

## CHAPTER 8

### JURISDICTIONS CARVED FROM THE LOUISIANA AND FLORIDA PURCHASES

#### Orleans Territory – Louisiana

In 1803, the United States purchased from France the Province of Louisiana. The area would later be divided into the states of Louisiana, Arkansas, Missouri, Iowa, South Dakota, Nebraska, and Kansas, and part of the states of Oklahoma, Minnesota, North Dakota, Montana, Wyoming, and Colorado. Although France had originally colonized the area, it had been occupied by Spain from 1796 to 1803. After retrocession, effective French occupation lasted only from November 30, 1803, to December 20, 1803.<sup>1</sup>

On November 14, 1803, President Jefferson sent Congress a detailed Description of Louisiana, in which he described the laws in force as being "the laws of Spain and the ordinances formed expressly for the colony. . . ."<sup>2</sup> Jefferson's opinion was confirmed by the consistent attitude taken by the courts, first of Orleans Territory (including approximately the present state of Louisiana) and then of Louisiana. In 1817, the state supreme court stated: "In Spain, however, the laws of which were, and have continued to be ours. . . ."<sup>3</sup>

In the organic acts for Orleans territory, Congress continued in force these Spanish laws.<sup>4</sup> Upon organization as the state of Louisiana in 1812, the state constitution continued in effect "all laws now in force in this territory, not inconsistent with this constitution, shall continue and remain in full effect until repealed by the legislature."<sup>5</sup>

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1. The exact nature of the laws in force in the Louisiana Purchase at the date of acquisition by the United States is discussed by Brown, "Law and Government in the 'Louisiana Purchase': 1803-1804," 2 Wayne L. Rev. 169-89 (1956).

2. 10 American State Papers, 1 Miscellaneous 344 (1834).

3. *Cottin v. Cottin*, 5 Mart. O.S. 93 (1817). For a discussion of the conflict between diverse legal systems, see Brown, "Legal Systems in Conflict: Orleans Territory 1804-1812," 1 Am. J. Legal Hist. 35-75 (1957).

4. "An Act erecting Louisiana into two territories, and providing for the temporary government thereof," March 26, 1804, 2 Stat. 283; "An Act further providing for the government of the territory of Orleans," March 2, 1805, 2 Stat. 322.

5. Constitution of 1812, Schedule, § 4. See 3 Thorpe ed., Federal

However, on May 4, 1805, the Legislature made an important breach in the predominantly civilian character of the prevailing laws. As §33 of "AN ACT for the punishment of crimes and misdemeanors," it enacted the following provision:

All the crimes, offenses and misdemeanors herein before named, shall be taken, intended and construed according to and in conformity with the common law of England; and the forms of indictment (divested however of unnecessary prolixity), the method of trial, the rules of evidence and all other proceedings whatsoever in the prosecution of the said crimes, offenses and misdemeanors, changing what ought to be changed, shall be, except as is by this act otherwise provided for, according to the said common law.<sup>6</sup>

This 1805 adoption was construed by the Louisiana Court of Errors and Appeals in 1844 as bringing into force, first in Orleans Territory and later in the State of Louisiana, the common law of crimes as it existed in 1805, "modified, explained and perfected by statutory enactments." Applying this general principle, the court held that the statutes of 2 and 3 Edw. 6 and "the statute of Geo. 2" relative to venue were in force in Louisiana.<sup>7</sup>

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and State Constitutions, Colonial Charters, and Other Organic Laws 1380 at 1391 (1909) [hereinafter cited Thorpe].

6. "AN ACT For the punishment of crimes and misdemeanors," § 33, May 4, 1805, Acts of the Territory of Orleans 1804, 416, 440 (1805). This act was not popular among the non-American segments of the Louisiana population. Edward Livingston, despite his common law background, disapproved of this wholesale introduction of one area of the common law. See *The Complete Works of Edward Livingston on Criminal Jurisprudence* 91-92, 101, 122 (1873). Under legislative authorization in 1822 Livingston prepared a complete Code of Criminal Law and Procedure, but the code was never adopted in Louisiana. It was not until 1928 that a Code of Criminal Procedure was adopted which completely superseded the act of 1805. See Hubert, "History of Louisiana Criminal Procedure," 33 *Tulane L. Rev.* 739, 740-743 (1959).

7. *State v. McCoy*, 8 *Robinson (La.)* 545 (1844). In its opinion, the court stated:

"... It will not be contended that those principles and rules of the common law, which had been abrogated and had ceased to exist in England, previously to 1805, were introduced by our statute. On the other hand, the system would have been incomplete and inefficient for the purposes contemplated by the Legislature, if they had not adopted the substitutes established by Parliament, for the rules of the common law which had been abolished. . . .

"With this construction of our act, it may be considered that by the statute of 2 and 3 Edw. 6 [relating to venue], which is amendatory of the common law, it is as fully and definitively settled in this State, as though such a provision had been made by special legislative enactment,

Except for such English statutes and parts of the common law as could be brought into Louisiana law through the statute of 1805 — which was not completely superseded until the adoption in 1928 of a Code of Criminal Procedure — the laws in force in Orleans Territory were initially the laws of Spain and after 1808 were based on the Code Napeleon.<sup>8</sup> As noted earlier, these were continued in effect by the original state constitution of 1812.

Louisiana Territory — Missouri Territory — Missouri

"An Act erecting Louisiana into two territories, and providing for the temporary government thereof," approved March 26, 1804, divided the area included within the Louisiana Purchase into the territory of Orleans and the District of Louisiana.<sup>9</sup> In 1805, the District of Louisiana was organized as the territory of Louisiana, and in 1812, it was renamed the Missouri Territory.<sup>10</sup>

At the date of the French cession of Louisiana to the United States, Spanish laws were in force.<sup>11</sup> These laws were continued in force by the organic acts.<sup>12</sup> However, "An Act further providing

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that the venue in such cases, is in the parish where the death occurred.

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"The same reasons which have been urged for adopting the statute of Edw. 6, as part of our law in relation to venue, apply with equal force to the statute of Geo. 2. Both were passed for the purpose of explaining the common law, or of providing rules for the prosecution of criminals, in lieu of those which had grown in disuse, or which had been forgotten or become doubtful, or which experience had taught to be inconvenient and ineffectual."

Other cases construing and applying the 1805 statute include *Territory v. Nugent*, 1 Martin (La.) 108, 169 (1810), *State v. Kennedy*, 8 Robinson (La.) 590, 604-608 (1844), *State v. Foster*, 7 La. Ann. 255 (1852), *State v. Foster*, 8 La. Ann. 290 (1853), *State v. Smith*, 30 La. Ann. 846 (1878).

8. See Brown, "Legal Systems in Conflict: Orleans Territory 1804-1812." 1 Am. J. Legal Hist. 35, 57-59 (1957).

9. 2 Stat. 283.

10. "An Act further providing for the government of the district of Louisiana," March 3, 1805, 2 Stat. 331; "An Act providing for the government of the Territory of Missouri," June 4, 1812, 2 Stat. 743.

11. President Thomas Jefferson in 1804 noted with reference to this area ". . . at present the Spanish laws are in force there." 13 Carter ed., *The Territorial Papers of the United States* 19 (1934). In an early Missouri state case, *Lindell v. McNair*, 4 Mo. 380, 382 (1836), the court stated: "The laws of Spain, which prevailed here when the transfer from France to the United States was made. . . ."

12. "An Act erecting Louisiana into two territories, and providing for the temporary government thereof," March 26, 1804, 2 Stat. 283; "An Act further providing for the government of the district of Louisiana,"

for the government of the district of Louisiana," which in 1805 gave it a territorial form of government, provided for the appointment of three judges to "have the same jurisdiction which is possessed by the judges of the Indiana territory. . . .<sup>13</sup> — i.e., "a common law jurisdiction." In 1807 and 1810 there were further breaches in the civil law pattern,<sup>14</sup> while in 1816 the following enactment by the Missouri territorial legislature reflected the inrush of emigrants from the eastern states:

The common law of England, which is of a general nature, and all statutes made by the British parliament in aid of or to supply the defects of the said common law, made prior to the fourth year of James the first, and of a general nature, and not local to that kingdom, which said common law and statutes are not contrary to the laws of this territory, and not repugnant to, nor inconsistent with the constitution and laws of the United States shall be the rule of decision in this territory, until altered or repealed by the legislature, any law, usage or custom to the contrary notwithstanding, provided, however, that none of the British statutes respecting crimes and punishments shall be in force in this territory, nor shall any person be punished by common law, where the laws and statutes of this territory have made provision on the subject, but where the laws and statutes of the United States and this territory have not made provision for the punishment of offences, the several courts may proceed to punish for such offences. . . .<sup>15</sup>

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March 3, 1805, 2 Stat. 331; "An Act providing for the government of the Territory of Missouri," June 4, 1812, 2 Stat. 743.

13. 2 Stat. 331, § 4 provided: "There shall be appointed three judges who . . . shall possess the same jurisdiction which is possessed by the judges of the Indiana territory. . . ." The organic act for Indiana Territory, "An Act to divide the territory of the United States northwest of the Ohio into two separate governments," May 7, 1800, 2 Stat. 58, had re-enacted by reference the provision in the Northwest Ordinance ". . . There shall also be appointed a court to consist of three judges . . . who shall have a common-law jurisdiction. . . ."

14. "AN ACT establishing courts of justice and regulating judicial proceedings," July 3, 1807, § 68: ". . . The rules of the common law respecting evidence as adopted by the courts of the United States having common law jurisdiction shall govern the decisions of the courts of this territory in like cases." 1 Missouri Territorial Laws 105, 124 (1842). "AN ACT regulating the mode of judicial proceedings in certain cases, and extending certain powers to the general courts," October 26, 1810, § 1: "In all cases where a remedy cannot be had in the ordinary course of the common law proceedings, the General Court shall exercise a chancery jurisdiction. . . ." *Id.* at 239, 240. "AN ACT in addition to an act, entitled, 'An act to amend an act regulating the mode of judicial proceedings in certain cases and extending certain powers to the General Court,'" December 21, 1818, § 1, gave a similar jurisdiction to the circuit courts in each county. *Id.* at 608.

15. "AN ACT declaring what laws shall be in force in this territory," January 19, 1816. 1 Missouri Territorial Laws 436 (1842). See comment

The Missouri Constitution of 1820 continued in effect "All laws now in force . . . until they expire by their own limitations, or be altered or repealed by the general assembly."<sup>16</sup>

Thus the 1816 statute was continued in force<sup>17</sup> and has, with various modifications, continued in effect in that state until 1962.<sup>18</sup>

### Arkansas Territory

Arkansas Territory was carved out of Missouri Territory by "An Act Establishing the Territory of Arkansas," approved March 2, 1819.<sup>19</sup> The act provided for the continuance in the new territory of "all the laws which shall be in force in the Territory of Missouri, on the fourth day of July next, not inconsistent with the provisions of this Act, and which shall be applicable to the

by H. M. Brackenridge in a charge to a Florida grand jury in 1831 to the effect that a volume of the "digested Legislative acts of Missouri," available to him in 1822 during the first session of the Florida Legislative Council, "contained for the greater part, little more than the adaptation of the joint labours of Jefferson, Wythe and Madison, and some of the Pennsylvania Legislators, to the circumstances of the country. The act adopting the common and statute law of England, prior to the 4th of July 1776, was among the few which can be called original . . ." 24 Carter, ed., Territorial Papers of the United States, 309, 313 (1934).

16. Constitution of 1820, Schedule, § 2. See 4 Thorpe 2150 at 2165.

17. For cases construing the Act of January 19, 1816, and its successors see inter alia Lindell v. McNair, 4 Mo. 380 (1836), Baker's Adm'r v. Crandall et al., 78 Mo. 484 (1883), and Industrial Acceptance Corp. v. Webb., 287 S.W. 657 (Mo. App. 1926). See also Eckhardt, "Common Law, and Statute Law of England," 17 Mo. L. Rev. 398 (1952). In Baker v. Crandall, supra at 588, the court held that the statutes of 4 Ed. 3, c. 7 (relating to the survival of actions) and 31 Ed. 3, st. 1, c. 11 (relating to the administration of the goods of an intestate) constituted "a part of the common law."

18. At intervals in the intervening years, the act has been modified. Laws 1957, at 587, § 1, Missouri Revised Statutes § 1.010 (1949), provided as follows:

"The common law of England and all statutes and acts of parliament made prior to the fourth year of the reign of James the First, of a general nature, which are not local to that kingdom and not repugnant to or inconsistent with the Constitution of the United States, the constitution of this state, or the statute laws in force for the time being, are the rule of action and decision in this state, any custom or usage to the contrary notwithstanding, but no act of the general assembly or law of this state shall be held to be invalid, or limited in its scope or effect by the courts of this state, for the reason that it is in derogation of, or in conflict with, the common law, or with such statutes or acts of parliament; but all acts of the general assembly, or laws, shall be liberally construed, so as to effectuate the true intent and meaning thereof."

19. 3 Stat. 493.

Territory of Arkansas . . . until modified or repealed by the legislative authority thereof."

The new territory officially came into existence on July 4, 1819. Until December 28, 1819, the legislative power rested in the federally-appointed governor and three judges, who, on August 3, 1819, enacted a provision confirming the federal provision placing in force in Arkansas the laws "now in existence in the territory of Missouri. . . ." <sup>20</sup>

One of the laws in force in the territory of Missouri on July 4, 1819, was the statute of January 16, 1816 in which the Missouri legislature had declared:

The common law of England, which is of a general nature, and all statutes made by the British parliament in aid of or to supply the defects of the said common law, made prior to the fourth year of James the first, and of a general nature, and not local to that kingdom, which said common law and statutes are not contrary to the laws of this territory, and not repugnant to, nor inconsistent with the constitution and laws of the United States shall be the rule of decision in this territory, until altered or repealed by the legislature, any law, usage, or custom to the contrary notwithstanding, provided, however, that none of the British statutes respecting crimes and punishments shall be in force in this territory, nor shall any person be punished by common law, where the laws and statutes of this territory have not made provision for the punishment of offences, the several courts may proceed to punish for such offences . . . <sup>21</sup>

This statute continued in force in Arkansas Territory throughout the territorial period.<sup>22</sup> It was modified in 1837 by the General Assembly of the State of Arkansas to read:

SEC. 1. The common law of England, so far as the same is applicable and of a general nature, and all statutes of the British Parliament

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20. "AN ACT declaring what laws shall be in force in the Territory of Arkansas," August 3, 1819, Laws of the Territory of Arkansas 70 (1821).

21. "AN ACT declaring what laws shall be in force in this territory," January 19, 1816, 1 Missouri Territorial Laws 436 (1842). In commenting on this statute, the Arkansas Supreme Court in *Horsley et al. v. Hilburn et al.*, 44 Ark. 458 (1884) stated: "This statute remained to govern the subsequently formed territory of Arkansas, and was afterwards re-enacted as a part of the laws of the State, with some change of phraseology and grammatical arrangements." See also Egbert Harris to the Speaker of the House of Representatives, January 9, 1833, 21 Carter ed., Territorial Papers of the United States 593, 597 (1934) where an enclosed report stated passim, "The Common law of England regulates the subject of bail in the territory. . . ."

22. See Steele & McCampbell, eds., Laws of Arkansas Territory 130-31 (1835).

in aid of, or to supply the defects of the common law, made prior to the fourth year of James the First, (that are applicable to our own form of government,) of a general nature and not local to that kingdom, and not inconsistent with the constitution and laws of the United States, or the constitution and laws of this State, shall be the rule of decision in this State, unless altered or repealed by the General Assembly of this State.

SEC. 2. In cases of crimes and misdemeanors, committed in this State, the punishment of which has not been provided for by the statute, the court having the jurisdiction thereof, shall proceed to punish the offender under the provisions of the common or statute law of England, put in force in this State, by this act. . . .<sup>23</sup>

Section 1 of the 1837 act was in force in 1962 as §1-101, Arkansas Statutes.<sup>24</sup>

### Florida Territory

When Spain ceded to the United States in 1819<sup>25</sup> the area later to be organized as the Territory of Florida, the laws then in force were those of Spain.<sup>26</sup> Pending organization by Congress, Major-General Andrew Jackson was placed in charge as Governor of the Province of the Floridas, exercising the powers of the Captain General and Intendant of the Island of Cuba. On July 21, 1821, he promulgated an ordinance which provided in part:

. . . the judicial proceedings . . . shall be conducted in criminal cases, according to the course of the common law. . . .<sup>27</sup>

The organic act of March 30, 1822, continued in effect the laws

23. Act of December 9, 1837. Revised Statutes of the State of Arkansas, adopted at the October Session of the General Assembly of Said State, A.D. 1837, 182 (1838). Among the earlier cases referring to this statute are *Horsley et al. v. Hilburn et al.*, note 21, *supra*, *Biscoe v. Thweatt*, 74 Ark. 545, 86 S.W. 432 (1905), and *Moore v. Sharpe*, 91 Ark. 407, 414, dissent 421, 121 S.W. 341 (1909).

24. Arkansas Statutes § 1-101.

25. Treaty concluded February 22, 1819, proclaimed February 22, 1821. 2 Malloy ed., *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers 1776-1909*, 1651 (1910).

26. See *Heirs of Vidal v. John Innerarity*, 1821, *Annals of Congress*, 17th Cong., 1st Sess., 2328, 2334 (1855). See also letter from John Quincy Adams, Secretary of State, to Governor Andrew Jackson, October 26, 1821, *id.* at 2339, in which Adams referred to the laws ". . . of Spain, operating in the provinces. . . ." For a discussion of what laws of Spain were to be considered in force in the Floridas, see a report submitted to Jackson on July 26, 1821, by H. M. Breckenridge, newly appointed Alcalde of Pensacola, *id.* at 2540, 2544.

27. *Id.* at 2551, 2554. See also Thomas, *A History of Military Government in Newly Acquired Territory of the United States* 54-97 (1904).

then in force, that is, the laws of Spain as modified by Jackson's ordinance relating to criminal proceedings.<sup>28</sup>

The legislative body for the newly organized territory, the Legislative Council, convened in the summer of 1822. On September 2, it repealed all the laws and ordinance in effect in the territory of July 22, 1822.<sup>29</sup> Commenting on this act, in a concurring opinion in Menendez et al. v. Rodriguez, Justice Whitfield in 1932 stated:

"The laws and ordinances" that were repealed as above shown were the laws of Spain that were continued in force in the Floridas by the proclamation, and the ordinances promulgated in 1821, by Major General Andrew Jackson, Governor of the Provinces of the Floridas, pursuant to authority conferred by James Monroe, President of the United States, under an Act of Congress approved March 3, 1821, to carry into execution the Treaty with Spain ceding the Floridas to the United States. . . .<sup>30</sup>

While repealing all the laws then in force in the newly organized territory, the Legislative Council provided a substitute by enacting that

. . . the common law of England which is of a general nature, and all statutes of the British Parliament in aid of, or to supply the defects of the said common law made prior to the fourth year of James the first and of a general nature, and not local to the kingdom, which said common law and statutes are not inconsistent with the constitution and laws of the United States, and except as in this act, is hereafter excepted, together with the system of equity recognized and practised in the courts of Chancery in the U. States, shall be the rule of decision in this Territory, until altered or repealed by the Legislature thereof — Provided however that none of the British statutes respecting crimes and punishments shall be in force in this Territory, nor shall any person be punished by common law, where the laws and statutes of this Territory have made provision on the subject, but where the laws and statutes of the United States and of this Territory have not made provision for the punishment of offences, the several courts may proceed to punish for such offences . . . .<sup>31</sup>

The following year, however, by the Act of June 29, 1823, this provision was repealed and the following enacted:

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28. "An Act for the establishment of a territorial government in Florida," 3 Stat. 654.

29. "AN ACT Providing for the adoption of the Common Law, and certain Statutes of Great-Britain, and for repealing the Laws and Ordinances now in force," September 22, 1822, Acts of the Legislative Council of the Territory of Florida 1822, 53 (1823).

30. Menendez et al. v. Rodriguez, 106 Fla. 214, 219-20, 143 So. 223 (1932).

31. See note 29, supra.

. . . the common and statute law of England, which is of a general nature, with the exceptions hereinafter mentioned, down to [7-4-1776] . . . is hereby declared to be in force in this territory; Provided, the said common and statute law be not inconsistent with the constitution and laws of the United States, and the acts of the Legislative Council of this Territory—and Provided also, That none of the British statutes respecting crimes and misdemeanors, shall be in force in this territory. . . 32

In 1829, the Governor and Legislative Council repealed the 1823 act and enacted the following provision:

. . . the common and statute laws of England, which are of a general and not of a local nature, with the exception hereinafter mentioned down to [7-4-1776] . . . are hereby declared to be in force in this Territory; Provided, The said statutes and common law be not inconsistent with the constitution and laws of the United States, and the acts of the Legislative Council of this Territory; And provided also, That none of the British statutes respecting crimes and misdemeanors shall be in force in this Territory, except statutes declaratory of and in aid of the common law; nor shall any person be punished by the said common law, when there is an existing provision by the statutes of this Territory on the subject; but when there exists no such provision by statute of the Territory, then the several courts of this Territory shall proceed to punish such offence. . . . 33

In a Presentment to the Grand Jury of Jackson County, in December 1831, the Honorable H. M. Breckenridge — the same man who ten years earlier had reported to Andrew Jackson on the status of the laws in the Floridas — set out inter alia an account of the acts of 1822, 1823, and 1829 dealing with the adoption of the common law and the British statutes. He stated in part:

. . . The Legislative Council of this Territory [in 1822], it must be acknowledged, had an arduous task to perform. In the different states of the Union, from which you have migrated to this country, they had the advantage of the settled code of Great Britain, and this, when altered and modified by the cautious hand of enlightened men, with the aid of experience, has enabled them to establish something better suited to this circumstances, and situations, without incurring the danger of

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32. "AN ACT Providing for the adoption of the Common and Statute laws of England, and for repealing certain laws and ordinances," July 29, 1823, Acts of the Legislative Council of the Territory of Florida 1823, 111 (1823).

33. "AN ACT Providing for the adoption of the Common and Statute Laws of England, and for repealing certain laws and ordinances," November 6, 1829, Acts of the Legislative Council of the Territory of Florida 1829, 8 (1829). See Florida Statutes 1959 §2.01.

uncertainty, obscurity and confusion. The alterations might be made from time to time, on an established system, as they were dictated by necessity. This Territory, having been obtained by the United States, through a treaty with a foreign nation, whose government was of a despotic character, it became necessary to establish institutions entirely new. The inhabitants of Florida, did not like those of the Carolinas or Georgia, bring their laws and institutions with them; but from their habits and predilections, in this newly settled country, it was natural for them to look for models to those laws, and institutions, under which they had enjoyed liberty, prosperity and happiness. . . .

The first acts of the Legislative Council were passed in the summer of 1822, one year after the acquisition of the Territory. I was a member of that body, by commission from the President of the United States, but was appointed to my present situation, before the commencement of its session. Foreseeing, however, the difficulty under which the Territory would labor for the want of a suitable code of laws, I had procured a volume of the digested Legislative acts of Missouri, which had been similarly situated, having been also a province of Spain. The Territory of Orleans, now the State of Louisiana, continued to be governed in civil matters by Spanish laws; the greater part of its inhabitants, having been accustomed to them, and estates being held subject to its rules. Missouri, on the contrary, was settled by citizens of the United States, habituated to English and American Legislation. The volume to which I have alluded, was the result of fifteen years experience in that State, and yet contained for the greater part, little more than the adaptation of the joint labours of Jefferson, Wythe and Madison, and of some of the Pennsylvania Legislators, to the circumstances of the country. The act adopting the common and statute law of England, prior to the 4th of July 1776,\* was among the few which can be called original. Our first Council, received this volume as their text book, and adopted the greater part of it, with little or no alteration. The next Council of 1823, for what cause it is difficult to say, thought proper to repeal the whole of them at once, instead of making such alterations, or amendments, as they might have deemed necessary. Our Territory, has ever since experienced the pernicious effect of this example. The whole body of the law criminal as well as civil, not even excepting the fundamental act which adopted the common and statute law of England, has since been repeatedly repealed, and re-enacted, and partial alterations have been made, by which they have been rendered vague and uncertain, instead of being permanent and generally known. . . .

The last statute of the Territory providing for the punishment of crimes and misdemeanors, was passed in 1823;† all acts prior to that period were expunged from the statute books. It was hoped that in future, we should look to this statute only, for our direction in the administration of the criminal law. But it was soon observed, that a most important omission had been made, in the enumeration of acts to be in force, by the condensation act as it is styled, of the same Council; all others being repealed. The act to which I allude, was that before spoken of, adopting the common and statute law of England. In the act of 1829‡ this omission is supplied, by the act adopting those laws, which are of a general, and not a local nature, down to the 4th of July 1776 — with certain exceptions, thereafter enumerated; these are, 1st, that the said

Statutes, and common law, be not inconsistent, with the Constitution and laws of the United States, and the acts of the Legislative Council of this Territory: 2d— that none of the British Statutes, respecting crimes and misdemeanors, shall be in force in this Territory, excepting Statutes declaratory of and in aid of the Common law; 3d—Nor shall any person be punished, by the said common law, when there is an existing provision on the subject, by the Statutes of the Territory; but when there is no such provision, then, the several Courts of the Territory, shall proceed to punish such offence, by fine and imprisonment, the fine not to exceed five hundred dollars, nor the imprisonment twelve months. . . .

By the act adopting the Common Law of England, it appears that none of the British statutes, on the subject of crimes and misdemeanors, are in force in this Territory, except such as are declaratory, and in aid of the Common Law; it appears further, that no part of the Common Law INCONSISTENT with the acts of the Council, is adopted; and again, that Common Law PUNISHMENTS, are in no instance to be inflicted; but in lieu of them, where our own Laws are silent, a discretionary power is given to the Court, to punish by fine not exceeding five hundred dollars, and imprisonment, not exceeding twelve months; so much of the Common Law therefore, on the subject of crimes and misdemeanors, as is not thus excluded, is still in force here.<sup>34</sup>

\* Fla., Acts, 1822, pp. 136-137.

† Approved Nov. 22, 1828, Fla., Acts, 1828, pp. 48-78.

‡ Approved Nov. 17, 1829, Fla., Acts, 1829, pp. 123-124.

Although the Legislative Council, in adopting this series of acts which declared in force substantial portions of the English statutes, may have hoped to thereby provide "a body of integrated law"<sup>35</sup> for the territory, it did not identify precisely what statutes of England were made a part of the laws of Florida. This uncertainty persisted throughout the territorial period and it was not until December 27, 1845, that the Governor of the State of Florida approved an act of the General Assembly which stated in part:

BE IT ENACTED . . . That his Excellency, the Governor, is hereby authorized to appoint some suitable person, to collect and arrange, under appropriate heads, all the Statutes of Great Britain, of force in this State; and upon the completion of said work, and its approval by the Governor, after having been first submitted to the examination of three skilful and experienced members of the bar, he, the said Governor, shall contract for the publication of such a number of volumes, not exceeding

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34. 24 Carter ed., Territorial Papers of the United States 609, 612-15 (1934). See also Dietz, "Sketch of the Evolution of Florida Law," 3 U. Fla. L. Rev. 74, 75 (1950); Day, "Extent to Which the English Common Law and Statutes Are in Effect," id. at 303-318.

35. British Statutes in Force in the State of Florida, compiled by Leslie A. Thompson, 1853, brought up to date and annotated by Guy W. Botts, 1943, 3 Florida Statutes 1941, Helpful and Useful Matter 3 (1946).

three thousand, subject to the future disposition of the General Assembly; and may issue his warrant upon the Treasury, in favor of said compiler, for such sum as he may deem reasonable and just.<sup>36</sup>

The Governor appointed Judge Leslie A. Thompson to compile such a list. The Judge completed his work, but the finished product was never officially approved by the Governor and it was not then published.<sup>37</sup>

In 1941, in the course of a revision of the Florida statutes then in progress, Attorney General Watson determined that the Thompson compilation should be brought up to date with annotations and published. This was done and the list was published in volume three of the Florida Statutes of 1941, so-called "Helpful and Useful Matter."

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36. "AN ACT concerning the Statutes of Great Britain, of force in this State," Acts of Florida 1845, 118 (1845).

37. See note 35, supra. The original manuscript is in the Library of the Supreme Court of Florida.