, shall, for the hearing and determination of any cause, be temporarily filled as provided by the law of said Territory, and, if there be no such law, then by appointment from among the circuit judges of the Territory by the remaining justices or justice, and if there be no such justice, then by the governor. [Am June 15, 1950, c 250, 64 Stat 216]

On appointments to supreme court, see §80. On amount of salaries, see §92. Salaries not to be reduced during term of office: §80. On appeals from supreme court, and relations between territorial and federal courts, see notes to §§81 and 86. Retirement of the judges is provided for by the Act of May 31, 1938, c 301, 52 Stat 591, 48 U.S.C.A. §§634b, 634c.

Under prior similar constitutional provision as to substitute justice, the court with two substitutes (the statute purporting to permit that), would be at least a de facto court: 15 H. 312; 235 U.S. 342 (reversing 201 Fed. 224, which affirmed 3 U.S.D.C. Haw. 585). Referred to in 16 H. 245; 17 H. 408, 430; 23 Ops. 540.

Effect of death of member prior to amendment: 38 H. 449.

See note to §86, appeal and error.

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§83. Laws continued in force. That the laws of Hawaii relative to the judicial department, including civil and criminal procedure, except as amended by this Act, are continued in force, subject to modification by Congress, or the legislature. The provisions of said laws or any laws of the Republic of Hawaii which require juries to be composed of aliens or foreigners only, or to be constituted by impaneling natives of Hawaii only, in civil and criminal cases specified in said laws, are repealed, and all juries shall hereafter be constituted without reference to the race or place of nativity of the jurors; but no person who is not a citizen of the United States and twenty-one years of age and who cannot understandingly speak, read, and write the English language shall be a qualified juror or grand juror in the Territory of Hawaii. No person shall be convicted in any criminal case except by unanimous verdict of the jury. No plaintiff or defendant in any suit or proceeding in a court of the Territory of Hawaii shall be entitled to a trial by a jury impaneled exclusively from persons of any race. Until otherwise provided by the legislature of the Territory, grand juries may be drawn in the manner provided by the Hawaiian statutes for drawing petty juries, and shall sit at such times as the circuit judges of the respective circuits shall direct; the number of grand jurors in each circuit shall be not less than thirteen, and the method of the presentation of cases to said grand jurors shall be prescribed by the supreme court of the Territory of Hawaii. The several circuit courts may subpoena witnesses to appear before the grand jury in like manner as they subpoena witnesses to appear before their respective courts. [Am April 1, 1952, c 127, 66 Stat 32]

See 35 H. for rules prescribed under this § for presentation of cases to grand juries. On juries between annexation and establishment of territorial government, see note to Joint Resolution of Annexation RLH 1955, page 13. See 21 H. 548, as to nonliability of circuit judge in damages for official acts in excess, but not in clear absence, of jurisdiction under this section. A single circuit judge cannot require an oath of secrecy by a witness before a grand jury: 17 H. 341; nor can a circuit judge require proposed witnesses to give recognizances, or commit them to jail without giving them an opportunity to do so, to appear and testify, when the accused has not been committed or is not held to await the action of the grand jury and no indictment is under consideration by the grand jury: 20 H. 453. This § did not repeal so much of the Hawaiian laws relating to the drawing of juries as to leave the rest inoperative: 15 H. 602. Objections to manner of drawing grand juries, waived, unless presented at first opportunity: 13 H. 413; 15 H. 613; 15 H. 141. Accused has no right to appear before grand jury or have witnesses for him heard by it: 15 H. 613. The right, if any, to assistance of counsel at impanelment of grand jury is waived, if not claimed, though accused is in prison: 15 H. 613. Disqualifications of grand jurors (e.g. noncitizenship) do not destroy the jurisdiction of the court or make the indictment void, and cannot sustain a collateral attack by habeas corpus: 211 U.S. 148.

Verdicts must be unanimous under this act, but unanimity may be waived in civil cases: 13 H. 705; petty offenses may be tried by magistrate without a jury notwithstanding a demand for trial by jury: 27 H. 844; see also 20 H. 614, 23 H. 91, and 23 H. 766, as well as the next two cases cited herein; a misdemeanor punishable by imprisonment for a year, is not an infamous offense and does not require an indictment, and in such case trial by jury, while required if demanded, may be waived: 17 H. 432, 439; and a case of conspiracy may be tried by consent by eleven jurors: 20 H. 74, 95; and trial by jury may be waived in civil cases: 15 H. 59. Waiver of jury in felony case: 33 H. 113. Trial of suit for over \$20 may be before district magistrate first, if

jury is provided for on appeal: 14 H. 290; but an issuance of execution in such case by the magistrate pending appeal would be unconstitutional: 14 H. 524; although a requirement of a bond for the payment of the judgment as a condition of appeal would be constitutional: 15 H. 590. This § does not make applicable to the federal court a territorial statute making successive disagreements of two juries operate as an acquittal: 4 U.S.D.C. Haw. 466. Referred to in 23 Ops. 543; 13 H. 481, 556; 16 H. 245, 253, 266, 747; 18 H. 539, 645; 20 H. 243, 256; 21 H. 539; 187 U.S. 309; 190 U.S. 211; 217 U.S. 244; 1 U.S.D.C. Haw. 43.

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§84. Disqualification by relationship, pecuniary interest, or previous judgment. That no person shall sit as a judge or juror in any case in which his relative by affinity or by consanguinity within the third degree is interested, either as a plaintiff or defendant, or in the issue of which the said judge or juror has, either directly or through such relative, any pecuniary interest; nor shall any person sit as a judge in any case in which he has been of counsel or on an appeal from any decision or judgment rendered by him, and the legislature of the Territory may add other causes of disqualification to those herein enumerated. [Am May 27, 1910, c 258, §6, 36 Stat 447; rep L Sp 1959 1st, c 5, §8]

As to other causes of disqualification added by legislature, see HRS §601-7.

Interest and relationship. A circuit judge may sit in a suit brought by a deputy of his son as assessor in the name of the government, the son being paid a regular salary: 10 H. 5. A justice of the supreme court may sit in a disbarment case, although he and his father-in-law were interested in a corporation, in connection with dealings with which, the attorney, representing other parties, was alleged to have acted unprofessionally: 15 H. 380; 2 U.S.D.C. Haw. 58. A judge is not disqualified by the fact that a relative within the third degree is a shareholder in a corporation which is a party, the judge having no pecuniary interest through such relative: 18 H. 510; 20 H. 617. Wife's interest as life beneficiary of income from stock and judge's contingent interest in income, disqualification: 35 H. 786, 811. Ownership in stock of corporate trustee which might be individually liable, disqualification: 33 H. 565. Relationship by affinity within the third degree to the son of a party, is not disqualification: 20 H. 434; but such relationship to a party, though the party is such merely as trustee, is a disqualification: 20 H. 262; a judge is not disqualified from sitting in a partition suit by a reason of having ordered a fee paid to an attorney out of the fund in court for defending the judge a prohibition case which arose out of the partition case: 22 H. 641; appointment of trustee by majority of justices of supreme court acting as individuals under power in will does not disqualify them from sitting on appeal from decree holding such appointment invalid and appointing a different trustee: 250 Fed. 145, affirming 23 H. 575. Cited in 29 H. 256; 29 H. 438; 29 H. 560; 31 H. 150.

Bias and prejudice; counsel: A justice of supreme court should not sit in a case in which he would have to pass on effect of his own testimony: 10 H. 354; but may sit in a disbarment case although he had several times as circuit judge punished the attorney for contempt: 15 H. 377; 2 U.S.D.C. Haw. 59; for although he had referred the question of unprofessional conduct to the attorney general for investigation and action if necessary: 2 U.S.D.C. Haw. 57. Before this § was amended a judge was held not disqualified by reason of having been of counsel if he had not taken an active part in the case: 17 H. 194; questioned 22 H. 246; or even if he had taken an active part: 17 H. 394, questioned 22 H. 246; 18 H. 375, questioned 22 H. 246; or by reason of having expressed approval of an act, involved in the case, to a member of a legislative committee when the bill was before it: 17 H. 429.

Under the amendment a judge is not disqualified from sitting in an action of ejectment by reason of having been of counsel in an action for summary possession of the same land: 20 H. 548; nor from ordering a guardian to file an account and inventory by reason of having acted as counsel for the appointment of the guardian: 20 H. 553; and for purposes of disqualification there is no distinction between attorney and counsel: 22 H. 245.

A judge is disqualified by having been a member of a firm which was retained although he took no part in the case and had no knowledge of the issues: 26 H.

406; and likewise in a prohibition proceeding where the firm was retained generally to accomplish a purpose and defended in a mandamus proceeding and later in the prohibition proceeding although the latter was brought after the judge left the firm: 27 H. 62.

Acceptance of retainer to bring divorce proceedings does not disqualify district magistrate from sitting as judge upon trial of criminal offense against libellee not included in grounds for divorce. 27 H. 509, 524. A general employment involving title to land is the same "case" as an equitable action to quiet title to such land: 27 H. 637. See 18 H. 602 (gratuitous advice by judge).

This § was held not to apply to a federal district judge in Hawaii, but was considered argumentatively in support of a ruling that having been of counsel, whether actively or merely nominally, was a disqualification: 4 U.S.D.C. Haw. 4; but a judge so disqualified may act in purely formal matters: Id.

On appeal. A justice of the supreme court may sit on an appeal in a habeas corpus case brought to obtain the release of a prisoner held under sentence pronounced in a criminal case by such justice when he was a circuit judge: 13 H. 570; also in a case with which he has no previous connection, although a question of law is involved which was involved in other distinct cases at the trial of which he had presided when a circuit judge: 13 H. 534; and in a disbarment case, although he had previously as circuit judge passed on the insanity of one alleged to have been taken advantage of by the attorney: 15 H. 377; 2 U.S.D.C. Haw. 59. A justice is disqualified from sitting in a case where the validity of an order made by him as circuit judge is attacked: 20 H. 617. Formerly under the provision of C.C. 1859, §820, against sitting "alone" on appeal, etc., a justice could sit with the other justices on appeal from himself: 3 H. 30; 9 H. 354; or preside over a jury on appeal from himself: 4 H. 431; but not sit alone, jury waived, on such an appeal: 6 H. 304.

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

Referred to in 217 U.S. 244; 22 H. 576; 16 H. 245; 31 H. 920, 928; 37 H. 40; 41 H. 270, 234 P.2d 221.

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CHAPTER V.
UNITED STATES OFFICERS

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

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

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

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

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

The legislature of the Territory of Hawaii shall have the right to alter or amend any part of the election laws of said Territory, including those providing for an election of Delegate to Congress, and its action shall be the law, with full binding force, until altered, amended, or repealed by Congress. [Am June 28, 1906, c 3582, 34 Stat 550]

The delegate is not a representative in Congress, although (dictum) he is a member of Congress: 3 U.S.D.C. Haw. 299 (construing law against contributions by corporations for election purposes). Compare the following decisions as to Philippine resident commissioner: 112 F.2d 29; as to delegate from Alaska: 5 Alaska 602. See Note to §14.

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§86. Federal court. Removal of causes and appeal. The laws of the United States relating to removal of causes, appeals and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii. [Am March 3, 1909, c 269, §1, 35 Stat 838; March 3, 1911, c 231, §291, 36 Stat 1167; March 4, 1921, c 161, §1, 41 Stat 1412; July 9, 1921, c 42, §313, 42 Stat 119; June 1, 1922, c 204, Title II, 42 Stat 599, 614, 616; Jan. 3, 1923, c 21, Title II, 42 Stat 1068, 1084; Feb. 12, 1925, c 220, 43 Stat 890; Feb. 13, 1925, c 229, §13, 43 Stat 936; Dec. 13, 1926, c 6, §1, 44 Stat 919; Jan. 31, 1928, c 14, §1, 45 Stat 54; July 31, 1946, c 704, §1, 60 Stat 716; June 25, 1948, c 646, §§8, 39, 62 Stat 986, 992; rep March 18, 1959, Pub L 86-3, §14(f), 73 Stat 4]

This section was amended in toto by the Act of June 25, 1948, c 646, §8, 62 Stat 986. For additional annotations, mainly on matters covered under prior law, see notes on pp. 50-52, RLH 1945.

Jurisdiction, As Between Federal And Territorial Courts

Hawaii National Park: As to jurisdiction within Hawaii National Park, see the Act of April 19, 1930, c 200, 46 Stat 227, as amended, set out after the U.S. Constitution.

Military and naval reservations: See 4 U.S.D.C. Haw. 62; cf. 19 H. 201, 23 H. 63.

Harbors: See 217 U.S. 244.

Other questions of concurrent or coordinate jurisdiction: Federal court has jurisdiction of adultery under federal statutes, even though the territorial courts have like jurisdiction, under territorial statutes: 3 U.S.D.C. Haw. 262; 3 U.S.D.C. Haw. 517; but an acquittal or conviction in either court will bar a trial in the other: 3 U.S.D.C. Haw. 295. Territorial courts have not concurrent or coordinate jurisdiction in bankruptcy, and the federal court in bankruptcy, may, pending hearing, restrain a sale of the bankrupt's property on execution under a territorial court judgment: 1 U.S.D.C. Haw. 195; but a trustee in bankruptcy may sue in the territorial courts for a recovery of property fraudulently transferred before bankruptcy: 14 H. 544. Federal court as court of bankruptcy has jurisdiction to pass on validity of mortgage made by bankrupt so as to prevent that issue from being heard again in territorial court: 25 H. 151. Foreclosure of mortgage may not be stayed, 7 F.2d 576. Bankruptcy, provisions for discharge liberally construed, 29 F.2d 205. A seaman's wages, being exempt from garnishment, may be recovered in the federal court, though garnished in a territorial court: 1 U.S.D.C. Haw. 281; Fed. act exempting seaman's wages from attachment applies also to execution: 211 U.S. 239 (affirming 17 H. 416); but it does not apply to wages of seamen, not shipped through a shipping commissioner, engaged in coastwise trade other than between Atlantic and Pacific ports: 239 U.S. 459 (affirming 22 H. 160). To same effect, 21 H. 661. But see later amendments of the federal law. Admiralty jurisdiction of federal court not affected by territorial workmen's compensation act, at least unless injured seaman elects to take under that act: 4 U.S.D.C. Haw. 719. Admiralty, 183 F.2d 176. Admiralty measure of damages, 34 F.2d 83. The federal court will not interfere on habeas corpus with judgments of the territorial courts except in extreme cases: 1 U.S.D.C. Haw. 24; 1 U.S.D.C. Haw. 69; 1 U.S.D.C. Haw. 303. Decisions of the territorial supreme court construing charters granted by the Hawaiian legislature, are

binding on the federal court, when no federal question is involved: 1 U.S.D.C. Haw. 164. See also note to §81 and note on practice in U.S. Court, below.

Removal of criminal case from territorial to federal court: Federal statute providing for removal of cause from "state" to federal court when defendant acted under color of office applied to homicide case commenced in territorial court; the word "state" in the removal statute may be sufficient to include territories, but in any event §86 makes this removal statute applicable in Hawaii. 132 F.2d 374. (See also note on practice in U.S. District Court, this section.)

Alien property custodian: See 172 F.2d 384; 190 F.2d 155. Aeronautics: jurisdiction limited by civil aeronautics act, 174 F.2d 63.

Injunction against territorial officers prohibiting enforcement of territorial act, 336 U.S. 368, rev'g 74 F. Supp. 852.

Diverse citizenship, for conferring jurisdiction on the federal court, does not apply as between citizen of a state and citizen of the Territory: 1 U.S.D.C. Haw. 12. Injunction to stay proceeding in territorial circuit courts, 172 F.2d 176.

Appeal And Error

Appeals to Court of Appeals for the Ninth Circuit: Such appeals lie from the supreme court of the Territory and the federal District Court as provided in 28 U.S.C.A. 1291-1294. See 41 F.2d 740. Federal question: power to review decision of territorial supreme court, 160 F.2d 289; 188 F.2d 54; 191 F.2d 148; 208 F.2d 357. Federal question essential to appellate jurisdiction must be raised in territorial supreme court, 206 F.2d 851.

Direct review by the U.S. Supreme Court: From the supreme court of the Territory: 28 U.S.C.A. 1252, 1257.

For procedure on appeal and removal generally see U.S. Code, Title 28.

Case Notes: (For immigration and citizenship cases see the notes to §§4 and 100, Organic Act, and RLH 1955, §57-43).

Amount in controversy, 19 H. 73; 211 U.S. 145; 263 Fed. 817 (rev. 24 H. 460; see 24 H. 685). Burden on appellant to show sufficient value, 25 H. 53. Tax returns not conclusive, 212 U.S. 209.

Where supreme court of Hawaii vacates a decree and remands for further proceedings, the decree is not final, 267 Fed. 554; 291 Fed. 721; 52 F.2d 847. But see 270 Fed. 749. Bill of exceptions must be properly authenticated by trial judge; transcript and stipulation insufficient, 53 F.2d 637, 638. Mere filing of application for appeal insufficient (28 U.S.C.A. 2107, 9th Cir. rules, applied in 56 F.2d 61, 58 F.2d 1084, but rules since revised). Not taken in time, 64 F.2d 954, 78 F.2d 720 (Habeas corpus case). Taken in time, where within 3 mos. after dismissal of petition for rehearing: 119 F.2d 936. Rulings not incorporated in exceptions are not reviewable, 67 F.2d 156. Bill of exceptions to territorial supreme court does not lead to final judgment, hence no appeal to 9th circuit will lie, see 211 U.S. 169; 211 U.S. 428.

Statement of the evidence: reporter's transcript insufficient, 72 F.2d 60 (prior to Rule 75 of federal rules of civil procedure).

Severance, in case of joint decree: 75 F.2d 84; 93 F.2d 821.

Only parties to be affected are necessary or proper parties, 26 F.2d 609; 31 F.2d 553. Appellant must have or represent some interest affected by appeal, 211 U.S. 442; 30 F.2d 769. Insufficiency of evidence to sustain verdict must be raised by motion, for new trial, 34 F.2d 86. Appellate court limited to process, pleadings, and judgment. 50 F.2d 599. Where "decision" was merely opinion, not a special finding of facts, review limited to rulings on pleadings, or made in progress of trial: 91 F.2d 85.

Construction of territorial statute by local court will not be disturbed, 16 F.2d 273; except for manifest error, 36 F.2d 159; 47 F.2d 869; 52 F.2d 411; 79 F.2d 761; 105 F.2d 286. The 9th Cir. Ct. of App. "leans to interpretation" of local court, 27 F.2d 582. Construction of will contrary to common law, 59 F.2d 681; of trust, 61 F.2d 598.

Decision of Sup. Ct. of H. should be accepted if not manifestly erroneous, 305 U.S. 91, rev'g 93 F.2d 603, 94 F.2d 806, reh'g den. 305 U.S. 673; 115 F.2d 956.

More or less weight to local decisions on local matters: 222 U.S. 285 (aff. 18 H. 625); 238 U.S. 119 (reviewing 14 H. 651; 18 H. 625; 19 H. 47 and 334; 21 H. 441); 235 U.S. 342 (rev. 201 Fed. 224; see 3 U.S.D.C. Haw. 575; 11 H. 47; 15 H. 308); 239 U.S. 502 (aff. 21 H. 756); 210 U.S. 154 (aff. 17 H. 45); 214 U.S. 108 (aff. 18 H. 265); 226 U.S. 462 (aff. 20 H. 138); 233 U.S. 70 (aff. 20 H. 132); 252 Fed. 809 (aff. 22 H. 488); 239 Fed. 450 (aff. 23 H. 338); 239 Fed. 839 (aff. 22 H. 753); 240 Fed. 97 (aff. 22 H. 465); 242 Fed. 446 (aff. 23 H. 38); 250 Fed. 147 (aff. 23 H. 575); 250 Fed. 612 (aff. 23 H. 457); 255 Fed. 736 (aff. 23 H. 747); 242 U.S. 612 (aff. 21 H. 699); 269 Fed. 751 (aff. 25 H. 438); 270 Fed. 749 (aff. 24 H. 787); 272 Fed. 856 (aff. 25 H. 357); 281 Fed. 612 (aff. 26 H. 177); but see 267 Fed. 522 (rev. 25 H. 38); 283 Fed. 731 (aff. 25 H. 739); 289 Fed. 670 (aff. 26 H. 299); 290 Fed. 146 (aff. 26 H. 557); 291 Fed. 721 (aff. 26 H. 290); 295 Fed. 636 (aff. U.S.D.C. Haw., and following 25 H. 297); but see 9 F.2d 340 (rev. 28 H. 99); 8 F.2d 845 (aff. 28 H. 197); 10 F.2d 474 (aff. 28 H. 232); 16 F.2d 273 (aff. 29 H. 258); 27 F.2d 582 (rev. 29 H. 770); 31 F.2d 641 (aff. 30 H. 500); 35 F.2d 943 (aff. 30 H. 565); 36 F.2d 159 (aff. 30 H. 685); 47 F.2d 869 (aff. 31 H. 264, 295); 52 F.2d 356 (aff. 31 H. 376); 52 F.2d 411 (aff. 31 H. 625); 59 F.2d 681 (aff. 31 H. 1); 61 F.2d 598 (aff. 32 H. 32); 61 F.2d 896 (aff. 31 H. 781, 787); 66 F.2d 929 (aff. 32 H. 246).

See also, 78 F.2d 720; 79 F.2d 761; 105 F.2d 286; 132 F.2d 374; 312 U.S. 630; 313 U.S. 487, 498; 314 U.S. 63.

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

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

Honolulu is a Pacific port of the United States within tariff act allowing a drawback on coal used on steamers engaged in trade between Atlantic and Pacific ports of United States: 24 Ops. 6. See also §§93, 98, of this act; also Chronological Note of Acts Affecting Hawaii for other legislation by Congress relating to customs and kindred subjects; and note to Joint Resolution of Annexation, as to customs duties between annexation and the establishment of Territorial government in RLH 1955.

Honolulu is a "port or place in the United States" within the meaning of the shipping act. 36 Ops. 352.

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CHAPTER VI.
MISCELLANEOUS

§89. Wharves and Landings. The wharves and landings constructed or controlled by the Republic of Hawaii on any seacoast, bay, roadstead, or harbor shall remain under the control of the government of the Territory of Hawaii, which shall receive and enjoy all revenue derived therefrom. [Am June 29, 1954, c 418, 68 Stat 323]

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

The Act of December 22, 1942, c 803, 56 Stat 1071, authorizes federal departments and agencies to pay the Territory "the reasonable value, as determined by the department or agency concerned," of the use of such property, notwithstanding this section, during the period from Jan. 1, 1942 until 6 mo. after end of war, unless sooner terminated by Congress.

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

Hawaiian currency: See Act of Jan. 14, 1903, c 186, 32 Stat 771, 48 U.S.C.A. 513-517.

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§91. That, except as otherwise provided, the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight, shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the Governor of Hawaii. And any such public property so taken for the uses and purposes of the United States may be restored to its previous status by direction of the President; and the title to any such public property in the possession and use of the Territory for the purposes of water, sewer, electric, and other public works, penal, charitable, scientific, and educational institutions, cemeteries, hospitals, parks, highways, wharves, landings, harbor improvements, public buildings, or other public purposes, or required for any such purposes, may be transferred to the Territory by direction of the President, and the title to any property so transferred to the Territory may thereafter be transferred to any city, county, or other political subdivision thereof, or the University of Hawaii by direction of the governor when thereunto authorized by the legislature; Provided, That when any such public property so taken for the uses and purposes of the United States, if instead of being used for public purpose, is thereafter by the United States leased, rented, or granted upon revocable permits to private parties, the rentals or consideration shall be covered into the treasury of the Territory of Hawaii for the use and benefit of the purposes named in this section. [Am May 27, 1910, c 258, §7, 36 Stat 447; June 19, 1930, c 546, 46 Stat 789; Aug. 21, 1958, Pub L 85-719, 72 Stat 709]

See §1489 of title 48 of U.S. Code for the Act of Mar. 27, 1934, c 99, 48 Stat 507, providing against loss of title of U.S. land.

See the Joint Resolution of Annexation and the note thereto, in regard to ceded public lands, RLH 1955, page 13; see Chronological Note of Acts Affecting Hawaii for Acts of Congress, presidential proclamations, and executive orders, RLH 1955, page 9; see also notes to §73. For transfers made by the Governor, see notes to this section in R.L. 1925 and R.L. 1935 and the records of the commissioner of public lands.

See §73(q) re further power of the Governor to set land aside for use of United States.

Nature of authority granted Territory. 66 F. Supp. 782.

Under the original §, the Territory could not sell ceded movable property: 25 Ops. 523 (tugboat); but previous sales were ratified and further sales authorized by an Act of May 26, 1906 (34 Stat 204). The title of the government to the crown lands cannot be questioned by the courts: 18 H. 651; 18 H. 645; 20 H. 548. The Territory may maintain a bill for an injunction to remove obstructions to public rights of the shore outside of high water mark: 16 H. 376. Setting aside land for a naval reservation does not deprive the Territorial courts of jurisdiction over misdemeanors committed thereon against local laws: 19 H. 200. (See also 23 H. 63; 4 U.S.D.C. Haw. 466; notes to §§2, 55, and 86.) Referred to in 15 H. 367; 16 H. 245; 21 H. 144; 217 U.S. 244; 1 U.S.D.C. Haw. 95. See also 25 Ops. 225; 150 F.2d 1016.

Palmyra Island was part of the land ceded to the U.S. by Hawaii, 133 F.2d 743. However, for claim of private ownership based on presumption of lost grant, see 156 F.2d 756, aff'd 331 U.S. 256.

Sand Island, created by the deposit of spoil on submerged land, is subject to the provisions of this section and after having been set aside by the President for military purposes could be transferred by him to the Treasury Dept. 39 Ops.

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§92. Salaries, certain officers. That the following officers shall receive the following annual salaries, to be paid by the United States: The governor, \$15,000; the secretary of the Territory, \$5,400; the chief justice of the Supreme Court of the Territory, \$10,500; the associate judges of the Supreme Court, \$10,000 each; the judges of the Circuit Court for the First Circuit of the Territory of Hawaii the sum of \$7,500 and, to each of the judges of the Second, Third, Fourth and Fifth Circuits of the Territory of Hawaii the sum of \$7,000. The governor shall receive annually from the United States, in addition to his salary, (1) the sum of \$1,000 for stationery, postage, and incidentals, and (2) his traveling expenses while absent from the capital on official business. The governor is authorized to employ a private secretary who shall receive an annual salary of \$3,000 to be paid by the United States. [Am May 27, 1910, c 258, §8, 36 Stat 448; July 9, 1921, c 42, §314, 42 Stat 120; May 29, 1928, c 904, §§1, 2, 45 Stat 997; Oct. 15, 1949, c 695, §5(a), 63 Stat 880; rep March 18, 1959, Pub L 86-3, §14(e), 73 Stat 4]

See §80, salaries of justices of supreme court and circuit courts not to be diminished during their term of office. But see 307 U.S. 277. See §86 for salaries of U.S. judges and see note thereto re other salaries.

Retirement of judges of supreme court and U.S. District Court of Hawaii is provided for by the Act of May 31, 1938, c 301, 52 Stat 591, 48 U.S.C.A. §§634b, 634c.

Salary of Secretary of Hawaii, see RLH 1955, appendix, note 1A.

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

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

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§94. Investigation of fisheries. That the Commissioner of Fish and Fisheries of the United States is empowered and required to examine into the entire subject of fisheries and the laws relating to the fishing rights in the Territory of Hawaii, and report to the President touching the same, and to recommend such changes in said laws as he shall see fit.

A number of volumes and pamphlets have been published on these fisheries and laws by the Commissioner. Referred to in 21 H. 632, 633.

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

Fishing rights covered by land commission awards or held under the early laws of Hawaii, are vested rights under this §: 194 U.S. 154, 31 L.R.A. (N.S.) 397 (reversing 14 H. 465); 200 U.S. 255; 16 H. 308. Requirement that fishing right be established as provided in §96 in order to be valid, is constitutional. 35 H. 608. Fisheries in streams are not covered by this § though the fish come from the sea: 18 H. 462. Fisheries free to citizens and alien residents alike before this Act continued so afterwards: 3 U.S.D.C. Haw. 227. This § repealed the penal remedy provided for in §482, R.L. 1905: 16 H. 307. This § does not prevent the requirement of a license fee for fishing for profit with a boat of more than a certain width: 19 H. 643. Congress did not reserve exclusive control over the sea fisheries of the Territory: 21 H. 39 (Ann. Cas. 1915A 1155); 21 H. 631; 31 H. 678.

Referred to in 39 H. 129.

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

That if such fishing right be established the attorney-general of the Territory of Hawaii may proceed, in such manner as may be provided by law for the condemnation of property for public use, to condemn such private right of fishing to the use of the citizens of the United States upon making just compensation, which compensation, when lawfully ascertained, shall be paid out of any money in the treasury of the Territory of Hawaii not otherwise appropriated.

Action provided for is not an action to quiet title to real property; may be brought in circuit different from that in which fishery is: 18 H. 460. Referred to in 21 H. 632; 205 U.S. 353; 39 H. 129; 41 H. 597.

Jurisdiction of court does not include power to adjudicate title to submerged land. 48 H. 152, 397 P.2d 593.

See note to §95.

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§97. Quarantine. The health laws of the government of Hawaii relating to the harbor of Honolulu and other harbors and inlets from the sea and to the internal control of the health of the islands shall remain in the jurisdiction of the government of the Territory of Hawaii, subject to the quarantine laws and regulations of the United States. [Am July 1, 1944, c 373, §611, 58 Stat 714]

Quarantine station and grounds thus transferred included only the island known as Kamokuakulikuli and not tracts on Sand and Quarantine Islands set aside for military purposes by executive order of Nov. 24, 1920, which therefore was valid; 33 Ops. 409. Referred to in 13 H. 21.

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§98. That all vessels carrying Hawaiian registers on the twelfth day of August, eighteen hundred and ninety-eight, and which were owned bona fide by citizens of the United States, or the citizens of Hawaii, together with the following-named vessels claiming Hawaiian register, Star of France, Euterpe, Star of Russia, Falls of Clyde, and Willscott, shall be entitled to be registered as American vessels, with the benefits and privileges appertaining thereto, and the coasting trade between the islands aforesaid and any other portion of the United States, shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts.

See also §88 of this act. On authority to register Hawaiian vessels after annexation and before this act, see note to Joint Resolution of Annexation, RLH 1955, page 13. For special act for register of barkentine "Hawaii," see 32 Stat 35. On issuance of register to American citizen of Chinese birth, see note to §4. Referred to in 182 U.S. 397 and 105 Fed. 78, to show that "coasting trade" is not limited to interior waters or contiguous coast. Referred to in 23 Ops. 416; 24 Ops. 7.

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

Compare Const. of 1894, Art. 95. In view of this §, the title of the government to crown lands cannot be questioned by the courts: 18 H. 645; 18 H. 651; 20 H. 548. When monarchy ceased, crown lands became part of the public domain, irrespective of this § or the corresponding § of the Const. of 1894, and no equitable interest remained in retiring queen: 45 C. Cls. R. 418; if there were any trust it was denied by this §, and the statute of limitations (six years) began to run: Id. Referred to in 16 H. 245. See note to §73.

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§100. All records relating to naturalization, all declarations of intention to become citizens of the United States, and all certificates of naturalization filed, recorded, or issued prior to the taking effect of the naturalization Act of June twenty-ninth, nineteen hundred and six, in or from any circuit court of the Territory of Hawaii, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this Act further validated or legalized. [Am May 27, 1910, c 258, §9, 36 Stat 443; Oct. 14, 1940, c 876, §504, 54 Stat 1137, 1172]

Territorial circuit courts were held to have jurisdiction to naturalize even before the general naturalization act of June 26, 1906, which clearly conferred such jurisdiction: 17 H. 295; 211 U.S. 146. The first paragraph of this § as originally enacted (see RLH 1935) may have been unconstitutional because not "an uniform rule:" 162 Fed. 470; it has been repealed by implication by the general naturalization act above referred to: Id, overruling 3 U.S.D.C. Haw. 191, and it was specifically repealed Oct. 14, 1940. Referred to in 13 H. 21. See §4 and note thereto; also citizenship and immigration cases in note to RLH 1955, §57-43.

Certificates of naturalization granted by the U.S. District Court for Hawaii between January 1, 1919 and July 1, 1922, validated "insofar as failure of the record to contain final order under the hand of the court is concerned" by the Act of June 29, 1938, c 822, 52 Stat 1249. Referred to in 236 F.2d 622.

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§101. That Chinese in the Hawaiian Islands when this Act takes effect may within one year thereafter obtain certificates of residence as required by "An Act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, as amended by an Act approved November third, eighteen hundred and ninety-three, entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May fifth, eighteen hundred and ninety-two," and until the expiration of said year shall not be deemed to be unlawfully in the United States if found therein without such certificates: Provided, however, That no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands. [Rep Dec. 17, 1943, c 344, 57 Stat 600]

A Chinese who left Hawaii with a return permit after annexation and before this act took effect and did not return before this act took effect, was not within the provisions of this § and could not thereafter return: 1 U.S.D.C. Haw. 1. A Chinese domiciled in the U.S. and coming to Hawaii as a seaman on an American vessel from an American port cannot be excluded: 1 U.S.D.C. Haw. 15. Chinese exclusion laws apply to Hawaii: 1 U.S.D.C. Haw. 49. The right of a Chinese woman to land depends on her status on arrival and is not affected by her marriage after arrival: 1 U.S.D.C. Haw. 113. Provision excluding Chinese laborers does not apply to citizen born in Hawaii after April 30, 1900, 31 F.2d 407. Chinese holding certificates in the U.S. may go to Hawaii, but quaere, whether they may return to the U.S. from Hawaii; "therein" in this § refers to Hawaii; 23 Ops. 487. The provision making it a misdemeanor to aid the landing of Chinese in the U.S. from other countries is extended so as to apply to landings from Hawaii on the mainland: 3 U.S.D.C. Haw. 87. See §4 and note thereto; also Joint Resolution of Annexation and note thereto, RLH 1955, page 13, and general immigration act and note to RLH 1955, §57-43.

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

Referred to in 13 H. 21. See also the Act of May 19, 1908, c 175, 35 Stat 165.

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

See also Act of May 19, 1908, c 175, 35 Stat 165. Hawaiian currency: See note to §90.

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

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§105. That no person shall be employed as a mechanic or laborer upon any public work carried on in the Territory of Hawaii by the Government of the United States, whether the work is done by contract or otherwise, unless such person is a citizen of the United States or eligible to become such a citizen. [Add July 9, 1921, c 42, §315, 42 Stat 120]

The Act of January 2, 1942, c 646, 55 Stat 881, authorized the employment of nationals of the United States for certain federal public work in Hawaii during the national emergency declared by the President on May 27, 1941.

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§106. The board of harbor commissioners of the Territory of Hawaii shall have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the Territory of Hawaii relative to the control and management of the shores, shore waters, navigable streams, harbors, harbor and water-front improvements, ports, docks, wharves, quays, bulkheads, and landings belonging to or controlled by the Territory, and the shipping using the same, and shall have the authority to use and permit and regulate the use of the wharves, piers, bulkheads, quays, and landings belonging to or controlled by the Territory for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor, and, subject to all applicable provisions of law, to fix and regulate from time to time rates for services rendered in mooring vessels, charges for the use of moorings belonging to or controlled by the Territory, rates or charges for the services of pilots, wharfage, or demurrage, rents or charges for warehouses or warehouse space, for office or office space, for storage of freight, goods, wares and merchandise, for storage space for the use of donkey engines, derricks, or other equipment belonging to the Territory, under the control of the board, and to make other charges, including toll or tonnage charges on freight passing over or across wharves, docks, quays, bulkheads, or landings. The Board shall likewise have power to appoint, subject to the Territorial laws of Hawaii relating to the civil service of Hawaii, clerks, wharfingers, and their assistants, pilots and pilot-boat crews, and such other officers and employees as may be necessary; to make rules and regulations pursuant to this section and not inconsistent with law; and generally shall have all powers necessary to carry out the provisions of this section. All officers and employees appointed pursuant to this section shall be subject to the Territorial laws of Hawaii relating to the civil service of Hawaii.

All moneys appropriated for harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the board, subject to the provisions of law. All contracts and agreements authorized by law to be entered into by the board shall be executed on its behalf by its chairman.

The board shall prepare and submit annually to the governor a report of its official acts during the preceding year, together with its recommendations as to harbor improvements throughout the Territory. [Add July 9, 1921, c 42, §315, 42 Stat 120; am Aug. 14, 1958, Pub L 85-650, §1, 72 Stat 606]

Power to impose tolls, 31 H. 372. This board was created by an act of the territorial legislature in 1911. See HRS §266-1. This act, as amended, was ratified by Congress by the Act of March 28, 1916, 39 Stat 39. As to the origin of §106 supra see S. Con. R. 11, Senate Journal, 1919, p. 1027, and H.R. 7632, introduced in Congress July 21, 1919. Cong. Rec. v. 58, pt. 3, p. 2977, but not passed.

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§107. That this Act may be cited as the "Hawaiian Organic Act." [Add July 9, 1921, c 42, §315, 42 Stat 121]

The act of July 9, 1921, 42 Stat c. 42, contains four titles. Title 2 comprising §§201-223, is the Hawaiian Homes Commission Act, 1920, (following State Constitution). Title 3, comprising §§301-315, consists of amendments of the Organic Act. Title 1, comprising §§1-2, and Title 4, comprising §§401-402, are as follows: Section 1. That this Act may be cited as the "Hawaiian Homes Commission Act, 1920." Section 2. That when used in this Act the term "Hawaiian Organic Act" means the Act entitled "An Act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended. Section 401. All Acts or parts of Acts, either of the Congress of the United States or of the Territory of Hawaii, to the extent that they are inconsistent with the provisions of this Act, are hereby repealed. Section 402. If any provision of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act and the application of such provision to circumstances other than those as to which it is held unconstitutional shall not be held invalidated thereby.

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