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Sketch of the Evolution of Florida Law

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SKETCH OF THE EVOLUTION OF FLORIDA LAW

On March 30, 1822, a Congressional enactment created the Territory of Florida.¹ This act vested the legislative powers in a governor and a Legislative Council of thirteen resident citizens, all appointed by the president of the United States with the advice and consent of the senate.²

I. COMMON LAW

In 1822 the Council repealed all "laws and ordinances" in force in the Territory prior to July 22 of that year.³ At the same time, it adopted the common law and general statutory law of England in effect "prior to" the fourth year of the reign of James I of England.⁴ In all probability this year was selected because of its chronological relation to the first permanent English settlement in North America,⁵ although it is apparent that the exact dates were not carefully analyzed.⁶

The 1822 Act continued in force until June of 1823, when the Council provided that, with certain minor exceptions included in the enactment, the common and statute law of England of a general and not of a local nature down to July 4, 1776, should be in effect in the Territory, unless inconsistent with the Constitution and laws of the

¹8 STAT. 654 (1822).

²*Ibid.*

³Fla. Terr. Act of Sept. 2, 1822. The repealing provisions of this act were obviously aimed at ordinances; this was the first session of the Council, and it could not repeal federal laws in effect in the Territory in any event. The repeal abrogated, *inter alia*, the Spanish civil law in force prior to the cession by Spain, with the exception that grants made by King Ferdinand or his lawful authorities prior to January 24, 1818, were recognized by the United States pursuant to the Treaty of Amity, Settlement and Limits, Art. VIII, 8 STAT. 252, 258 (Feb. 22, 1819).

⁴Fla. Terr. Act of Sept. 2, 1822; 4 James I ended March 23, 1607, since his reign began March 24, 1603.

⁵*See, e.g.,* Penny v. Little, 3 SCAM. 301, 304 (Ill. 1841). The colonists landed May 31, 1607, and founded Jamestown, Va.; *e.g.,* 3 WINSOR, ENGLISH EXPLORATION AND SETTLEMENTS IN NORTH AMERICA 126 (1884).

⁶*See* notes 4, 5 *supra*. The period "prior to" 4 James I ended March 23, 1606, over 14 months before the founding of Jamestown.

United States or the acts of the Legislative Council.⁷

As of January 1, 1829, all territorial statutes were repealed with the exception of eighty-two specifically designated,⁸ yet neither the Act of 1822 nor that of 1823 was among those retained. Presumably upon the discovery of this unwitting repeal of all Territorial common law,⁹ another act was promptly passed, eleven months after the repeal, reenacting substantially the Act of 1823.¹⁰ These 1829 provisions remain in effect today.¹¹

II. CONSTITUTIONS

A Territorial Convention, which met in Saint Joseph in December of 1838, framed a constitution, although this did not become effective until the admission of Florida into the Union seven years later.¹² Prior to 1845 the organic law of the Territory was, of course, the Constitution of the United States.

In 1861 Florida, following the lead of South Carolina and Alabama, adopted the Ordinance of Secession¹³ and amended its Constitution of 1838 in such a way that it could function as a part of the Confederacy.¹⁴

Upon the dissolution of the Confederate Government at the close

⁷Fla. Terr. Act of June 29, 1823.

⁸Fla. Terr. Act of Nov. 23, 1828.

⁹There was, of course, at this time a federal common law effective in the Territory. Over a century later, however, in *Erie R. R. v. Tompkins*, 304 U. S. 64 (1913), the Supreme Court of the United States suddenly discovered that the federal common law had never existed.

¹⁰Fla. Terr. Act of Nov. 6, 1829. A thorough treatment of this matter is contained in an unpublished manuscript of James W. Day, of the faculty of the College of Law, University of Florida.

¹¹FLA. STAT. §§2.01, 2.02 (general); 775.01, 775.02 (crimes) (1949). The latter two sections are derived from a modified form of the original Fla. Terr. Acts of Sept. 2, 1822, and Nov. 6, 1829, as amended by Fla. Terr. Act of Feb. 10, 1832.

¹²5 STAT. 742 (March 3, 1845). The convention did not complete its draft until Jan. 11, 1839, and adoption came still later; but this constitution is popularly referred to as that of 1838, or alternatively as that of 1845.

¹³The Ordinance of Secession was adopted on Jan. 10, 1861, by a convention called for this purpose.

¹⁴Accurately speaking, the convention merely amended the Constitution of 1838, but in practice the resulting document is generally referred to as the Constitution of 1861; cf. WHITFIELD'S NOTES, reprinted in 3 FLA. STAT. 81, 150 (1941).

of the War Between the States, the military governor, in furtherance of the presidential plan of restoring Florida to the Union, called a constitutional convention. On October 28, 1865, this body repealed the Ordinance of Secession and adopted a constitution, effective November 7, 1865, but not submitted to the people for ratification.¹⁵ Inasmuch as the delegates to this convention were largely ex-Confederates,¹⁶ the provisions of the new instrument were less drastic than those desired by the Republicans then in control of federal policy.¹⁷

This dissatisfaction was reflected in Congressional action; a statute was promptly passed, over the veto of President Johnson, declaring that no legal government existed in Florida and requiring a return to military rule until such time as a new constitutional convention could be conducted under military auspices.¹⁸ Pursuant to this mandate delegates were chosen,¹⁹ in an election in which a large number of recently emancipated slaves participated despite the fact that both the Fourteenth and the Fifteenth Amendments to the Constitution of the United States had not as yet been adopted.²⁰ The Constitution of 1868 followed, embodying all the salient features of the Congressional plan of reconstruction.²¹

The result, however, was too much for true Floridians to tolerate for long, especially in view of the conditions under which this constitution was promulgated. A further source of friction existed in those provisions authorizing gubernatorial appointment of county as well as state officers.²² The widespread dissatisfaction with this form of executive centralization led to our Constitution of 1885, which, as amended approximately one hundred times, constitutes the present organic law of Florida.

¹⁵*Id.* at 163.

¹⁶DAVIS, *THE CIVIL WAR AND RECONSTRUCTION IN FLORIDA* 361 (1913).

¹⁷CONG. GLOBE, 39th Cong., 1st Sess. 313 (1865); DAVIS, *op. cit. supra* note 16, at 365.

¹⁸14 STAT. 428 (March 2, 1867); *cf.* Whitfield, *Florida's First Constitution*, 17 FLA. HIST. Q. 83 (1938).

¹⁹The elected delegates numbered 46: 2 were ex-Confederates; 18 were Negroes, 3 of whom were actually residents of states other than Florida; and the rest were a collection of carpet-baggers and scalawags; *cf.* DAVIS, *op. cit. supra* note 16, at 493.

²⁰The former was ratified in 1868; the latter, in 1870.

²¹DAVIS, *op. cit. supra* note 16, at 511.

²²FLA. CONST. Art. V, §19; Art. VI, §15 (1868).

III. STATUTES

In 1839 appeared the *Compilation of the Public Acts of the Legislative Council of the Territory of Florida*, by John P. Duval, the first systematic collection of Florida statutes. Eight years later Judge Leslie A. Thompson²³ published *A Manual or Digest of the Statute Law of the State of Florida*, a compilation containing marginal notes and omitting much of the superfluous wording in the existing general statutes. Over twenty years elapsed before another compilation was undertaken; but in 1872 *A Digest of the Statute Law of Florida*, by Allen H. Bush, was printed, followed nine years later by James F. McClellan's *A Digest of the Laws of the State of Florida*.

Eleven years thereafter the first revision was published. Only three of these preceded Florida Statutes, 1941. The first, in 1892, was *The Revised Statutes of the State of Florida*; *The General Statutes of the State of Florida* followed in 1906; and, after another fourteen-year interval, *The Revised General Statutes of Florida* appeared in 1920.²⁴ Each of these revisions was fortified by an act reenacting the laws of a general and permanent nature included therein, and at the same time repealing all general and permanent statutes or portions of statutes omitted therefrom unless recognized by reference as continuing in force. Local laws were not affected, of course, nor were statutes passed at the legislative session that adopted the revision; but any laws amendatory of those omitted from the revision were of no effect, even though passed at the adopting session.

All three revisions were annotated, and their arrangement of the laws was similar. There were five major divisions: (1) political and civil organization of the state; (2) civil courts; (3) estates of decedents; (4) real and personal property; and (5) crimes and criminal procedure. The subdivisions retained the same titles in each of these revisions, the only difference being that a few new titles were added in the later ones. Since the section numbers differed in each revision, the sections included were accompanied by parenthetical references to their respective section numbers in the immediately preceding revision.

²³Judge Thompson also completed in 1853 his *BRITISH STATUTES IN FORCE IN THE STATE OF FLORIDA*, reprinted, as edited and annotated by Botts, in 3 *FLA. STAT.* 1 (1941).

²⁴This revision is always referred to as that of 1920, although technically it was adopted by the Legislature on June 9, 1919, and did not become effective until Feb. 6, 1921.

Meanwhile unofficial compilations were being published.²⁵ The next authorized publication, however, which followed the third revision by seven years, was the *Compiled General Laws of Florida, 1927*. All sections were renumbered, in order to cover the many new laws enacted after the 1920 revision; and one table indicated where the 1920 sections still in force could be found in the 1927 compilation, while another showed where the general session laws enacted after 1920 could be found. Supplements to this work were issued in 1936 and 1940, the latter being cumulative; and the annotations were brought down to date in both the original volume and the supplements.

The fourth revision, *Florida Statutes, 1941*, was printed in three volumes and became effective in July 1942. This was the first edition of a program of biennial revision adapted from the Wisconsin Plan. Before the second biennial revision could be published, however, World War II interfered, with the result that resort to supplements again became necessary.

In Volume I of *Florida Statutes, 1941*, which contained the statutes themselves, the logical plan of organizing chapters and sections was used in placing related chapters in consecutively numbered series, with many numbers left vacant at suitable points for assignment to future chapters in the same general field. Within each chapter all pertinent general laws, stripped of much of their verbiage, were gathered and assigned section numbers. The new decimal system of numbering statutes by chapter to the left of the decimal, and by section to the right, was inaugurated in this revision. After available numbers are all used, new chapters can readily be inserted by the addition of a capital letter preceding the most closely related chapter number, while sections are expanded by adding another numeral at the end of the nearest appropriate section number. Thus the renumbering of old sections, with the inevitable reference tables, is avoided.

The general index in the 1941 revision combined two methods of indexing: the descriptive word index; and comprehensive titles as main headings, with component parts indexed thereunder. Cross-references were also included in this index.

Volume II of *Florida Statutes, 1941*, set forth the legislative history

²⁵There were several of these: *Akers' STATUTE LAWS*, appearing in 1902; *THE COMPILED LAWS 1914 OF THE STATE OF FLORIDA*, printed by West Publishing Co.; and *FLORIDA CUMULATIVE STATUTES*, by T. J. and H. A. Michie, 1925.

of the statutes, the revision notes, the annotations to the statutes, the current state court rules and the Constitutions of the United States and of Florida. It also included tables showing the numbers of sections still in effect as these appeared in the 1920 revision, in the 1927 compilation, and in the subsequent general session laws. Historical notes and other useful matter were placed in Volume III.

In 1949 the Legislature reestablished the biennial revision plan, originally adopted in 1941 but abandoned during the recent war. The Statutory Revision Department, under the over-all supervision of the Attorney General, was created for the specific purpose of revising our statutes constantly; its first major task was to prepare a new revision, Florida Statutes 1949.²⁶ The work is being done rapidly and well. The new revision will consist of three volumes similar in many respects to those of Florida Statutes, 1941. Volume I is already in print; and a temporary supplement to Volume II, including the annotations from 1947 through 1949, will be published for interim use until Volume II is revised in its entirety.

Volume I is paged consecutively throughout, but for convenience is bound in two books. It adopts the desirable features of Florida Statutes, 1941, and also makes several laudable innovations. The legislative history notes, which appeared in Volume II of Florida Statutes, 1941, have been revised to date and can now be found with the statute itself. The Florida Constitution, as amended through 1948, has been indexed separately as well as in the general index. The general index has been revised, and new catch-words and title-words have been added. The many useless cross-references have been eliminated; in their stead, wherever possible, are direct references to the chapters and sections actually involved. No section in force has been omitted from the index; and every section has been indexed under several heads, if pertinent thereto.

The original decimal system of numbering sections has been retained, with one improvement. For a new section inserted between two existing sections, the hyphen formerly resorted to has been eliminated. Now, for example, section 25.12-1 would be correctly cited as 25.121. A number in parentheses immediately following a section number still denotes a subsection, of course.

As in Florida Statutes, 1941, chapters relating to the same general

²⁶See, in general, Ervin, *Florida Statutes of 1949*, 23 FLA. L. J. 272 (1949); Henderson, *The New Florida Statutes—What—When—and How Much*, 23 FLA. L. J. 348 (1949).

topic are grouped together under appropriate titles and are indexed in the Analysis of Florida Statutes by Titles and Chapters; this latter also shows whether a chapter has been repealed or has expired. Chapters retain their former numbers with minor exceptions, made for reasons of proper topical relation;²⁷ and at the beginning of each chapter there is an index to its own sections. A section repealed is omitted, but its former number appears, with history notes of the authorization for its deletion. As a general plan, new matter is assigned a new section number rather than the old number of a deleted section.

A tracing table showing the section numbers in Florida Statutes 1949 assigned to the 1949 general session laws has been included, along with current tables of the various Florida courts and the new standard mortality tables. Volume I also contains the Supreme Court Rules of Practice and the 1950 common law and equity rules recently promulgated by the Supreme Court of Florida for use in all lower courts of record in civil proceedings.²⁸

All statutes in the 1949 revision through 1947 have been officially adopted as the statutory law of Florida. The general laws enacted at the regular and special sessions of 1949 are also included; but, as printed in this revision, they are merely *prima facie* evidence of the existing laws until the 1951 Legislature formally adopts them in their revised form. Meanwhile, as regards 1949 enactments, the general session laws themselves²⁹ remain the official legislative expression.

It is the objective of this statutory revision plan not only to improve content by eliminating obsolete, repealed, and amended sections but also to speed up publication, to focus attention on conflicts and inconsistencies, to save the practitioner time and effort in his search for the law currently in effect, and to keep the organic and statutory law of Florida constantly up to date at a reasonably low cost.

IV. REPORTS

Our recent progress has extended even to the reporting of decided cases. The Supreme Court of Florida and the Board of Commissioners

²⁷C. 481 has been changed to 447; c. 39 to 454; c. 485 to 455.

²⁸For a thorough exposition see Wigginton, *New Florida Common Law Rules*, 3 U. OF FLA. L. REV. 1 (1950).

²⁹These are printed and distributed under the direction of the secretary of state after each session of the Legislature, pursuant to FLA. STAT. §§283.12, 283.25 (1949).

of State Institutions of Florida have now adopted the Southern Reporter as the official publication of the decisions and opinions of our Supreme Court. This system brings the separate Florida Reports to an end with Volume 160, containing most of the cases decided in 1948 through December 21, and begins with page 692 of Volume 37 of Southern Reporter, Second Series, as the official reports for Florida. Gone at last are the tedious waiting for the official reports, the inevitable discrepancies between the earlier unofficial reports and the much later official ones, the needless duplication in printing resulting in higher cost per copy, the tremendous waste of time involved in checking what should be—but all too frequently is not—the same phraseology in two sets of books, and the squandering of space for citations on two references when one serves the purpose equally as well. West Publishing Company is printing separate volumes of the Florida decisions and opinions alone, under the title *Florida Cases*,³⁰ using the pagination of the Southern Reporter for these. Regardless of whether the separate volumes or those of the Southern Reporter are used, the citation is the same.

This procedure constitutes another major stride toward the goal of furnishing the Florida practitioner with his basic material promptly, in accurate form, and at a minimum of expense.

GEORGE A. DIETZ

³⁰The first volume of Florida cases covers the major portion of those decided in 1949, as well as those decided in 1948 that are not reported in Volume 160 of the Florida Reports or, as regards the earliest 1948 cases, in Volume 159.

A chronological table of statutes will be found on the following page.

CHRONOLOGICAL TABLE

STATUTES

- 1839 Duval's Compilation of Territorial Laws.¹
- 1847 Thompson's Digest.¹
- 1872 Bush's Digest.¹
- 1881. McClellan's Digest.¹
- 1892 The Revised Statutes of the State of Florida.²
- 1906 The General Statutes of the State of Florida.²
- 1920 The Revised General Statutes of Florida (abbreviated R. G. S.).²
- 1927 Compiled General Laws of Florida, 1927 (abbreviated C. G. L.).¹
- 1936 Compiled General Laws of Florida, 1927, Permanent Supplement.¹
- 1940 Compiled General Laws of Florida, 1927, Permanent Cumulative Supplement.¹
- 1941 Florida Statutes, 1941.²
- 1943 Florida Statutes, 1941, Cumulative Supplement.²
- 1945 Florida Statutes, 1941, Cumulative Supplement.²
- 1947 Florida Statutes, 1941, Cumulative Supplement.²
- 1949 Florida Statutes 1949.³

CONSTITUTIONS

1838,⁴ 1861, 1865, 1868, 1885.

¹Compilation: an authorized collection of the general laws in force, edited, but only prima facie evidence of the law. The session laws are the primary authority. The exact titles of the early compilations are set forth in III *supra*; their customary abbreviated titles are used in this table.

²Revision: a collection of all general laws in force, edited, and reenacted into law.

³Revision through 1947 session laws; compilation of 1949 session laws; see discussion in III *supra*.

⁴Effective 1845; see discussion in II *supra*, especially note 12.