

Organic Act Establishing the Territory of New Mexico

(Act of September 9, 1850, 9 Statutes at Large 446, Chapter 49)

Sec. 1. Propositions offered state of Texas; boundaries; relinquishment of territorial and other claims

The following propositions shall be, and the same hereby are, offered to the state of Texas, which, when agreed to by the said state, in an act passed by the general assembly, shall be binding and obligatory upon the United States, and upon the said state of Texas: provided, the said agreement by the said general assembly shall be given on or before the first day of December, eighteen hundred and fifty:

A. the state of Texas will agree that her boundary on the north shall commence at the point at which the meridian of one hundred degrees west from Greenwich is intersected by the parallel of thirty-six degrees thirty minutes north latitude, and shall run from said point due west to the meridian of one hundred and three degrees west from Greenwich; thence her boundary shall run due south to the thirty-second degree of north latitude; thence on the said parallel of thirty-two degrees of north latitude to the Rio Bravo del Norte, and thence with the channel of said river to the gulf of Mexico.

B. the state of Texas cedes to the United States all her claim to territory exterior to the limits and boundaries which she agrees to establish by the first article of this agreement.

C. the state of Texas relinquishes all claim upon the United States for liability of the debts of Texas, and for compensation or indemnity for the surrender to the United States of her ships, forts, arsenals, customhouses, customhouse revenue, arms and munitions of war and public buildings with their sites, which became the property of the United States at the time of the annexation.

D. the United States, in consideration of said establishment of boundaries, cession of claim to territory and relinquishment of claims, will pay to the state of Texas the sum of ten millions of dollars [(\$10,000,000)] in a stock bearing five percent interest, and redeemable at the end of fourteen years, the interest payable half-yearly at the treasury of the United States.

E. immediately after the president of the United States shall have been furnished with an authentic copy of the act of the general assembly of Texas accepting these propositions, he shall cause the stock to be issued in favor of the state of Texas, as provided for in the fourth article of this agreement: provided, also, that no more than five

millions of dollars [(\$5,000,000)] of said stock shall be issued until the creditors of the state holding bonds and other certificates of stock of Texas for which duties on imports were specially pledged, shall first file at the treasury of the United States releases of all claim against the United States for or on account of said bonds or certificates in such form as shall be prescribed by the secretary of the treasury and approved by the president of the United States: provided, that nothing herein contained shall be construed to impair or qualify anything contained in the third article of the second section of the "joint resolution for annexing Texas to the United States," approved March first, eighteen hundred and forty-five, either as regards the number of states that may hereafter be formed out of the state of Texas, or otherwise.

ANNOTATIONS

Compiler's notes. — The section headings throughout this Organic Act were inserted by the compiler.

Organic Act is constitution of territory; legislature cannot make laws in conflict with it or laws adopted by it. *Browning v. Estate of Browning*, 1886-NMSC-022, 3 N.M. 659, 9 P. 677.

The Organic Act and acts of congress operated as a constitution for the territory. *Territory ex rel. Curran v. Gutierrez*, 1904-NMSC-02012 N.M. 254, 78 P. 139, *appeal dismissed*, 202 U.S. 614, 26 S. Ct. 766, 50 L. Ed. 1171.

Organic Act was the constitution of the territory of New Mexico and the legislature could not pass laws in conflict with it. *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, 63 N.M. 156, 315 P.2d 223.

Inconsistent acts of legislature void. — The constitution of the United States, the organic act under which a territory is organized and acts supplemental or in addition thereto form the constitution of a territory. Any act of the territorial legislature inconsistent with these acts of congress is unconstitutional and void. *Torrez v. Board of County Comm'rs*, 1901-NMSC-002, 10 N.M. 670, 65 P. 181.

Any act inconsistent with the Organic Act must be held void. *Garcia y Perea v. Barela*, 1890-NMSC-009, 5 N.M. 458, 23 P. 766.

Powers of legislature. — Organic Act contained no specific provision concerning right of trial by jury, but did create a legislature with power to legislate upon all rightful matters consistent with the constitution of the United States and the Organic Act, subject to right of disapproval resting in congress. *State v. Holloway*, 1914-NMSC-086, 19 N.M. 528, 146 P. 1066, 1915F L.R.A. 922 (1914).

Local legislature was entrusted with enactment of the entire system of municipal law, subject to the right of congress to revise, alter and revoke at its discretion and to general scheme of local government in Organic Act. *Territory v. Hicks*, 1892-NMSC-

024, 6 N.M. 596, 30 P. 872, *overruled on other grounds*, *Haynes v. United States*, 1899-NMSC-003, 9 N.M. 519, 56 P. 282.

Congress could delegate authority to define jurisdiction of courts created by it to the territorial government. *Territory v. Yarberry*, 1883-NMSC-001, 2 N.M. 391.

Legislative assembly could not extend jurisdiction of territorial supreme court beyond limits of the Organic Act. *Territory v. Ortiz*, 1852-NMSC-002, 1 N.M. 5.

Laws at date of treaty continue until altered. — Acts of December session, 1847, of the general assembly were valid, and until congress legislated the government, the laws existing at date of the treaty between United States and Mexico would still exist and continue. *Ward v. Broadwell*, 1854-NMSC-001, 1 N.M. 75.

In territory acquired by conquest or cession, the jurisprudence affecting personal property rights and domestic relations, as it existed between the people under the government from which the territory was carved, remains in full force until altered by a government of the United States. *In re Chavez*, 149 F. 73 (8th Cir. 1906).

Validity of Kearny Code. — "Kearny Code," enacted in 1847, was valid, except to extent that it attempted to confer political rights. It consisted of an organic law for the government of the territory, and a system of laws for the administration of public justice, and the protection of life, liberty and property of the people of New Mexico. *Ward v. Broadwell*, 1854-NMSC-001, 1 N.M. 75.

Sec. 2. Boundaries of New Mexico; provisos

All that portion of the territory of the United States bounded as follows: beginning at a point in the Colorado river where the boundary line with the Republic of Mexico crosses the same; thence eastwardly with the said boundary line to the Rio Grande; thence following the main channel of said river to the parallel of the thirty-second degree of north latitude; thence east with said degree to its intersection with the one hundred and third degree of longitude west of Greenwich; thence north with said degree of longitude to the parallel of thirty-eighth degree of north latitude; thence west with said parallel to the summit of the Sierra Madre; thence south with the crest of said mountains to the thirty-seventh parallel of north latitude; thence west with said parallel to its intersection with the boundary line of the state of California; thence with said boundary line to the place of beginning - is hereby, erected into a temporary government, by the name of the territory of New Mexico: provided, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state: and provided, further, that, when admitted as a state, the said territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission.

ANNOTATIONS

Boundary with Colorado. — Since 1874, the Major survey and marking of the 37th parallel of north latitude, westward to the Macomb monument, has been the recognized and accepted south boundary of Colorado between said points, and since the Preston survey, retracement and remarking of said line in the year 1901, said line as remarked and retraced between Macomb monument and the Preston monument, at the intersection of said parallel with the Cimarron meridian, has been and now is the recognized and accepted boundary. *New Mexico v. Colorado*, 267 U.S. 30, 45 S. Ct. 202, 69 L. Ed. 499 (1925), decree entered, 268 U.S. 108, 45 S. Ct. 388, 69 L. Ed. 503 (1925).

Boundary with Texas. — The report of Samuel S. Gannett, commissioner to run, locate and mark boundary between the states of New Mexico and Texas in the valley of the Rio Grande river was confirmed. *New Mexico v. Texas*, 283 U.S. 788, 51 S. Ct. 357, 75 L. Ed. 1415 (1931).

Sec. 3. Governor; powers and duties

The executive power and authority in and over said territory of New Mexico shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect; he may grant pardons 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 can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed.

ANNOTATIONS

Governor was granted absolute power of pardon for offenses against state law, unrestrained by any limitation or regulation whatever. *Ex parte Bustillos*, 1920-NMSC-095, 26 N.M. 449, 194 P. 886.

In pardoning person convicted of misdemeanor, governor was not bound by legislative restriction. 1915-16 Op. Att'y Gen. 240.

Power to parole. — A parole is in the nature of a conditional pardon, and can be granted by no one except the governor. 1909-12 Op. Att'y Gen. 193.

Power to fill vacancies. — The legislature did not intend to limit governor's power to fill vacancies to those occurring by death or resignation only. *Territory ex rel. Curran v.*

Gutierrez, 1904-NMSC-020, 12 N.M. 254, 78 P. 139, *appeal dismissed*, 202 U.S. 614, 26 S. Ct. 766, 50 L. Ed. 1171 (1906).

No power to remove sheriff from office. — Power to remove from office a lawfully elected sheriff in this territory is not, by the Organic Act, vested in the governor, and, until otherwise provided by congress, the legislative assembly has the right by appropriate legislation to determine the method of removal. *Territory ex rel. Hubbell v. Armijo*, 1907-NMSC-013, 14 N.M. 205, 89 P. 267.

No power to appoint attorney general. — That the governor, under this section, was required to faithfully execute the laws did not empower him solely to appoint an attorney general when a previous unconfirmed appointee's term expired, because that office was not a necessary incident to the executive department and such appointment was in contravention of law because of Organic Act, § 8. *Territory v. Stokes*, 1881-NMSC-001, 2 N.M. 49.

Effect of law violating separation of powers. — Laws 1865, ch. 28, § 2 (§ 1039, 1897 Comp.) providing that fines for contempt were limited to \$50 in absence of jury trial was invalid in that it violated the separation of powers doctrine contained in §§ 3, 5 and 10 of the Organic Act, and was not within reasonable and proper regulatory limits; thus it was not carried into effect upon statehood by N.M. Const., art. II, § 12. *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, 63 N.M. 156, 315 P.2d 223.

Sec. 4. Secretary; powers and duties

There shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first day of December in each year, to the president of the United States, and, at the same time, two copies of the laws to the speaker of the house of representatives and the president of the senate, for the use of congress. And, in case of the death, removal, resignation or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

Sec. 5. Legislative assembly; apportionment; election; meetings

The legislative power and authority of said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of twenty-six members,

possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population, (Indians excepted,) as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken, and the first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and he shall, at the same time, declare the number of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected having the highest number of votes in each of said council districts, for members of the council, shall be declared by the governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be duly elected members of the house of representatives: provided, that in case of a tie between two or more persons voted for, the governor shall order a new election to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: provided, that no one session shall exceed the term of forty days.

ANNOTATIONS

Effect of law violating separation of powers. — Laws 1865, ch. 28, § 2 (§ 1039, 1897 Comp.) providing that fines for contempt were limited to \$50 in absence of jury trial was invalid in that it violated the separation of powers doctrine contained in §§ 3, 5 and 10 of the Organic Act, and was not within reasonable and proper regulatory limits; thus it was not carried into effect upon statehood by N.M. Const., art. II, § 12. *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, 63 N.M. 156, 315 P.2d 223.

Sec. 6. Qualifications of voters and officeholders

Every free white male inhabitant, above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: provided, that the right of suffrage, and of holding office, shall be exercised only by citizens of the United States,

including those recognized as citizens by the treaty with the republic of Mexico, concluded February second, eighteen hundred and forty-eight.

ANNOTATIONS

This act provided qualifications of voters and officers. *Territory ex rel. Sandoval v. Albright*, 1904-NMSC-021, 12 N.M. 293, 78 P. 204, *appeal dismissed*, 200 U.S. 9, 26 S. Ct. 210, 50 L. Ed. 346 (1906).

It gave legislature power to create office of county assessor and prescribe as one of his qualifications for office that he reside in county for which he is elected to serve. *Territory ex rel. Sandoval v. Albright*, 1904-NMSC-021, 12 N.M. 293, 78 P. 204, *appeal dismissed*, 200 U.S. 9, 26 S. Ct. 210, 50 L. Ed. 346 (1906).

Unqualified voter. — Person of foreign birth, who took out papers after he voted and whose father was not naturalized prior to his majority, was not a legal voter under this section. *Berry v. Hull*, 1892-NMSC-029, 6 N.M. 643, 30 P. 936.

Woman is qualified to hold appointive office of state librarian. 1912-13 Op. Att'y Gen. 81.

Under this provision, a woman can hold a nonelective ministerial office, including that of state librarian. *State v. De Armijo*, 1914-NMSC-021, 18 N.M. 646, 140 P. 1123.

Sec. 7. Extent of legislative power; approval of laws by congress

The legislative power of the territory shall extend to all rightful subjects of legislation, consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly and governor shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect.

ANNOTATIONS

Compiler's notes. — This section was amended or modified by the Springer Act, 24 Stat. 170 (48 U.S.C. §§ 1471 to 1473, 1475, 1478, 1479).

Legislative power over all rightful subjects of legislation. — As legislative power of territory extends to all rightful subjects of legislation consistent with U.S. constitution, it would extend to statute authorizing judgment against sureties of an appeal bond. *Beall v. New Mexico*, 83 U.S. (16 Wall.) 535, 21 L. Ed. 292 (1872).

The legislative power extends to all rightful subjects of legislation consistent with the U.S. constitution and the Organic Act and properly included transfers of causes having

effect of revival and transfers of causes from one jurisdiction to another for trial. *Leitensdorfer v. Webb*, 1853-NMSC-002, 1 N.M. 34, *aff'd*, 61 U.S. (20 How.) 176, 15 L. Ed. 891 (1857).

Including definition of crimes, prescription of punishment. — Legislature was given power over all rightful subjects of legislation including definition of crimes and misdemeanors and prescription of punishment. *Bray v. United States*, 1852-NMSC-001, 1 N.M. 1.

Laws 1854, Feb. 16, § 688, 1884 Comp. (superseded by Laws 1891, ch. 80, § 4), defining first-degree murder, was enacted strictly within the grant of power of this section. *Territory v. Yarberry*, 1883-NMSC-001, 2 N.M. 391.

And regulation of intoxicants. — State legislatures may regulate or prohibit absolutely the sale of intoxicating liquors, and may prohibit the manufacture of them without violating the fourteenth amendment to U.S. constitution. *Rapp v. Venable*, 1910-NMSC-041, 15 N.M. 509, 110 P. 834.

Right to hire and pay subordinates. — Legislatures of territories, though dependents and subjects of congress, are, except as restricted by the constitution and statutes, unrestrained in their right to organize and provide for themselves, as in hiring and paying of subordinates. *Baca v. Perez*, 8 N.M. 187, 42 P. 162 (1895).

Congress did not intend by the Act of June 19, 1878, making appropriations for compensation of territorial officers and members and officers of territorial legislatures, and providing that "no greater number of officers or charge per diem shall be paid or allowed by the United States to any territory," to prohibit territorial legislature from employing and compensating from territorial treasury subordinates for officers named in act. *Baca v. Perez*, 1895-NMSC-025, 8 N.M. 187, 42 P. 162.

Right to take judicial action. — General superintending control over "inferior courts" possessed by territorial district and supreme courts did not extend to the judicial action of the legislative houses in the case where it was deemed necessary to confer such powers upon them with a view to enable them to perfect their organization and perform their legislative duties. *Chavez v. Luna*, 1889-NMSC-016, 5 N.M. 183, 21 P. 344.

Sec. 8. Elective and appointive officers

All township, district and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of New Mexico. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint, all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

ANNOTATIONS

Appointment power limited. — Act Jan. 25, 1854 (§ 2556, 1897 Comp.) was void as inconsistent with this section and 48 U.S.C. § 1459, since, under the Organic Act, the governor could make only original appointments to territorial offices without consent of legislative council, and, under the last-mentioned section, could only temporarily fill vacancies caused by death or resignation, while the territorial act attempted to give him authority to fill all vacancies in such offices. *Territory v. Stokes*, 1881-NMSC-001, 2 N.M. 49.

Unauthorized removal and appointment. — Power of governor to fill office of treasurer by appointment, without advice and consent of the territorial council and during its recess, was limited to cases of death or resignation, and governor had no power to remove treasurer and appoint his successor, but mandamus lay for party appointed to such office by the governor, since he had prima facie title thereto. *Eldodt v. Territory ex rel. Vaughn*, 1900-NMSC-015, 10 N.M. 141, 61 P. 105.

Power to remove and appoint county officers was vested exclusively in legislature, unlimited by act of congress. *Territory ex rel. Sandoval v. Albright*, 1904-NMSC-021, 12 N.M. 293, 78 P. 204.

Governor was not empowered to remove an officer elected under statute. *Territory ex rel. Hubbell v. Armijo*, 1907-NMSC-013, 14 N.M. 205, 89 P. 267.

Sec. 9. Restrictions on office-holding by members of legislative assembly

No member of the legislative assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

Sec. 10. Courts; jurisdiction; judicial districts; clerks; appeals

The judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall

be as limited by law: provided, that justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars [(\$100)]; and the said supreme and district courts, respectively, shall possess chancery as well as common-law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law, but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars [(\$1,000)]; except only that in all cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by the said supreme court without regard to the value of the matter, property or title in controversy; and except also that a writ of error or appeal shall also be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus involving the question of personal freedom; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeals in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Oregon territory now receive for similar services.

ANNOTATIONS

I. GENERAL CONSIDERATION.

Bracketed material. — The bracketed material was inserted by the compiler.

Compiler's notes. — For Oregon Territorial Act, see Act of Congress, Aug. 14, 1848, 9 Stat. 323, ch. 177.

Judicial power vested by act. — Act which established territory of New Mexico and Organic Act provided that judicial power of territory should be vested in a supreme

court, district courts, probate courts and in justices of peace. *Tapia v. Martinez*, 1888-NMSC-002, 4 N.M. 329, 16 P. 272.

Limits on legislature. — Territorial legislature had power over all rightful subjects of legislation including definition of crimes and misdemeanors and prescription of punishment; but the jurisdiction of all courts provided for by law, both appellate and original, was as limited by law, except that no power could be given to justices of peace where title and boundaries of land were in question or sum claimed exceeded \$100. *Bray v. United States*, 1852-NMSC-001, 1 N.M. 1.

Effect of law violating separation of powers. — Laws 1865, ch. 28, § 2 (§ 1039, 1897 Comp.) providing that fines for contempt were limited to \$50 in absence of jury trial was invalid in that it violated the separation of powers doctrine contained in §§ 3, 5 and 10 of the Organic Act, and was not within reasonable and proper regulatory limits; thus it was not carried into effect upon statehood by N.M. Const., art. II, § 12. *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, 63 N.M. 156, 315 P.2d 223.

II. JURISDICTION OF COURTS.

Act provided for chancery as well as common-law jurisdiction. *Territory ex rel. Wade v. Ashenfelter*, 1887-NMSC-013, 4 N.M. 93, 12 P. 879, *appeal dismissed*, 154 U.S. 493, 14 S. Ct. 1141, 38 L. Ed. 1079 (1893).

Intention of this section was to clothe supreme and district courts with equity and law powers for purpose of discharging with fullest effect the duties assigned to them by congressional and territorial legislation. *Bray v. United States*, 1852-NMSC-001, 1 N.M. 1.

Phrase "chancery as well as common-law jurisdiction" did not recognize validity of common-law marriages. *In re Gabaldon's Estate*, 1934-NMSC-053, 38 N.M. 392, 34 P.2d 672, 94 A.L.R. 980.

Provision of this section of the Organic Act, giving supreme court and district courts chancery as well as common-law jurisdiction, did not bring into the territory the common law in its broadest sense, but simply established a system of procedure according to the course of the common law. *Browning v. Estate of Browning*, 1886-NMSC-022, 3 N.M. 659, 9 P. 677.

Supreme and district courts possessed chancery as well as common-law jurisdiction. *Torrez v. Board of County Comm'rs*, 1901-NMSC-002, 10 N.M. 670, 65 P. 181.

Congress had power to delegate authority to define jurisdiction of courts created by it to territorial government. *Territory v. Yarberry*, 1883-NMSC-001, 2 N.M. 391.

It was within competency of congress either to define directly, by their own act, the jurisdiction of courts created by them, or to delegate authority to do so to territorial

government; and by either proceeding, to permit or to deny transfer of any legitimate power or jurisdiction previously exercised by courts of provisional government to tribunals of territorial government. This power was in fact delegated by this section. *Leitensdorfer v. Webb*, 61 U.S. (20 How.) 176, 15 L. Ed. 891 (1857).

Legislative power of territory extended to all rightful subjects of legislation, consistent with U.S. constitution and this act although all laws passed by legislative assembly and governor had to be submitted to congress of United States and were void if disapproved; and jurisdiction of the several courts herein provided for, both appellate and original, and that of probate courts and justices of peace, was limited by law. *Torrez v. Board of County Comm'rs*, 1901-NMSC-002, 10 N.M. 670, 65 P. 181.

Organic Act provided only that jurisdiction of supreme court, with its appellate power, should be as limited by law, and that jurisdiction of other courts therein mentioned as courts of original jurisdiction also should be as limited by law. *Archibeque v. Miera*, 1857-NMSC-003, 1 N.M. 160.

III. SUPREME COURT.

Derivation of jurisdiction. — Territorial supreme court derived its appellate jurisdiction from Organic Act, and, by terms of act itself, had no appellate jurisdiction except from final decisions of district courts. Organic Act brought supreme court into existence, and all of its jurisdiction was derived from Organic Act and subsequent congressional legislation. *Jung v. Myer*, 1902-NMSC-013, 11 N.M. 378, 68 P. 933.

Limits thereof. — Supreme court was vested with full appellate jurisdiction, but did not have original jurisdiction in any case but that of granting writs of habeas corpus; an affirmative grant of original jurisdiction implied a negative upon its exercise in any other case. *Territory v. Ortiz*, 1852-NMSC-002, 1 N.M. 5.

Chancery and common-law powers. — Writs of error, bills of exception and appeals were allowed in all cases from final decisions of district courts to the supreme court of territories under such regulations as were prescribed by law, and the supreme court and district courts possessed chancery as well as common-law jurisdiction, which invested the supreme court with common-law jurisdiction in the exercise of its original and appellate jurisdiction. *Marinan v. Baker*, 1904-NMSC-034, 12 N.M. 451, 78 P. 531.

Legislature to provide regulations. — This section, while not self-executing, provided what cases could be appealed to supreme court. Legislature could provide only the regulations whereby appeals could be prosecuted "in all cases" from final decisions of district court. Legislature could neither extend nor abridge right of appeal but was confined to providing regulations for its exercise; matters of probate and will contests were appealable. *In re Morrow's Will*, 1937-NMSC-008, 41 N.M. 117, 64 P.2d 1300.

Writ of prohibition. — Territorial district courts are not technically inferior courts but are relatively inferior to the supreme court of New Mexico, which court can properly issue

writ of prohibition to them. *Lincoln-Lucky & Lee Mining Co. v. District Court*, 1894-NMSC-006, 7 N.M. 486, 38 P. 580.

Review of decisions. — This section did not give federal court of appeals the right to review decisions of state supreme court; the review was expressly limited to judgments of territorial courts. *Lovato v. New Mexico*, 220 F. 104 (8th Cir. 1915).

IV. DISTRICT COURTS.

Jurisdiction. — District courts had original jurisdiction in all cases, civil and criminal, in which jurisdiction was not specially delegated to some other court, and also had such appellate and supervisory jurisdiction as might have been granted them by law. *Territory v. Ortiz*, 1852-NMSC-002, 1 N.M. 5.

Indiscretion of legislature. — The Organic Act and other congressional acts regarding government of New Mexico territory left jurisdiction of district courts to discretion of legislature. *State ex rel. Weltmer v. Taylor*, 1938-NMSC-035, 42 N.M. 405, 79 P.2d 937.

Effect of certain statutes on jurisdiction. — Territorial statutes gave the judges of the supreme court sitting in the county district courts exclusive jurisdiction to hear cases arising under territorial laws, but did not withdraw from the courts of the larger districts the authority expressly conferred on them by the Revised Statutes and the Organic Act, something that territorial courts could not do. *Santa Fe Cent. Ry. v. Friday*, 232 U.S. 694, 34 S. Ct. 468, 58 L. Ed. 802 (1914)(case brought under the federal Employer's Liability Act of 1906).

Nature of chancery jurisdiction. — Chancery jurisdiction was derived from the Organic Act and other acts of congress, and was the same as that vested in the courts of the United States, possessing chancery powers, to institute, hear and determine causes in equity. *Gutierrez v. Pino*, 1866-NMSC-006, 1 N.M. 392.

Common-law offenses. — Common-law as well as chancery jurisdiction was conferred on the supreme and district courts, provided the jurisdiction was to be limited by law, which clothed those courts with equity and law powers, but this did not give them cognizance of offenses at common law without legislative sanction. As no statute gave district court jurisdiction of common-law assault and battery, an indictment for such offense did not lie in the district court. *Bray v. United States*, 1852-NMSC-001, 1 N.M. 1.

Court had no jurisdiction to vacate judgment after one year from time it was rendered. *Weaver v. Weaver*, 16 N.M. 98, 113 P. 599 (1911).

Divorce between Indians. — In divorce action between Indians of different pueblos, residing therein, the district court of the county had jurisdiction where it was not asserted that Pueblo customs and laws provided a remedy. *Tenorio v. Tenorio*, 1940-NMSC-002, 44 N.M. 89, 98 P.2d 838.

Writs of certiorari. — In exercise of their superintending control, district courts had power, either as courts of common law or courts of chancery, to issue writs of certiorari to probate courts. *Territory v. Valdez*, 1872-NMSC-001, 1 N.M. 533.

Time, place and duration. — Acts 1880, ch. 8 did not change the times and places of holding the district courts, or their duration, but declared that such courts should be at all times in session and open at any place in the district where the judge might be, for certain purposes, including that of rendering final decrees. *United States v. Gwyn*, 1888-NMSC-012, 4 N.M. 635, 42 P. 167.

Congress and the legislature intended that district courts be open at all times and that any associate justice of the supreme court might preside over a district court to effectuate prompt administration of justice. *Mayes v. Bassett*, 1912-NMSC-021, 17 N.M. 193, 125 P. 609.

V. PROBATE COURTS.

Jurisdiction. — Probate courts were created by the Organic Act and were to exercise the jurisdiction conferred upon them as limited by law. *Bucher v. Thompson*, 1893-NMSC-010, 7 N.M. 115, 32 P. 498.

Section did not confer chancery jurisdiction on probate courts. *Perea v. Barela*, 1891-NMSC-034, 6 N.M. 239, 27 P. 507.

Probate courts without jurisdiction to determine contested claims of title to property between an estate and a stranger; Organic Act's express conferring of chancery as well as common-law jurisdiction upon supreme and district courts and its failure to confer such jurisdiction upon probate courts was equivalent to expressly denying probate courts such jurisdiction. *Caron v. Old Reliable Gold Mining Co.*, 1904-NMSC-016, 12 N.M. 211, 78 P. 63.

Guardian's sale of land. — Probate court had jurisdiction to make order under which land was sold by widow as special guardian. *Hagerman v. Meeks*, 1906-NMSC-032, 13 N.M. 565, 86 P. 801.

Solemnize marriages. — Organic Act fixed judicial powers of the courts. Probate courts were and are courts of special and limited jurisdiction, and the judges were "civil magistrates" empowered to solemnize marriages. *Golden v. Golden*, 1937-NMSC-021, 41 N.M. 356, 68 P.2d 928.

Judgment admitting will to probate could not be annulled by same court in proceeding brought by an heir, after he became of age and more than 20 years after the judgment was rendered. *Bent v. Thompson*, 138 U.S. 114, 11 S. Ct. 238, 34 L. Ed. 902 (1891).

Appeal tried de novo. — Under Organic Act, only supreme court was clothed with appellate powers, while the district court, courts of probate and justice courts were courts of original jurisdiction. Hence, on appeal from justice of peace to district court, case was tried on its merits de novo as a court of original jurisdiction, without regard to previous trial, and transcript on such appeal was resorted to only to ascertain if the case appealed was the one that originated there. *Archibeque v. Miera*, 1857-NMSC-003, 1 N.M. 160.

VI. APPEALS.

Legislature could not take away right of appeal from district court to territorial supreme court. *Sena v. United States*, 147 F. 485 (8th Cir. 1906).

Organic Act prohibited appeals from decisions other than final judgments.

Weaver v. Weaver, 1910-NMSC-015, 15 N.M. 333, 107 P. 527. See also *Weaver v. Weaver*, 1911-NMSC-013, 16 N.M. 98, 113 P. 599, permitting appeal of district court's improper vacation of judgment.

Decree granting injunction and appointing receiver for insolvent corporation was final decree for purposes of appeal. *Sacramento Valley Irrigation Co. v. Lee*, 1910-NMSC-049, 15 N.M. 567, 113 P. 834; *Eagle Mining & Imp. Co. v. Lund*, 1910-NMSC-064, 15 N.M. 696, 113 P. 840.

In action to foreclose mechanic's lien, where order directed sale of lien property and payment of proceeds into court after payment of complainant's claim, and supplemental order directed payment of proceeds into court for determination of priorities and distribution, such supplemental order did not destroy finality of original order for appeal purposes. *Texas, S.F. & N.R.R. v. Orman*, 1886-NMSC-003, 3 N.M. 612, 9 P. 253.

Contempt judgment of district court not reviewable, not being "rendered upon an indictment." *Marinan v. Baker*, 1904-NMSC-034, 12 N.M. 451, 78 P. 531.

Appeal could not be had from judgment classed as a criminal contempt. *Costilla Land & Inv. Co. v. Allen*, 1910-NMSC-044, 15 N.M. 528, 110 P. 847.

Review of county board. — Action of board of county commissioners in declaring vacant, for default, the office of county collector, under Laws 1882, ch. 62, § 111 (§ 2916, 1884 Comp.), was in a quasi-judicial capacity only, and on review thereof by way of certiorari no presumption arose in their favor as to regularity of proceedings. *Armijo v. Board of County Comm'rs*, 1885-NMSC-030, 3 N.M. 477, 7 P. 19.

Review of decision by U.S. supreme court. — In cases brought by appeal from territorial supreme courts, weight or sufficiency of evidence was not considered, but only whether findings supported judgment, and whether there was any error in rulings, duly excepted to, upon admission or rejection of evidence. *Grayson v. Lynch*, 163 U.S. 468, 16 S. Ct. 1064, 41 L. Ed. 230 (1896).

In habeas proceeding an 1885 congressional act (23 Stat. c. 355) limiting appeals from territorial supreme courts to U.S. supreme court to matters involving money or rights ascertainable in money did not impliedly repeal this section as to appeals in habeas corpus proceedings. *Gonzales v. Cunningham*, 164 U.S. 612, 17 S. Ct. 182, 41 L. Ed. 572 (1896).

Sec. 11. Attorney for territory; marshal

There shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Oregon. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States: he shall perform the duties, be subject to the same regulation and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present territory of Oregon, and shall, in addition, be paid two hundred dollars [(\$200)] annually as a compensation for extra services.

Sec. 12. Governor and other officers; appointment; oath of office; salaries; appropriations

The governor, secretary, chief justice and associate justices, attorney and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation, before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation, before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified and recorded, in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars [(\$1,500)] as governor, and one thousand dollars [(\$1,000)] as superintendent of Indian affairs. The chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars [(\$1,800)]. The secretary shall receive an annual salary of eighteen hundred dollars [(\$1,800)]. The said salary shall be paid quarter-yearly, at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three

dollars [(\$3.00)] each per day during their attendance at the sessions thereof, and three dollars [(\$3.00)] each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route. There shall be appropriated annually the sum of one thousand dollars [(\$1,000)], to be expended by the governor, to defray the contingent expenses of the territory; there shall also be appropriated annually a sufficient sum to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler.

Compiler's notes. - Act June 17, 1870, 16 Stat. 152, ch. 130 fixed the salary of the chief justice and associate justices at \$3,000 each. Act Jan. 23, 1873, 17 Stat. 416, ch. 48 changed the pay of members of the legislature to \$6 per day, and mileage as then provided by law. The presiding officer of each branch of the legislature was to receive \$10 per day and various employees were to receive from \$5 to \$8 per day. The governor was to receive \$3,500, and the secretary of the territory \$2,500 per annum.

Sec. 13. First session of legislative assembly; seat of government

The legislative assembly of the territory of New Mexico shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

Sec. 14. Delegate to house of representatives; election

A delegate to the house of representatives of the United States, to serve during each congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the times, places and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly: provided, that such delegate shall receive no higher sum for mileage than is allowed by law to the delegate from Oregon.

Sec. 15. Survey of lands; school lands

When the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

Sec. 16. Judicial districts; assignment of judges

Temporarily and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter or modify such judicial districts, and assign the judges and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Sec. 17. Federal constitution and laws extended to New Mexico

The constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said territory of New Mexico as elsewhere within the United States.

ANNOTATIONS

Territorial statute counter to congressional legislation was invalid. *Pankey v. Ortiz*, 1921-NMSC-007, 26 N.M. 575, 195 P. 906, 30 A.L.R. 92.

The U.S. constitution, the Organic Act and acts supplemental or in addition thereto formed constitution of territory. Any act of territorial legislature inconsistent with constitution or those acts of congress was unconstitutional. *Torrez v. Board of Cnty. Comm'rs*, 1901-NMSC-002, 10 N.M. 670, 65 P. 181.

Applicability of federal law. — The Organic Act, which is our constitution, provides that the constitution and laws of the United States which are not locally inapplicable shall have the same force and effect within New Mexico as elsewhere; hence, a creditor who tried to intervene in a suit in equity brought by a partner to have the partnership put into the hands of a receiver would not be allowed so to do, where he had shown no equity grounds for intervention, because of the seventh amendment guarantee of trial by jury for actions at common law. *Flournoy v. Bullock, Baker & Co.*, 1901-NMSC-016, 11 N.M. 87, 66 P. 547, 55 L.R.A. 745.

Act Feb. 26, 1889 (Session Laws 1889, p. 227) was unconstitutional, as attempting to set aside right to jury trial guaranteed by fifth amendment of U.S. constitution, and was,

also, local and special, and therefore in contravention of specific congressional inhibition against territorial legislatures enacting such laws as to summoning and impaneling jurors. *Territory v. Baca*, 1892-NMSC-010, 6 N.M. 420, 30 P. 864.

Courts of territory had power to pass upon constitutionality of acts of territorial legislature. *Torrez v. Board of Cnty. Comm'rs*, 1901-NMSC-002, 10 N.M. 670, 65 P. 181.

Territorial courts, like state courts, were invested with general jurisdiction. *Lynch v. Grayson*, 1893-NMSC-004, 7 N.M. 26, 32 P. 149, *aff'd*, 163 U.S. 468, 16 S. Ct. 1064, 41 L. Ed. 230 (1896).

Sec. 18. Temporary suspension of provisions of act

The provisions of this act are hereby suspended, until the boundary between the United States and the state of Texas shall be adjusted; and when such adjustment shall have been effected, the president of the United States shall issue his proclamation, declaring this act to be in full force and operation, and shall proceed to appoint the officers herein provided to be appointed in and for said territory.

Sec. 19. Citizens' rights protected

No citizen of the United States shall be deprived of his life, liberty or property, in said territory, except by the judgment of his peers and the laws of the land.

ANNOTATIONS

Compiler's notes. — The Organic Act was approved on September 9, 1850.

Approved Sept. 9, 1850.