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MOSES ELIAS LEVY
An Early Florida Pioneer and the Father of
Florida's First Senator
By LEON HUHNER

Never before has there been an instance of the formation of a great nation like our own, in which so many different races and nationalities have taken part. The sturdy English, the thrifty Scotch, the buoyant Irish, the Spaniards, Germans, French, Italians, Dutch, Scandinavians and others are all represented in our country's fabric, irrespective of their religious tenets or affiliations. And so it is not surprising to find that Jews were also among these pioneers. Though but few in number, they appear in every one of the original thirteen colonies throughout the colonial and revolutionary periods, and also later on in the gradual expansion of the republic.

Moses Elias Levy was born at Mogador in Morocco about 1782.¹ He was descended from one of the many Jewish families who had been expelled from the Iberian peninsula toward the close of the fifteenth century and had found refuge in northern Africa. Tradition has it that the family name was

Because of the limitations of space some notes have been omitted and references condensed, but the sources of all statements made in this paper may be found in the various government publications cited throughout, as well as in the various historical works quoted. This paper was read before the Florida Historical Society at its last annual meetings.

1. See recital in grant of citizenship, 1831, which contains the recital of the previous grant of citizenship of 1822. See also House Document No. 10, 27th Congress, First Session, pp. 10, 17 and report by Mr. Halstead, House Document No. 510, 56th Congress, Second Session p. 25 etc. Chester A. Rowell "A Historical and Legal Digest of All Contested Election Cases in the House of Representatives in the United States, Washington, 1901. Barton report 27th Congress, p. 114. House Report No. 450, 27th Congress, Second Session, Vol. II p. 76.

Yulee,² but as a matter of fact the subject of this sketch never used that name, and throughout his entire career never went by any other name than that of Levy.³ According to this tradition, his father had been a grand vizier at the court of the Emperor of Morocco and had discovered a conspiracy on the part of the heir apparent to dethrone the emperor. He had disclosed the plot, and its consequent failure resulted in the imprisonment of the young prince. By this, Levy's father had incurred the bitter hatred of the prince and when the latter eventually came to the throne the vizier at once realized his dangerous position and fled with his family to Gibraltar where he left them, while he himself went on to Egypt where he died shortly afterward.⁴

Moses E. Levy was brought up at Gibraltar, but while still very young he obtained a position as supercargo on a vessel bound for the West Indies. He finally settled at St. Thomas in 1800, when he was about 19 years of age.⁵ His mother and sister appear to have left Gibraltar also and to have settled

2. This statement appears in a letter written by Mr. George R. Fairbanks, who had been Levy's attorney and published in this *Quarterly*, January 1940. Mr. Fairbanks states that he had obtained the information from Moses Levy and had told it to Levy's son about the time when the latter became the first senator from Florida in 1845. Aside from the Fairbanks letter, this family tradition appears nowhere else.
3. Neither in his application for citizenship nor in his testimony before the Congressional committee, nor in connection with any of his extensive land and business transactions both here and abroad is there any suggestion that his name had ever been other than Levy, and all the members of his family bore that name until the Senator made the change above referred to. See also George B. Utley in *Magazine of History* Vol. III p. 79.
4. These statements likewise appear in the letter of Mr. George R. Fairbanks above referred to as having been given him by Moses E. Levy, but as stated do not appear elsewhere. They are repeated however in the interesting sketch "Senator Yulee" written by the Senator's son Mr. C. Wickliffe Yulee which appeared in this *Quarterly*, Vol. II, Nos. 1 and 2. (1909)
5. House Report No. 450, 27th Cong. 2nd Sess. Vol. II, p. 25, 76, etc.

in Porto Rico, but they too eventually migrated to St. Thomas. Young Levy engaged in the lumber business and soon accumulated a considerable fortune.⁶

For many generations the island of St. Thomas had possessed a large and influential Jewish community.⁷ While still in his early twenties, Levy married a lady belonging to one of the respected families of the island, whose first name was Hannah,⁸ but whose maiden name I have thus far been unable to ascertain. In 1804 there was born his first son, whom he named Elias,⁹ while his second son named David was born at St. Thomas on June 2, 1810.¹⁰ It was David who later had a distinguished career and became the first senator from the state of Florida. Two daughters were also born to the young couple, the one named Rahma, and the other Rachel,¹¹ while a sister of Moses Levy, likewise named Rachel, who had come with her mother from Gibraltar, later married Joseph Benlisa, a resident of St. Thomas.

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6. 705, 24th Cong. 1st Sess. Vol. III; 87, 5th Cong. 2nd Sess. Vol. I: 238. 25th Cong. 3rd Sess. Vol I.
 7. See Publications of American Jewish Historical Society (35 Volumes) particularly Vol. 27. Also Jewish Encyclopedia.
 8. This appears from the entry of the birth of his son Elias in the records of the Hebrew Congregation at St. Thomas. I obtained a transcript thereof through the courtesy of the local minister the Rev. M. D. Sasso.
 9. The Rev. M. D. Sasso, Minister of the Hebrew Congregation at St. Thomas has kindly examined the Protocol of Births of the Congregation at St. Thomas (Protocol B 1786-1848) which contains the following entry, "Elias Levy son of Moses Elias Levy and Hannah Levy was born at St. Thomas on February 2, 1802."
 10. House Report No. 450, 27th Cong. 2nd, Vol. 11 p. 25 also p. 73 etc. See also Rowell report *supra*.
 11. All the four children are mentioned in the Will of Moses E. Levy to which reference will be made hereafter. His daughter Rahma married Jonathan M. DaCosta of St. Thomas and became the mother of Dr. Jacob Mendes DaCosta one of the leading American physicians of his day and of Charles DaCosta who became one of the leaders of the New York Bar. His daughter Rachel married Abraham Pretto Henriques likewise of St. Thomas.

Moses Levy continued as a prosperous merchant on the island until 1816 when he removed to Havana, Cuba, where he became a contractor for the government in furnishing supplies to the army.¹² Shortly after his arrival, however, he became intensely interested in Florida, which was then part of the vast domain known as the Intendency of Cuba, the governor of that island administering the affairs of Florida as well.

With unusual vision Levy realized the wonderful possibilities of Florida and with the ardor of the Spanish adventurers of old he dreamed of the brilliant future in store for so promising a country and of the revenue which might be obtained from its colonization and development.¹³

There was, however, an additional incentive. Throughout his entire life Levy was ardently devoted to his own people and to the ancient faith. It therefore naturally occurred to him that there might be established in that vast domain a settlement for the downtrodden members of his race in Europe, and that he might be able to bring numbers of them across the sea and establish in Florida a colony of Jewish people as a refuge and religious community.¹⁴

With this plan in mind, he began to negotiate for the purchase of large tracts of land there, and in 1816 went to England in connection with his plan for colonization.¹⁵

While in London in 1816 he met a German Jew, Frederick S. Warburg of Hamburg, who was probably a member of the famous banking family of that name. The latter informed him that he himself had come to England on behalf of some German fami-

12. House Report No. 450, 27th Congress, 2nd II 5, 25, 76, etc.

13. House 450, 27th Cong. 2nd II 5, 25 etc.

14. Ibid. 56 etc. Also letter of George R. Fairbanks above referred to.

15. House 450, 27th Cong. 2nd II. 56, 141-7 etc.

lies, without regard to race however, who desired to emigrate to the New World and who had commissioned him to find for them a suitable site on which vine culture might be successful.¹⁶ Levy at once explained to Warburg his own plan and at the same time suggested to him that Florida would be the most suitable place for the group of settlers in whom Warburg was interested.

Shortly thereafter Levy returned to Cuba and on his arrival found that something had happened which might be of service to his plan. This was the recent grant of a vast tract of land in Alachua, which had just been made to Don Fernando de la Maza Arredondo.¹⁷

Arredondo, a resident of St. Augustine in 1811, had been of the greatest service to the Spanish authorities in raising an army and collecting troops for the protection of that city during a formidable rebellion.¹⁸ He had repeatedly petitioned the Spanish government for a grant as a reward for his services, and by royal decree, dated September 3, 1817, the King of Spain had finally granted him "four leagues of land to each wind." This tract contained 289,000 acres in Alachua, but the grant also contained the condition that the grantee must settle thereon two hundred Spanish families and begin such establishment within three years.¹⁹

At this time General Andrew Jackson, in subduing the Indians in Florida, destroyed the town of Alachua.²⁰ The whole country was swarming with hostile Indians and this proved a formidable barrier to colonization. Business in Florida was now at a

16. Deposition of Frederick S. Warburg before Congressional Committee, House 450 141-147 (Exhibit No. 17) Also F. W. Buchholz "History of Alachua County, Florida" (Gainesville) 42-52.

17. House 450 *supra* pp. 25 etc. Also Buchholz *supra*.

18. Buchholz 42-52. Also Congressional reports above cited.

19. *Ibid.*

20. *Ibid.* Also George R. Fairbanks "History of Florida." 266-7.

low ebb, while the impoverished Spanish government could not protect any settlers except those in the immediate vicinity of St. Augustine. Immigration from Europe and from the United States had practically stopped.

Levy saw that the Spanish dominion in Florida was doomed and that the only salvation for the country lay in its being taken over by the United States. He was convinced that Florida would then hold a future of unlimited possibilities.

Early in 1818 he visited the United States, stopping at Charleston, Philadelphia and New York.²¹ He grew enthusiastic over our free institutions and it appears he actually contemplated settling here for good, but his affairs at the time did not permit him to do so.²²

His dream of a great colony in Florida gave him no rest, and upon returning to Cuba he at once purchased a large tract of land at Alligator Creek and provided in the contract that part of the purchase money was to be paid only when Florida was actually ceded to the United States.²³

The question of the dispute between the United States and Spain as to the territories claimed by each was finally ended by the cession of Florida to the United States in 1819. The actual transfer however was to take place later and the date for the exchange of flags was finally fixed for July 17, 1821.

21. See Barton's report; 705, 24th Cong. 1st III.

22. House Report 450 *supra* p. 108.

23. House 15, 27th Cong. 3rd II p. 10 etc., which gives Levy's deposition as follows: "I left Havana in the fall of 1820 for Charleston, when I learned the treaty with Spain and this country was ratified and the proposed project from that time occupied my individual mind. I spent the winter and spring in Norfolk, New York and Philadelphia engaged in the object which filled my mind - colonizing. Well, I left early in the middle of June for Florida. I had made arrangements with some gentleman there for the establishment of two or three sugar plantations upon my land, and carried with me from Philadelphia a person to manage my place." See also House Report No. 10, Exhibit 12.

When the treaty was ratified, Levy became more enthusiastic than ever. He had come to the conclusion, however, that Alachua was better suited for immediate development than was the land he had purchased, and shortly afterwards he traded the latter with Arredondo for a share in the great Alachua Grant.²⁴ Through his agents Hernandez and Cheaviteau of Havana, Levy purchased about 52,900 acres of land in the same province and paid \$40,000 therefor.²⁵ During all this time he had also kept in touch with Warburg who was still in London. As the Arredondo Grant contained the express provision that the grantee must proceed to settle 200 families thereon within three years, Levy soon realized that he could not limit himself to a particular class in the selection of settlers, but that it was imperative to secure them without regard to race or creed as speedily as possible in order to comply with the condition. He thereupon at once modified his plan and engaged Warburg to secure the necessary settlers.²⁶

Shortly afterward, in 1820, he wrote to his agent that the land was ready and that the colonists designed for settlement might be sent on.

The next important step was to secure provisions and equipment for the settlers when they arrived, and with the same tireless energy that characterized the man throughout we find that he immediately purchased in Cuba a large quantity of sugar cane for planting,²⁷ and historians inform us that this

24. Buchholz *supra* 42-52.

25. See Contested election case of David Levy. *Levy vs. Arredondo* in transcript of records of Supreme Court of United States, 1838, II 912, 933, 936. Rowell *supra*; Barton's report, Executive Documents XI, 18th Congress, First Session p. 74. Also *Levy vs. United States* in which the report recommends the confirmation of his claim to 36,000 acres in Alachua County. Also *Ibid.* p. 84 confirming 14,500 acres.

26. House Report 450 *supra* 459.

27. Barton's report *supra*.

was the first sugar cane imported into this country.²⁸ He also purchased various fruit trees and seeds for his plantations. In August 1821 we find him at Charleston, South Carolina,²⁹ and in December of that year at Savannah, in order to expedite the sending of supplies.

In the interests of his ambitious plans Levy again came to New York early in 1821 and in February of that year we find him in Philadelphia. In order to make sure of American citizenship, he appeared before the United States Circuit Court there on June 8, 1821 and declared his intention to become a citizen of the United States.³⁰ Thence he went to Charleston and from there proceeded to St. Augustine. Throughout his absence, Mr. Forbes, the mayor of St. Augustine, had acted as his agent in regard to his possessions.³¹

We must here digress for a space concerning a matter which became of great importance later when his son David Levy had started on his distinguished political career. It has already been mentioned that July 17, 1821, was the date fixed for the exchange of flags and for the actual transfer of Florida by Spain to the United States. It had also been especially provided that all persons who were residents of Florida on that date should automatically become citizens of the United States.

As Levy had large interests in Florida and as citizenship was of great importance to him, he proceeded to make his various preparations and pur-

28. See long article in *Florida Herald and Southern Democrat* (St. Augustine) December 31, 1841.

29. House Report No. 450 *supra* pp. 9, 76-96. On his way from St. Augustine to Charleston Levy again wrote to Frederick S. Warburg of London. This letter is dated "At Sea on my return from St. Augustine to Charleston August 6, 1821," and describes the 53,000 acres he had purchased in Florida. *Ibid.* 59. Also House Document No. 15, 27th Cong. 3rd II 10 etc.

30. House Report No. 450 *supra* p. 60 etc.

31. House Report 450 *supra* 76-95.

chases for his plantation long before the date mentioned as above stated. He finally set out from Charleston allowing sufficient time to reach St. Augustine by the date fixed, but unfortunately for him the ship had been becalmed and was delayed for about eight days along the Florida coast and within sight of land.³² There was no doubt whatever that Levy arrived at St. Augustine some time in July 1821, and no special notice was taken of the exact date of his arrival. When, however, some months later it became important to fix the exact date, Levy himself seems to have been uncertain whether he had arrived before July 17th or a few days later. Years afterward, as we shall see, this became a very important issue.³³ Many witnesses were then examined on the point by a Congressional committee and there was a hopeless conflict of testimony, although all witnesses agreed that he had arrived some time in July 1821.

Levy's arrival seems to have been a notable occasion for the new American possession. Here was a man of means who had come to Florida with a view of establishing and equipping a considerable plantation and to maintain it until it proved successful. Accordingly we find that a dinner was given to him shortly after his arrival and he soon became acquainted with the foremost residents of St. Augustine.³⁴

In order to make a proper record of those who had acquired citizenship in the new territory, General Jackson, who had been appointed governor of the territory, issued a rule requiring the mayors of St. Augustine and Pensacola to open registers and

32. *Ibid.* Also House Document No. 15 *supra* pp. 10 etc.

33. This occurred when the question was raised whether his son, the future senator, could hold office. See contested election case of David Levy in House Report 450 *supra*.

34. *Ibid.* Testimony of Abby Dexter before the Congressional committee.

record therein the names of all who were inhabitants on July 17, 1821. This was accordingly done, and on March 4th, 1822, we find that Levy registered as such resident, describing himself as a planter, aged forty.³⁵ He renounced his allegiance to the King of Denmark to whom St. Thomas belonged and took the oath of allegiance to the United States. Being a man of scrupulous honesty, however, he set forth in his petition all the facts, stating his recollection that the ship had been becalmed for several days and that therefore he may not have arrived at St. Augustine exactly on July 17, but also setting forth that he had purchased lands in Florida long before with a view of settling there, and that he had actually declared his intention of becoming a citizen at Philadelphia in February of the preceding year.³⁶ He had certainly done his best to arrive in time, and if he was not in Florida on the 17th, he was certainly in sight of its shore for some time before that date. His petition was granted and he received a certificate of citizenship on March 23, 1822.³⁷ His wife must have died prior to that date for in his petition he described himself as single. Several other Jews were naturalized at St. Augustine at about the same time.³⁸ Thereafter the matter of the date of his arrival received no further attention and he was regarded as one of the earliest citizens of the territory.

Levy now devoted all his energies to his plantations and became wrapped up, heart and soul, in the welfare of Florida. He was looked upon as one of

35. *Ibid.* Also Bartlett, *Cases of Contested Elections in Congress 1834-65* (Washington, 1865).

36. See citations under notes 25.

37. A copy of this certificate is incorporated in the subsequent certificate issued to Levy in 1831.

38. House Report No. 459 *supra* p. 123. Among such names are George Levy, age 26, single, planter from London. Lewis Solomon, age 30, single, watchmaker from London. Levy M. Rodenberg, age 29, single, grocer from Amsterdam. Isaac Hendricks, age 47, married, planter from South Carolina.

its foremost citizens, not only as the owner of vast lands but also as a man of other independent means. In an affidavit verified June 19, 1822, he describes himself "as the sole owner of the schooner boat 'Fly', now lying in the harbor of St. Augustine."³⁹

As we have seen, he was anxious to begin actual colonization as soon as possible and that matter was uppermost in his mind. In fact, we find that he had actually written a letter to Warburg on the subject. Immediately upon his arrival he went to his land and built thereon an extensive plant for manufacturing sugar. Early in 1822 Warburg arrived with a group of colonists, some of them from Germany and France; among the latter being the Chateaufneuf family, while others came from upper New York and from New Jersey as well.⁴⁰ It appears that about thirty had come from New York and these were supported by him at Alachua. Levy's expense in connection with his colonists had amounted to \$11,000.

Throughout his life Levy was an opponent of human slavery and had repeatedly both written and spoken against that institution,⁴¹ but in establishing his plantations he soon realized that slave labor was absolutely essential in the wilderness and he therefore purchased negroes for that purpose.

Some difficulties now developed in regard to the title to the two tracts which he had purchased from Arredondo and in order to avoid litigation an exchange was made between them on January 22, 1822, whereby Levy received, on certain conditions, one-fourth of the entire Arredondo Grant, which was 24 miles square.⁴²

39. *Ibid.* 47.

40. Executive Documents, Vol. XI *supra* pp. 70, 343-344.

41. See citations in note 64.

42. *Florida Herald and Southern Democrat*, St. Augustine, December 31, 1841. Also the Congressional reports above cited.

But even this vast territory did not satisfy Levy's ambition. Throughout 1822 he continued to add to his holdings, making purchases from Antonio Fernandez Mier, who was probably a Jew, and from other grantors as well.⁴³ He added thousands of acres to the land which he owned, some at Alligator creek, on the St. Johns river near Lake George, at Black creek, Cedar swamp, Travers Land, Cassonvilla, Charcola and other places, besides the land which he owned in Alachua county where his chief holdings were located.⁴⁴ He continued making such purchases for several years in other parts of the territory, including land at Tampa bay. In some of his transactions there figure Abraham M. Cohen of Philadelphia and Isaac Hendricks.

He commenced planting sugar cane in January 1822 at a place called Volutia, about eight miles above Lake George on the St. Johns river.⁴⁵ He also developed a place opposite this plantation which he called "Hope Hill." His first colony in Alachua county was named "Pilgrimage" and he hired one Anthony Rutant to superintend it.⁴⁶ When the latter arrived some time in 1822, twenty-five acres had already been cleared and planted with corn and Levy advanced \$1,000 for equipment and dry goods for the settlers.

On February 18, 1822, we find Levy making an agreement at Micanopy for a number of other improvements including the erection of fifteen houses in Alachua.⁴⁷ In May of that year he brought a whole cargo of sugar cane from Cuba. He also brought a quantity of tropical fruit, roots and seed

43. House report No. 450 *supra* Exhibit 12 p. 49. Executive Documents, Vol. XI *supra* pp. 130, 223, 256, 258, 311-316.

44. *Ibid.* Also Buchholz *supra* pp. 42-52; also note 71 *infra*.

45. Contested election case of David Levy *supra*.

46. Buchholz *supra* 42-52.

47. Florida Herald and Southern Democrat (St. Augustine, December 31, 1841) and the various Congressional reports above.

and built an extensive plant for manufacturing sugar. Nor was this all. His plans were not merely ambitious but they were scientific as well, and he now engaged persons to cultivate the vine, the olive and other products from the south of France.⁴⁸ By the end of 1822 he had actually expended \$18,000 in connection with his plantations.

Though Warburg had brought on some colonists in 1822, Levy kept incessantly urging him to continue his efforts in that direction and as Warburg later testified he was active in securing colonists for several years thereafter.⁴⁹ Nor was the original plan to assist his own people forgotten, for Levy continued to make efforts to attract Jewish refugees, and this appears from one of the German newspapers as late as November, 1825.⁵⁰

With characteristic energy, he advanced the work of colonization in various ways. In 1823 a road was built with adequate bridges wide enough for wheeled vehicles to Picolata, 45 miles away. Dwellings were erected for the colonists together with an outhouse, stable, cornhouse and a blacksmith's shop, while a supply of corn was housed, sufficient to maintain the settlers for a year.

During July 1823 the settlement in Micanopy had increased from thirteen houses, the largest of which was 25x30, to twenty-five houses, with frames up for ten others. Water power also was established, and Levy built for himself what was styled a mansion where he resided on his own plantation in the heart of the wilderness, though his family continued to reside at St. Augustine.

Before a Congressional committee a number of years later, F. P. Sanchez and other witnesses testi-

48. *Ibid.*

49. House Report No. 450 *supra* pp. 141-7. See also Exhibit No. 17 Deposition of Frederick S. Warburg.

50. *Allgemeine Zeitung des Judenthums* 1868 Vol. 32 p. 346.

fied that "in spite of the hazard of Indians, Moses E. Levy had spent more than \$18,000 in establishing families, furnishing provisions, building houses, and for clothing for the settlers."⁵¹

It appears that Arredondo had also sold portions of his grant to various parties, quite a number of whom resided in New York and these had formed a land committee of their own.⁵² For several years thereafter Levy made frequent trips to New York, holding meetings with the New York committee to discuss matters of importance as they came up, and later on we find that the various owners were incorporated as the Alachua Land Company in order to prosecute various actions to clear up questions of title.⁵³

As the property improved litigation had broken out concerning not merely the titles to the land but among the various interests as well. These law suits continued for many years and in them eminent counsel appeared for the various parties.⁵⁴ One important question of title had arisen concerning the entire grant itself, for it was claimed that the Arredondo Grant had become void, because the required 200 families had not been settled there within the time limited. This matter was fully threshed out in 1829, and Judge Joseph L. Smith of the

51. Florida Herald and Southern Democrat (December 31, 1841.) House Report No. 450 *supra*. Also Executive Document No. 156, 18th Cong. 1st pp. 75, 313, 343, 244, 350, 353, 355-6.
52. See court record at St. Augustine in ease of John H. Brush *et al* vs. Moses E. Levy *et al* (File Case B-8) where the statement as well as the committee's proceedings appear. See also St. John's County archives File Case D-4. I am indebted to Mrs. Katherine S. Lawson for this reference.
53. See St. John's County Archives at St. Augustine File Case D-4 which contains an agreement by the Company as well as its offer of retainer to Hon. Joseph M. White to act as its attorney.
54. See "Spanish Papers and Arredondo Suits Exhibits in Office of Clerk of Circuit Court at St. Augustine. Also Letter of George R. Fairbanks *supra*. Also St. John's County Archives File Case D-4. Mr. Berrian of Georgia had been suggested as Counsel.

Superior Court for the District of East Florida, in an elaborate opinion rendered in November 1830, held that this provision of the grant merely contemplated that the colonization of 200 families must be commenced within the time limited, even though a much longer time might have been necessary to actually settle that number. He therefore held that the grant and the titles thereunder were valid.⁵⁵

When Levy visited the United States in 1819 he had brought with him his two young sons. The older, Elias, was sent to Harvard. He did not graduate however, but left during his sophomore year in October 1823.⁵⁶ The younger son, David the future senator, was about nine years of age at the time of his arrival and in order to give him better educational advantages than could be obtained in Cuba, Levy placed him with his intimate friend Moses Myers, who was then one of the leading citizens of Norfolk, Virginia,⁵⁷ a man who had held public office and who later became the representative of the French Republic in the United States. At Norfolk young David Levy remained from 1819 to 1827.⁵⁸

One of the documents produced at the Congressional hearing later on mentions that Levy's family in 1823 consisted of four children, all of whom except David resided in London.⁵⁹ This may account for

55. See "Opinion of Honorable Joseph L. Smith, Judge of the Superior Court for the District of East Florida upon the Claim of Fernando de la Maza Arredondo and others against United States." Charleston, 1831.

56. House Report No. 450 *supra* p. 67. Also Records of Harvard College, where his residence is given as St. Augustine, E. F.

57. See Eminent and Representative Men of Virginia and the District of Columbia. (Madison, 1893, p. 523). See also Acts of Virginia December 23, 1792.

58. Miscellaneous Documents No. 57 *supra* pp. 41 etc.

59. House Report No. 450 *supra* pp. 56 and 58. Bartlett *supra*; Rowell *supra*. His son Elias Yulee is probably the person of that name who subsequently became Receiver of Olympia, Washington Territory. I am informed that Elias Levy married a relative whose name was likewise Levy. Their grandson is the present mayor of Orlando, Samuel Yulee Way.

the fact that Elias was taken out of Harvard, and as no mention is made of Levy's wife in the document referred to, and as he is described as single in the certificate of citizenship issued in 1822, it is fair to assume that she had died before that date. Subsequently Elias returned to America, but it appears that both sons had incurred their father's displeasure and that he had cut off their allowance in 1827. Various reasons have been given for this, the most probable one being that both young men had become lavish spenders, and had worried their father with money matters. Both sons thereupon went to their father's plantations in Alachua where they continued to reside until 1831.⁶⁰ It seems, however, that the father had become reconciled with them in the meantime and had allowed them to manage one of his plantations there.

Mention has been made heretofore of Levy's great interest in his own people. Throughout his entire life he was a professing Jew, and during his visit to the United States in February 1821, we find that he formed intimate friendship with prominent members of his faith in the various cities he visited. Among these may be mentioned Dr. Daniel L. Maduro Peixotto, the son of the Minister of the famous Spanish and Portuguese Congregation at New York.⁶¹ This gentleman later became one of the foremost figures in the annals of early American medicine, and was president of the Medical Society

60. House Report 450 pp. 66-73.

61. House Report No. 450 *supra* p. 59. From a letter by Levy to Warburg about this time there appears his deep devotion to his people and to his faith. In this letter he says "My residence will be wherever the seminary intended is established for there I intend to live or die. If the place is established by the Jewish community in America, the place will, I believe be Pennsylvania, to which I will sacrifice the flattering prospects which my lands in Florida promise, and sell off." The seminary referred to was never established however.

of the County of New York ⁶² To him Levy told of his ambitious plans for colonization in Florida and of the great lands which he had purchased there.

In 1825 Levy went to Europe in connection with his various business enterprises and remained for about three years. During that time he attracted considerable attention in a literary way. He made addresses in opposition to slavery, condemning it as an inhuman institution, and he also engaged in various controversies in defense of his own people. In 1827 and again in 1828 he engaged in one such controversy with a Mr. Forster. An account of this controversy was published in England in 1829, and shows that Levy had made a reputation both as a speaker and a writer. This rare pamphlet is entitled "Letter Concerning the Present Condition of the Jews, Being a Correspondence between Mr. Forster and Mr. Levy." ⁶³ In the preface appears the following statement. "Mr. Levy by his conduct and discourses at the meetings of Jews and Christians over which he presided, by his writings on the subjects of discussion at those meetings, as also by his plan for the abolition of negro slavery, made his name so well known as to render any further introduction of him to public notice unnecessary." All the letters are signed "Moses E. Levy," and on the last of them, dated August 28, 1828, he mentions the fact that he is on the eve of his departure for America. ⁶⁴

Another similar work appeared at York, England,

62. Appleton's Cyclopedia of American Biography Vol. IV. Also J. R. Kagan "Jewish Contributions to Medicine in America" (Boston, 1939 pp. 10-12).

63. This pamphlet contains 83 pages and bears the imprint London, J. Hatchard & Son, 187 Piccadilly 1829."

64. In this letter also mentions in closing a pamphlet on the slavery question. These data were brought to my attention by Dr. Albert M. Hyamson through the courtesy of Mr. A. M. Friedenberg.

in 1829,⁶⁵ and gives an account of Levy's controversy with Captain Thomas Thrush of the Royal Navy. This rare pamphlet is entitled "Letters to the Jews, particularly addressed to Mr. Levy of Florida, with a Copy of a Speech said to have been delivered by him at a meeting of Christians and Jews in London in May, 1828."

After his return to America Levy continued his defense of his people on various occasions and in an address delivered in 1830 by Dr. Daniel L. M. Peixotto, then Vice-President of the Medical Society of New York, appears the following statement: "The transactions of the Philo-Judaeian Society possess great interest, and for the independent stand which he took in the long neglected cause of his people, Moses E. Levy, Esq., of Florida, whom I am pleased to call my friend, deserves the gratitude and love of his brethren. The highest testimonials of approbation have been showered upon him by the other denominations."⁶⁶ There is further mention of Levy in the same connection.⁶⁷

But this was not by any means the extent of Levy's public activity. Throughout his entire life, he was public spirited and naturally intensely devoted to the welfare of Florida, where his great interests were centered. From the time of his arrival he played a very prominent part and as has been said was regarded as one of the leading citizens of St. Augustine.

65. Thomas Thrush (Late Captain Royal Navy) "Letters to the Jews With a Copy of a Speech said to have been Delivered by Mr. Levy of Florida" (York, 1829). This pamphlet is also listed on p. 74 as No. 431 of Jacobs & Wolf's "Bibliotheca Anglo-Judaica" 125. The speech referred to as delivered by Mr. Levy of Florida, was published in "The World" (London) May 28, 1828, 126.

66. "Discourse before the Society for the Education of Orphan Children" by Dr. Daniel L. M. Peixotto VP of the Medical Society of the City and County of New York (1830).

67. *Gazette and Daily Advertiser*, February 15, 1828.

Though the population of the territory was still predominantly Spanish, Levy had become so enthusiastic about American institutions that he sought to introduce American ideas and the lofty principles of American citizenship wherever possible.⁶⁸ In 1822, shortly after his arrival, it is stated that he lectured extensively and became active in all progressive movements, particularly in connection with education. He wrote for the press on a great variety of subjects, mainly political, and used as his pen name the words "Yulee" "Eubates" and other names. Between 1822 and 1824 he energetically advocated the establishment of a court of arbitration, in order to avoid expensive litigation, and he also fathered other judicial reforms. In 1824 he had the satisfaction that his various suggestions were embodied in the Judiciary Act of the territory. From the testimony of one of the witnesses before the Congressional committee, who had been connected with journalism in Florida, We learn that in 1822 and 1823 he frequently contributed to the *East Florida Herald*, and that "he was always deeply solicitous of the welfare and prosperity of the territory."

Again in 1825 when M. Letimondi, the Spanish consul in East Florida, celebrated the adoption of the Spanish constitution, it is stated that the decorations, as well as other portions of the arrangements in St. Augustine, were gotten up under Levy's direction, and that these included a transparency in the public square representing the transfer of Florida to the United States.⁶⁹ The account of the celebration, in the *Florida Herald*, was written in part by him. He continued his political and social activities

68. *Ibid.* House Report 450 *supra* pp. 66 etc. Testimony of James M. Gould.

69. Testimony of James M. Gould before Congressional Committee.

for many years, and throughout 1831 and 1832 is mentioned as exceptionally active in efforts to establish free schools, despite considerable opposition to such a project.

His entire fortune had been invested in his great enterprises, and their equipment and maintenance had been a severe drain upon his resources.⁷⁰ He was compelled to mortgage some of his land for \$13,000, and a little later, while in Paris in 1826, he again mortgaged some of his holding in Alachua for the additional sum of 50,000 francs.⁷¹ While his plantations were growing in importance and had benefited the territory and increased its population they did not prove as financially successful as had been expected. The most important reason for this was that Levy was beset by litigation in connection with his various land purchases, as well as from his various co-owners, and this litigation continued to harass him for a great many years.⁷² Besides these troubles the Indian war, known as the Seminole War, had also affected his plantations. In December 1835 for instance, while his manager Jacob Verhein was engaged in manufacturing sugar at one of his plantations near Micanopy, the sugar house and its contents were destroyed through fire by hostile In-

70. House Report No. 450, 27th Cong., 2nd. II p. 5 etc.

71. See St. Johns County Deed Book G pp. 11-19 where appears the mortgage made by Moses E. Levy, planter of St. John's County, Florida but now residing at Paris, to Seraphina Chauviteau (born Aloy) of Paris for 50,600 francs at 6%. This mortgage is subject to a previous mortgage of \$13,900 and mortgages, lands south of Lake George, as well as lands at Travers Island, Black Creek, Cascowilla (also spelled Tuscowilla) Chacala, Cedar Swamp and English Big Spring. I am indebted to Mrs. Katherine S. Lawson of St. Augustine for this reference.

72. *Ibid.* Mr. T. Frederick Davis of Jacksonville has called my attention to the fact that many of the papers in these law suits comprising affidavits, testimony, etc., are on file in the office of the Clerk of the Circuit Court at St. Augustine in a drawer labeled "Spanish Papers" in a compartment of the clerk's vault marked "Arredondo Suits Exhibits." See also letter of George R. Fairbanks *supra*.

dians.⁷³ The plantation itself had to be abandoned. His manager Jacob Verhein thereupon removed some of the property to a Micanopy military post, but when this was threatened by the Indians, Major Pierce, the commanding officer, ordered the property to be destroyed in order to prevent its falling into the hands of the Seminoles. Levy subsequently presented a claim to the government for its value, but Congress decided against the claim, holding that the property had been destroyed for the best interests of the territory, and that it had been lost by the fortunes of war.⁷⁴

In 1828 the citizens of St. Augustine became greatly disturbed by a decision of the Federal Court which seemed to intimate that the old inhabitants of Florida had not become citizens by the treaty. This decision was given wide publicity but it later appeared that the feeling it had aroused was unfounded.⁷⁵ However, to be on the safe side, Levy, as well as many other citizens at the time, applied anew for naturalization and their petitions were granted as a matter of course. Levy accordingly obtained a new certificate of citizenship in 1831.⁷⁶

We have already mentioned that the question of Levy's citizenship became of vital importance years later. It came about in this way. David Levy, his son and the future senator, had been admitted to the bar in 1832 and had entered the political arena,

73. House Reports No. 236, 25th Congress, Third Session, Vol. 1.

74. Report No. 236, 25th Cong. 3rd, I. 236 etc.

75. See *American Insurance Co. vs. Cauke* 1 Peters 542. Also Article in *Florida Herald and Southern Democrat*, Dec. 31, 1841.

76. Rep. 450, 76 etc. The present writer recently obtained from the Secretary of State of Florida a photostat copy of this certificate which contains much interesting material. It was granted by the Superior Court, East Florida, on October 17, 1831, and sets forth Levy's declaration of intention as well as the previous certificate dated March 18, 1822 which describes him as follows: Aged 40, single, five feet six, hair black, forehead round, weight 180 pounds, eyes dark, nose straight, mouth moderate, chin round, visage oval.

though contrary to his father's wishes. His political rise was rapid. In 1836 he was elected to the Legislative Council from St. Johns county ; in 1837 he was elected again. In 1838 he was a member of the convention which framed the constitution of Florida, and shortly afterward was chosen delegate in Congress from Florida. His right to his seat was thereupon challenged by the opposing faction on the ground that he was an alien.⁷⁷ It was of course admitted that he had been born at St. Thomas which was a Danish colony. He claimed his American citizenship through the fact that his father had become a citizen during his minority. In answer to this his opponents argued that the father had not been entitled to citizenship because he was not actually in Florida on July 17, 1821, the date set for the exchange of flags, and that therefore the certificate of citizenship which had been issued to him was void. Many sessions were held by the Congressional committee, which took evidence on the question whether Moses Levy was an actual resident of Florida on the date mentioned. Many witnesses were examined and, as heretofore mentioned, there was a hopeless conflict of testimony, though even the opposition conceded that Moses Levy on that date was certainly within sight of the Florida shore, but contended that he did not actually arrive until four or five days later.⁷⁸ The point was therefore made that if Moses Levy was not actually a resident of Florida on July 17th, 1821, his citizenship was invalid and could not enure to the benefit of his son. It was also argued that the fact that he subsequently

77. Miscellaneous Document No. 57 *supra* p. 41. His right to hold office had been challenged for the same reason in connection with the previous offices which he had held but had been decided in his favor. See article by the present writer "David L. Yulee, Florida's First Senator" where considerable additional detail and the various authorities are cited.

78. Barton's report. Also Misc. Doc. No. 57 *supra*.

obtained a new certificate of citizenship in 1831, concerning which there could be no question, was of no avail to the son, because it had been obtained after the son had already passed his 21st birthday.

The Congressional hearings dragged on until 1842, when Levy's citizenship was finally sustained not merely on the ground that there was a doubt as to his actual arrival on July 17th, 1821, but because he had repeatedly evinced his intention of becoming a citizen and had purchased lands in Florida long before that date, and was actually on his way to St. Augustine. It was held that the spirit of the legislation had been amply fulfilled.⁷⁹

At the time of these Congressional hearings, Moses Levy had been estranged from his son for several years. It is stated that this was due to some unscrupulous politicians who had brought about that result for political ends.⁸⁰ Despite this situation however, the father appeared at the hearings and gave his testimony frankly. Even the witnesses of the opposition testified at the hearings that Moses Levy at all times had been a man of character and integrity.

It is a curious fact, as appears from a letter of Mr. George R. Fairbanks who was the attorney for Moses Levy for several years, that the latter had never told any of his children either the traditions of his family, nor that Yulee had been their original name. In the letter referred to, Mr. Fairbanks states that these facts had been told him by his client and that he himself had narrated them to David Levy about 1845, who thereupon applied to

79. Ibid. The entire contest and testimony in full is given in the various Congressional reports, particularly House Report No. 450 *supra* p. 5. Several of the witnesses paid tribute to the character and the service of Moses E. Levy.

80. Leon Huhner "David L. Yulee" *supra* where the various authorities are cited. Also letter of George R. Fairbanks *supra*.

the court to have his name changed to Yulee.⁸¹ His brother Elias who then resided in Georgia, did the same thing shortly afterward. In 1845 he was elected to be the first senator from the new state and served with distinction with only a brief interruption until he resigned in 1861, when Florida seceded from the Union.⁸² After the struggle was over, he rendered valuable services, in restoring prosperity to Florida. Both surnames have been perpetuated in Florida in the name of Levy county and the towns of Yulee and Levyville.

Moses Levy resided in New York in 1838 but returned to St. Augustine in the latter part of 1841. He was now land poor; his fortunes had dwindled considerably and though he still owned vast tracts of land, they were burdened with such intricate litigation that they were unsalable for this and other reasons. He had been estranged from his sons for years and felt his situation keenly. In fact, in the course of his testimony before the Congressional committee above mentioned, he referred to his land ventures in Florida, as "purchases in this to me unhappy country".⁸³

Fortunately for him, however, in 1842 he made the acquaintance of a young man who had recently become the Clerk of the United States Superior Court at St. Augustine, George R. Fairbanks, who has left us an interesting account of his relations with Levy in the letter mentioned above which was published in the *Florida Historical Quarterly*, the issue of January 1940. He tells of becoming Levy's attorney and agent, and that after ten years his lands were

81. "The Acts and Resolves of a First General Assembly of the State of Florida" Tallahassee, 1845 p. 38, from which it appears that Levy's name was changed to "Eulee." The change to "Yulee" came later. See letter of George R. Fairbanks *supra*.

82. Nicolay and Hay, *Life of Lincoln* Vol. III p. 181. *New York Herald* October 11, 1886.

83. House Doc. 15, 27th Cong. 3rd II p. 1.

free from litigation and he possessed enough land and money to make him comfortable. Fairbanks adds: "Mr. Moses E. Levy was a man universally respected. His probity, large intelligence and benevolence were recognized by all. I hold him in the highest regard and veneration. He was just and generous in his business transactions."

Moses E. Levy died at White Sulphur Springs in Virginia on September 7, 1854,⁸⁴ survived by all his four children, namely, Senator David Levy Yulee, Elias L. Yulee, who resided in Georgia, and who subsequently held Federal office at Olympia, in Washington Territory,⁸⁵ his daughter Rahma who had married Jonathan M. DaCosta of St. Thomas, and another daughter Rachel who had married Abraham Pretto Henriques, likewise of St. Thomas.⁸⁶

Shortly after his death, his son David L. Yulee applied for letters of administration in October 1854 and took charge of the administration of the estate.⁸⁷ Subsequently, however, it appeared that Moses E. Levy had left a will. This was filed for probate on June 7, 1856 in the Circuit Court of St. Augustine by B. A. Putnam one of the executors therein named. The will had been executed at New York on September 4, 1838 and bequeathed \$100 to each of his children, dividing the residue of his estate equally between his two daughters and his sister Rachel Benlisa of St. Thomas. Shortly after the will had been filed, the record discloses that Captain Elias Yulee and his brother David entered suit in the Probate Court of St. Johns county to break their father's will, but as a matter of fact the will

84. His death at White Sulphur Springs is also mentioned in the Diary of Arthur M. Reid in possession of the St. Augustine Historical Society.

85. Senate Report 381, 35th Cong. 2nd., I.

86. Note 11 *supra*.

87. The bond of David Levy Yulee as administrator was fixed in the sum of \$10,000 and is dated October 10, 1854. See original in File P-6 at Court House in St. Augustine.

was never broken nor was the will contest ever disposed of. Levy's four children had effected a settlement among themselves and allowed Senator Yulee to continue to manage the estate as administrator. Some of the real estate belonging to the estate however had not been sold, and had evidently acquired value in the course of time. A petition was therefore submitted in 1915 and the will was actually admitted to probate on December 16, 1915, over sixty years after it had been originally filed.

Several of the descendants of Moses Elias Levy have attained prominence in their respective spheres. We have already mentioned the distinguished career of David L. Yulee. Among Levy's grand-children was Dr. Jacob Mendes DaCosta, who had been born in St. Thomas in 1833, and after studying in Paris and Vienna, had become Professor of Medicine at Jefferson Medical College, Philadelphia. He made a number of brilliant contributions to practical medicine, became President of the Association of American Physicians and also of the College of Physicians at Philadelphia, and published a number of works which are still regarded as classics.⁸⁸

Another grandson, Charles DaCosta studied law, and became one of the leaders of the New York Bar and a trustee of Columbia College.⁸⁹ Both Dr. Da-

88. See Appleton's Cyclopeda of American Biography, J. C. Wilson, "Memoir of Jacob Mendes DaCosta, Phila. 1902.

89. History of the Bench and Bar of New York, N. Y., 1897. Vol. I p. 290.

I desire to acknowledge the courtesy of Mrs. Katherine S. Lawson of the St. Augustine Historical Society, to whom I am indebted for some valuable material. My thanks are also due to Hon. Samuel Yulee Way, the mayor of Orlando, who is a great grandson of the subject of this sketch, to Hon. David R. Dunham, to Mr. Hiram Faver of St. Augustine, Mr. T. Frederick Davis of Jacksonville, Mr. Mills M. Lord, Jr., and to the Rev. M. D. Sasso of St. Thomas for their replies to my various inquiries.

Costa and his brother Charles DaCosta later became members of the Episcopal Church. A great grandson of this Florida pioneer is Samuel Yulee Way, the present mayor of Orlando.

One cannot but admire Moses Elias Levy's vision and courage in establishing important settlements throughout Florida, not only in Alachua county, but along the St. Johns river, on Tampa bay and elsewhere, as well as his indefatigable energy and pluck in developing them in the face of enormous obstacles and disappointments.

THE COURTS OF TERRITORIAL FLORIDA

By CHARLES D. FARRIS

The organic act establishing the Territory of Florida was passed by Congress on March 30, 1822. Another act of Congress admitted Florida into the union of states on March 23, 1845.² Provision was made for either the appointment or the election, by October 1845, of all officers under the state government who succeeded to functions of officers under the territorial government.³ The territorial period, therefore, may be said to have ended with the elections in October 1845.

The Continuity of the Courts

During the territorial period five courts functioned in Florida. One, the circuit court, existed for less than a year; three, the county court, the superior court and the court of appeals, were abolished at the end of the territorial period; only one, the justice of the peace court, survived the transition from territorial to state government.

Justices of the Peace. Justices of the peace were among the officers in whom the organic act permitted the Legislative Council to vest the judicial power of the territory.⁴ The Council first provided

1. There is nothing herein of the functioning of the judiciary in its legal framework, nor is any comparison made with other judicial systems. This is merely a summary of the law concerning the courts of the territory. My thanks are due the Florida Historical Records Survey, which allowed me access to its transcriptions of the session acts of the Legislative Council and the General Assembly.
2. *The Public Statutes at Large of the United States of America*, v. 3, pp. 656, 752. Hereinafter cited as *U. S. S. L.*
3. See Florida constitution, 1838, art. 5, secs. 3, 5, 9-13; *The Acts and Resolutions of the - General Assembly of the State of Florida*, 1845, ch. 4, secs. 10, 13, ch. 6, sec. 1, ch. 7, sec. 1. Hereinafter cited as *Acts*.
4. *U. S. S. L.*, v. 3, pp. 656, 752, v. 4, p. 45.

for justices of the peace in September 1822, and it reconstituted the office from time to time thereafter.⁵ The office was continued when Florida became a state.⁶

Circuit Courts. The organic act also vested the judicial power of the territory "in such inferior courts" as the Legislative Council might establish from time to time.⁷ In August 1822, the Council established two circuit courts, for East Florida and West Florida, respectively.⁸ A memorial of the governor and the Council addressed later that year to the President of the United States acknowledged that the establishment of circuit courts was "a temporary expedient" to lessen the effect of the "novel and dangerous" power which Congress had "vested in one judge [the judge of the superior court]-over the lives, liberties and property, of the citizens" of the territory.⁹ The circuit courts were abolished in June 1823, and all causes then pending in them were transferred to the superior and county courts, according to the jurisdictions of the latter two.¹⁰

County Courts. In September 1822, the Legislative Council had established in each county another inferior court known as the county court. This "court," which actually exercised only administrative functions, rather than judicial ones, was abolished by Congress in March 1823. Later that year however, in June, the Legislative Council again provided for a county court in each county, which was

5. *Acts - of the Legislative Council of the Territory of Florida*, 1822, p. 91. Hereinafter cited as *T. A.*, 1823, p. 26; *T. A.*, 1824-25, p. 239; *T. A.*, 1828, pp. 91-92; *T. A.*, 1829, pp. 135-136; *T. A.*, 1833, p. 49.

6. See Florida constitution, 1838, art. 5, sees. 1, 10; *Acts*, 1845, ch. 7, sec. 1.

7. *U. S. S. L.*, v. 3 pp. 656, 752, v. 4, p. 45.

8. *T. A.*, 1822., pp. 3, 5.

9. *Ibid.*, pp. 192-193.

10. *T. A.*, 1823, pp. 15-17.

to have most of the judicial functions of the abolished circuit court, and the same administrative functions as the county court of 1822. The county courts so established were reorganized from time to time, and continued to function until the end of the territorial period, when their jurisdictions and powers were distributed among the newly constituted circuit courts, judges of probate, and boards of county commissioners.¹¹

Superior Courts. Congress vested the judicial power of the territory in superior courts, one of which was provided for each judicial district into which the territory was divided.¹² All superior courts functioned until the end of the territorial period, when causes then pending in them were transferred to either the circuit courts of the state or the U. S. District Court, according to the jurisdictions of the latter two.¹³

The Court of Appeals. In their memorial to the President, the governor and the Legislative Council in 1822 had requested that a court of appeals be provided for the territory, but Congress did not establish such a court until 1824. The court functioned until the end of the territorial period, when all pending causes of which it had had jurisdiction were transferred to the state supreme court, except those cognizable by the U. S. District Court, which were transferred to that court.¹⁴

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11. *T. A.*, 1822, p. 93; *U. S. S. L.*, v. 3, p. 754; *T. A.*, 1823, p. 8; *T. A.*, 1824-25, p. 247; *T. A.*, 1828, p. 212; *T. A.*, 1829, p. 41; *T. A.*, 1833, p. 42; *Acts*, 1845, ch. 4, secs. 5, 17, ch. 6, secs. 1-3, ch. 11, sec. 1.
 12. *U. S. S. L.*, v. 3, pp. 656, 752, v. 4, pp. 45, 291-292, v. 5, p. 294.
 13. *Acts*, 1845, ch. 4, secs. 5, 8. See also *U. S. S. L.*, v. 5, p. 788, v. 6, pp. 128-129.
 14. *T. A.*, 1822, pp. 192-193; *U. S. S. L.*, v. 4, pp. 46, 600, v. 5, p. 294; *Acts*, 1845, ch. 5, sec. 14. See also *U. S. S. L.*, v. 5, p. 788, v. 6, pp. 128-129.

The Structural Organization of the Courts

Certain features of structural organization were common to all courts of the territory: the geographical extent of each court's jurisdiction was limited in general by the boundaries of a sub-county district, a circuit, a county, a judicial district, or the territory itself; all courts had judges and executive officers; all but the justice of the peace courts had clerks and prosecuting officers; and the times and places at which each could hold terms were regulated to a large extent by law.

Justices of the Peace. From January 1827 until the end of the territorial period, the county court of each county was required to divide the county into justice of the peace districts. The law prohibited the formation of more than seven districts in a county until March 1845; ¹⁵ thereafter any number of districts might be formed as would "best subserve the convenience of the people." ¹⁶

Until the first districting provision, "a competent number" of justices was provided, although from September 1822 to June 1823, eight justices were specifically provided for each county, three of whom were required to live in St. Augustine and three in Pensacola. ¹⁷ Between January 1827 and November 1829, the law prescribed at least one justice, and not more than two, for each district, except in St. Augustine, Tallahassee and Pensacola, ¹⁸ where more were presumably allowed. Between November 1829 and March 1845, "a competent number" of justices was again provided for each county. ¹⁹ From February 1833 to March 1845, the Legislative Council also provided for additional justices in "such number— as

15. *T. A.*, 1826-27, p. 167; *T. A.*, 1827-28, p. 153; *T. A.*, 1828, pp. 91-92.

16. *T. A.*, 1845, p. 17.

17. *T. A.*, 1822, p. 91; *T. A.*, 1823, p. 26; *T. A.*, 1824-25, p. 239.

18. *T. A.*, 1826-27, p. 167; *T. A.*, 1828, p. 153; *T. A.*, 1828, pp. 91-92.

19. *T. A.*, 1829, pp. 135-136.

the publick good-[might] require-in each county and in each justices district." ²⁰ After March 1845 the number of justices in each district might be "two or more." ²¹ After December 1824, the judges and justices of the county courts had individually all the jurisdiction, powers, and duties of justices of the peace. ²²

Under the organic act and an amendment thereto the governor could appoint justices of the peace until November 1829. In January 1828, the Legislative Council had provided for election of justices, upon the sanction of Congress. ²³ The sanction was not forthcoming, but Congress did provide in January 1829 that "justices of the peace-shall be chosen by-the legislature, at such time and for such term of service as the said legislature shall prescribe." ²⁴ Accordingly the Legislative Council provided that justices should be appointed by the governor and the Council. ²⁵ In June 1844 Congress prescribed that "justices of the peace - in the several territories shall be elected by the people in such manner as the respective Legislatures thereof may provide by law" ²⁶ and the Legislative Council provided in March, 1845 for the election of justices by the electorate of each justice's district. ²⁷

As judicial officers within the meaning of the organic act and an amendment thereto, justices of the peace until November 1829 could hold office for

20. *T. A.*, 1833, p. 49.

21. *T. A.*, 1845, p. 17.

22. *T. A.*, 1824-25, p. 247; *T. A.*, 1828, p. 213; *T. A.*, 1829, p. 41;

T. A., 1833, p. 42.

23. *U. S. S. L.*, v. 3, pp. 654, 751; *T. A.*, 1822, p. 91; *T. A.*, 1823, p. 26; *T. A.*, 1824-25, p. 239; *T. A.*, 1827-28, pp. 172, 173; *T. A.*, 1828, p. 93.

24. *U. S. S. L.*, v. 4, pp. 332, 333.

25. *T. A.*, 1829, pp. 135-136; *T. A.*, 1833, p. 49.

26. *U. S. S. L.*, v. 5, p. 670.

27. *T. A.*, 1845, p. 17.

four years. Thereafter during the territorial period a justice's term of office was two years.²⁸

During the territorial period justices were compensated by fees for specific services rendered or process issued.²⁹

In the absence of specific statutory authority before February 1835, justices were presumably subject to removal from office by the agency which had appointed them. Thereafter, they were subject to removal for cause by the governor or a judge of the superior court. Likewise, in the absence of specific statutory authority before November 1829, vacancies in the office of justice of the peace could presumably be filled by the appointing agency. Between November 1829 and March 1845 vacancies were required to be filled by the governor upon petition from the inhabitants of the justice's district. However, vacancies arising from removal between February 1835 and March 1845 were filled by the officer exercising the power of removal. In March 1845 provision was made for holding a special election to fill a vacancy in the office.³⁰

Any constable of the county could serve process of a justice of the peace court. The sheriff of the county and the marshal of the superior court could serve warrants for the arrest of persons charged with serious crimes. The phrase "constable or other officer attending" the justice's court, which occurs in several acts during the territorial period, indicates that the sheriff and marshal might also serve other process of a justice of the peace.³¹

28. *U. S. S. L.*, v. 3, pp. 657, 753, v. 4, pp. 332, 333; *T. A.*, 1829, *T. A.*, 1845, p. 17.

29. *T. A.*, 1822, pp. 172-174; *T. A.*, 1824-25, pp. 281-282; *T. A.*, 1828, pp. 171-172; *T. A.*, 1832, p. 91.

30. *T. A.*, 1829, p. 136; *T. A.*, 1835, p. 319; *T. A.*, 1845, p. 18.

31. *T. A.*, 1822, pp. 91, 93; *T. A.*, 1823, pp. 10, 27, 31, 108; *T. A.*, 1824-25, pp. 240, 242, 244-245, 246, 254; *T. A.*, 1825, p. 35; *T. A.*, 1826-27, pp. 56-57, 118-120; *T. A.*, 1827-28, pp. 154-155, 156, 163; *T. A.*, 1828, pp. 95, 101, 119-120; *T. A.*, 1833, p. 46.

After December 1824 each justice was required by law to hold one term of his court once a month in his district, on a day to be set by him.³²

Circuit Courts. For purposes of the circuit courts the territory was divided into the circuits of East and West Florida, separated by the Suwannee river. The governor appointed a judge in each circuit who was to hold office during good behavior subject to removal by the governor and the Legislative Council. The compensation of each judge was \$1200 per annum. There was a clerk of the circuit court in each county. Two solicitors, one in each circuit, acted as prosecuting officers of the circuit courts, and the sheriff of each county was the executive officer of the court in his county. The judge in the western circuit was required to hold four terms annually at Pensacola and two "at the Big Spring, on the Chipola, in Jackson County"; the judge in the eastern circuit was required to hold four terms annually at St. Augustine, and two at Jacksonville.³³

County Courts. The boundaries of the counties limited the extent of the jurisdictions of the county courts. Until December 1824, each county court was composed of one judge. From December 1824, to December 1825, the law provided for a three-judge court, consisting of a presiding judge designated by the governor and two associate judges. Any two of the three judges were a quorum. The office of associate judge was abolished in December 1825, and from then until November 1828 the law provided for a county court of one judge. An act of November 22, 1828, continuing the one-judge court was amended the following day to constitute a county court of three judges, any two of whom were a quorum. The amendment did not provide for desig-

32. *T. A.*, 1824-25, p. 154; *T. A.*, 1828, p. 93.

33. *T. A.*, 1822, pp. 3-6. The Big Spring is in section 33 of township five north of range nine west.

nating a presiding judge. The three-judge court was abolished in November 1829, and from then until February 1833 the county court consisted of a justice of the peace who was styled the presiding justice of the county. From February 1833 until the end of the territorial period the county court was composed of one judge.³⁴

Judges and justices of the county courts were always appointed by the governor and the Legislative Council. In spite of the provision of the organic act and amendments thereto that judicial officers should hold office for terms of four years, the Legislative Council in 1823, 1824, and 1828 provided that judges of the county courts should hold office during good behavior. No term was prescribed for the presiding justices between November 1829 and February 1833, but these officers probably held office for two years like other justices of the peace. After February 1833 the judge's term of office was four years.³⁵

Judges and justices of the county courts were always compensated by fees for specific services performed.³⁶

Until November 1829 judges and justices of the county courts could be removed from office by the governor and a majority of the Legislative Council. From then until February 1835 no specific manner of removal was provided by law, but thereafter the governor or a judge of the superior court could remove from office any person holding office by appointment from the governor and Legislative Council.³⁷ In the absence of specific statutory pro-

34. *T. A.*, 1823, p. 8; *T. A.*, 1824-25, p. 247; *T. A.*, 1825, p. 84; *T. A.*, 1828, pp. 213, 218; *T. A.*, 1829, p. 41; *T. A.*, 1833, p. 42.

35. *U. S. S. L.*, v. 3, pp. 657, 753, v. 4, p. 332; *T. A.*, 1823, p. 8; *T. A.*, 1824-25, p. 247; *T. A.*, 1828, pp. 213, 218; *T. A.*, 1829, pp. 135-136; *T. A.*, 1833, p. 42.

36. *T. A.*, 1823, p. 12; *T. A.*, 1824-25, p. 285; *T. A.*, 1825, p. 84; *T. A.*, 1828, pp. 171-172, 214; *T. A.*, 1829, p. 45; *T. A.*, 1832, p. 99; *T. A.*, 1833, p. 45.

37. *T. A.*, 1823, p. 8; *T. A.*, 1824-25, p. 247; *T. A.*, 1828, p. 213; *T. A.*, 1835, p. 319.

vision, vacancies in the office were presumably filled by appointment of the governor and Legislative Council.

Each county court had a clerk. The district attorneys of the superior courts prosecuted the criminal cases of which the county courts had jurisdiction, and the sheriffs of the several counties were their executive officers.³⁸

Until January 1827 and after January 1828 the judges and justices of the county courts were required to hold two regular terms of court every year. Between December 1825 and January 1827 they were required to hold two additional terms per year solely for probate business, and between January 1827 and January 1828 they were required to hold four regular terms every year.³⁹

Superior Courts. Until May 1824 the territory was divided into two judicial districts, the Eastern District, consisting of "that part of the territory known as East Florida", and the Western District, consisting of "that part of the territory known as West Florida."⁴⁰ In May 1824 the Eastern District was redefined as "that part of the territory east and south of the Suwannee river"; the boundaries of the Western District were contracted to include only "that part of the territory-west of the river Apalachicola"; and the Middle District, established at the time, was defined as "that part of the territory situated between the Apalachicola and Suwannee rivers."⁴¹

In May 1828 all that part of the Eastern District "south of a line from Indian river on the east, and

38. *T. A.*, 1823, pp. 10, 11, 12; *T. A.*, 1824-25, pp. 247, 250; *T. A.*, 1828, pp. 213, 216; *T. A.*, 1829, pp. 42, 45, 46; *T. A.*, 1833, pp. 43, 46, 47.

39. *T. A.*, 1823, p. 11; *T. A.* 1824-25, p. 251; *T. A.* 1825, pp. 85, 86; *T. A.*, 1826-27, p. 106; *T. A.*, 1827-28, pp. 86-88; *T. A.*, 1828, *T. A.*, 1829, pp. 42-43; *T. A.*, 1833, p. 44.

40. *U. S. S. L.*, v. 3, pp. 656, 752.

41. *Ibid.*, v. 4, p. 45.

Charlotte harbor on the west, including the latter harbor" was erected into the Southern District.⁴² The Eastern and Southern Districts underwent no further changes in area during the rest of the territorial period. When Franklin county was created in February 1832 from an area which lay in both the Western and the Middle Districts, the Legislative Council made the new county part of the Western District. Congress placed Franklin county in the Middle District in February 1836.⁴³

A resolution of the Legislative Council on February 14, 1835, besought the territory's delegate to Congress to urge Congress to establish a new judicial district, to be known as the Suwannee District, and to be composed of Madison, Hamilton, Columbia, Alachua and Hillsborough counties, as those counties were then constituted. The resolution averred that the judges in the Eastern and Middle Districts had much difficulty in holding courts in their respective districts because of the great distances to be covered and the poor methods of transportation available.⁴⁴

Congress did not establish the Suwannee District, but in July 1838 it did erect Franklin, Washington and Jackson counties, as then constituted to the knowledge of Congress, into the Apalachicola District. The latter two counties had formerly been in the Western District, and Franklin county had been in the Middle District.⁴⁵ After the establishment of

42. *Ibid.*, p. 292.

43. *T. A.*, 1832, pp. 44, 45; *U. S. S. L.*, v. 5, p. 5.

44. *T. A.*, 1835, pp. 347-348.

45. *U. S. S. L.*, v. 5, p. 294. It seems likely that Congress at the time was not aware of the Legislative Council's act of January 26, 1838, creating Calhoun county, mainly from the western part of Franklin county, and placing the new county in the Western District (see *T. A.*, 1838, pp. 9-10). At any rate, in an act of March 4, 1839, regulating the terms of superior court for the Apalachicola District, the Council required the judge of that district to hold two terms in Calhoun county (see *T. A.*, 1839, pp. 16-17). For composition of judicial districts by counties, see Appendix.

the Apalachicola District, no changes were made in its boundaries, nor were further changes made in the boundaries of the Western and Middle Districts during the rest of the territorial period.

The President of the United States, by and with the advice and consent of the Senate, appointed one judge of the superior court in each judicial district. Each judge held office for a four-year term.⁴⁶

Until June 1834 the judges in the Eastern, Middle and Western Districts received annual salaries of \$1,500, and the judge of the Southern District received an annual salary of \$2000. In May 1828, additional compensation of \$800 per year was allowed each judge who adjudicated land claims. After June 1834 each judge who was not engaged in the adjudication of land claims received an additional annual salary of \$300. This increment in salary was also allowed to judges who had engaged in the adjudication of land claims when their extra compensation from that source had ceased.⁴⁷ The judge of the Apalachicola District was to receive the "same" salary "as-allowed-to other judges" of the superior court in the territory.⁴⁸ The acts of Congress after 1838 making appropriations for salaries of superior court judges in Florida indicate that the judge of the Apalachicola District received an annual salary of \$1800, the same as that allowed the judges of the Eastern, Middle and Western Districts.⁴⁹

Judges of the superior courts could be removed from office upon conviction after impeachment.⁵⁰ In the absence of specific statutory provision, the

46. *U. S. S. L.*, v. 3, pp. 656, 657, 752, 753, v. 4, pp. 45, 292, v. 5, p. 294.

47. *Ibid.*, v. 3, pp. 657, 753, v. 4, pp. 46, 56, 285, 292, 739.

48. *Ibid.*, v. 5, p. 295.

49. *Ibid.*, pp. 344, 376, 427, 481, 592, 639.

50. U. S. Constitution, art. 1, sec. 3, art. 3, sec. 1.

President and the Senate could presumably fill vacancies in the office.

The judge of each judicial district was always required to appoint a clerk of the superior court in each county of the district wherein the judge was required by law to hold terms of court.⁵¹ A district attorney and a marshal in each district were the prosecuting and executive officers, respectively, for the superior court of the district.⁵²

Congress always required each judge to hold terms of court at one place in his district. These "district seats" were St. Augustine, Pensacola, Tallahassee, Key West, and either Apalachicola or St. Joseph, for the Eastern, Western, Middle, Southern, and Apalachicola Districts, respectively. From March 1822 to May 1826 and after March 1827 each judge was also required to hold terms of court at such other places and times in his district as the Legislative Council might provide. Between May 1826 and March 1827 Congress provided that the Legislative Council could require judges of the superior courts to hold terms in only one other place in their respective districts than the one assigned by the laws of the United States. After May 1826 the judges could hold court as occasion demanded for the trial of causes of admiralty and maritime jurisdiction and the hearing of cause in equity, and after April 1828 the judges could order extra terms and adjourn regular terms to other times and places than the ones required by law when the public interest required it and when the judges could not hold the regular terms assigned by law.⁵³

51. *U. S. S. L.*, v. 3, pp. 656, 752, v. 4, pp. 45, 293, v. 5, p. 294.

52. *Ibid.*, v. 3, pp. 656, 657, 752-753, v. 4, pp. 46, 292, v. 5, p. 294.

53. *Ibid.*, v. 3, pp. 656, 752, v. 4, pp. 45, 165, 166, 241, 264, 292, v. 5, p. 294. A county-seat controversy in Franklin county between Apalachicola and St. Joseph (see *T. A.*, 1836, pp. 1-2; *U. S. S. L.*, v. 5, p. 70; *T. A.*, 1837, pp. 3-4), which ultimately resulted in the creation of Calhoun county with St. Joseph as the county seat of the new county (see *T. A.*, 1838, pp. 9-10), was probably the cause of Congress' indecision in prescribing the "seat" of the Apalachicola District.

Court of Appeals. The court of appeals of the territory was composed of all judges of the superior courts. Thus its membership consisted of three judges from May 1824 to May 1828, four judges from May 1828 to July 1838, and five judges after July 1838.⁵⁴

Under the law which established the court of appeals two judges constituted a quorum until July 1832, in spite of the fact that the organization of the Southern District in May 1828 increased the number of superior court judges and the membership of the court of appeals to four. After July 1832 a majority of the court's membership constituted a quorum to hear and decide causes.⁵⁵

The clerk, district attorney, and marshal of the Middle (superior court) District were, respectively, the clerk, attorney, and executive officer of the court of appeals.⁵⁶

The court of appeals was required to hold a regular annual term in January at Tallahassee. After the regular term of 1836 was not held Congress set a special term for May of that year and authorized the judges thereafter to hold a special term in lieu of a regular term not held for any cause.⁵⁷

Original Jurisdictions of the Courts

Each court of the territory except the court of appeals exercised original jurisdiction in at least one of the following two kinds of causes: those arising under the laws of the territory including civil causes at law or in equity, criminal causes, and matters pertaining to the estates of decedents and minors; and those arising under the constitution and laws of the United States. The court of appeals had no original jurisdiction.

54. *U. S. S. L.*, v. 4, pp. 46, 291, 600, v. 5, p. 294.

55. *Ibid.*, v. 4, pp. 46, 291, 600.

56. *Ibid.*, p. 46.

57. *Ibid.*, v. 4, p. 46, v. 5, p. 5.

Civil Causes at Law and in Equity. The civil jurisdiction of a justice of the peace from September 1822 to June 1823 extended to all causes "founded upon any bond, bill, note, or account in writing, or assumpsit", when the value was \$20 or less.⁵⁸ Between June 1823 and January 1828 a justice had jurisdiction of "civil causes, wherein the amount of the debt, damages or value of the thing in controversy, - [did] not exceed - one hundred dollars," but no justice during that time had cognizance of actions for assault and battery, false imprisonment, trespass on lands where title was in question, and actions for slander, libel or malicious prosecution.⁵⁹ This jurisdiction was extended in January 1827, when justices were specifically given cognizance of all causes "founded on any speciality bill or note in writing or account" wherein the value was \$50 or less.⁶⁰ From January 1828 until the end of the territorial period a justice of the peace could exercise exclusive jurisdiction of suits for the collection of debts, dues, and demands wherein the value was \$50 or less.⁶¹ In January 1828 justices were forbidden to take cognizance of "any cause sounding in detinue, trover or other action, brought exclusively for the recovery of damages,"⁶² and in November 1828 and March 1842 justices were forbidden to take cognizance of actions for slander, assault and battery, false imprisonment, and trespass on lands.⁶³

All other territorial courts of original jurisdiction were given cognizance of civil causes at law and in equity. During the time the circuit court functioned

58. *T. A.*, 1822 p. 91.

59. *T. A.*, 1823, p. 27; *T. A.*, 1824-25, pp.239-240.

60. *T. A.*, 1826-27, p. 55.

61. *T. A.*, 1827-28, p. 154; *T. A.*, 1828, pp. 93-94; *T. A.*, 1829, p. 136; *T. A.*, 1842, p. 20.

62. *T. A.*, 1827-28, p. 154.

63. *T. A.*, 1828, pp. 93-94; *T. A.*, 1842, p. 20.

its jurisdiction of such causes was exclusive when the value involved was between \$20 and \$100, and concurrent with that of the superior court when the value was greater than \$100.⁶⁴ From June 1823 to January 1827 the county court had jurisdiction of civil actions at law and in equity when the value involved was between \$20 and \$100, and from January 1827 to February 1833 it had jurisdiction of such causes when the value was between \$50 and \$100. Until February 1833 the county court also had jurisdiction of civil causes at law and in equity concurrent with that of the superior court when the value involved was \$100 or more.⁶⁵ After February 1833 the county court had exclusive jurisdiction of civil actions at law and in equity when the value involved was between \$50 and \$1000 of such civil actions involving less than \$50 as were not specifically within the jurisdictions of other courts and in all civil actions involving more than \$1000 of which the superior court, by reason of the interest or other disability of its judge, could not take cognizance.⁶⁶ The superior court was always vested with jurisdiction of civil actions at law and in equity arising under the laws of the territory when the value involved was \$100 or more. After May 1826 its civil jurisdiction was merely original but not exclusive.⁶⁷

Criminal Causes. During the territorial period a justice of the peace had no criminal trial jurisdiction. Justices always discharged the functions of committing magistrates, however, and were always

64. *T. A.*, 1822, p. 3.

65. *T. A.*, 1823, p. 8; *T. A.*, 1824-25, p. 247; *T. A.*, 1826-27, pp. 106-107; *T. A.*, 1828, p. 213; *T. A.*, 1829, p. 41.

66. *T. A.*, 1833, pp. 42-43; *T. A.*, 1838, p. 38. These laws give the county court exclusive jurisdiction in cases where the value involved was between \$50 and \$1000, regardless of the act of Congress giving the superior court original jurisdiction of cases involving more than \$160.

67. *U. S. S. L.*, v. 3, pp. 656, 752, v. 4, pp. 45, 164, 291, v. 5, p. 294.

designated conservators of the peace. After June 1823 judges of the county courts and superior courts were likewise designated committing magistrates and conservators of the peace.⁶⁸

During the time it functioned the circuit court had jurisdiction of all offences committed against the territory in Duval and Jackson counties.⁶⁹ From June 1823 until December 1824 the county court had concurrent jurisdiction with the superior court of all criminal cases not capital,⁷⁰ and from January 1827 to January 1828 it had concurrent jurisdiction with the superior court of actions "of assault and battery, affrays and breaches of the peace."⁷¹ From December 1824 to January 1827 and after January 1828 the county court had no jurisdiction of criminal cases unless the judge of the superior court was the party accused or unless the superior court for any other reason was unable to exercise its criminal jurisdiction.⁷² The superior court always had original jurisdiction of all criminal cases arising under the laws of the territory and exclusive jurisdiction of all such cases as were capital.⁷³

Probate and Estates. While it functioned, the circuit court had exclusive jurisdiction of matters relating to the probate of wills, the granting of letters testamentary and letters of administration, and of other functions usually discharged by courts of

68. *T. A.*, 1822, pp. 91, 93 *T. A.*, 1823, pp. 30, 32; *T. A.*, 1824-25, pp. 244, 245, 254, 255; *T. A.*, 1827-1828, p. 154; *T. A.*, 1828, pp. 93, 119-120.

69. *T. A.*, 1822, p. 5. Terms of superior court were not provided for these counties until 1823; *T. A.*, 1823, p. 18.

70. *T. A.*, 1823, p. 8.

71. *T. A.*, 1826-27, p. 107; *T. A.*, 1827-28, p. 88.

72. *T. A.*, 1824-25, 247; *T. A.*, 1827-28, p. 88 *T. A.*, 1828, 213; *T. A.*, 1829, p. 42; *T. A.*, 1833, p. 43. The county court of Monroe county was an exception. From January 1827 to November 1828 it exercised jurisdiction of all crimes and misdemeanors when the punishment was not capital. (*T. A.*, 1826-27, p. 100; *T. A.*, 1828, p. 208.)

73. *U. S. S. L.*, v. 3, pp. 656, 752, v. 4, pp. 45, 164, 291, v. 5, p. 294.

ordinary. After June 1823 such jurisdiction was vested in the county court.⁷⁴

Federal Causes. Until May 1826 the organic act of the territory and amendments thereto vested in each superior court the same jurisdiction of all causes arising under the constitution and laws of the United States as was vested by the federal judiciary act of 1789 and an amendment thereto in the U. S. District Court of Kentucky.⁷⁵ In terms of those acts the Kentucky court had exclusive jurisdiction "of all suits at common law where the United States sue, and the matter in dispute amounts to the sum of one hundred dollars," and "of causes where an alien sues for a tort in violation of a treaty of the United States"; "original cognizance - of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds the sum of five hundred dollars, and the United States are plaintiffs; or an alien is a party"; "original exclusive cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under the laws of impost, navigation or trade of the United States," whether such seizures were made on land or water, "and of all suits for penalties and forfeitures incurred, under the laws of the United States"; and exclusive jurisdiction of "all crimes and offences cognizable under the authority of the United States," committed either within the district of the court or upon the high seas.⁷⁶

In May 1826 the substance of these provisions was codified, revised somewhat, and embodied in an amendment to the organic act. In terms of the amendment each superior court had "original juris-

74. *T. A.*, 1822, p. 127; *T. A.*, 1823, pp. 9, 43; *T. A.*, 1824-25, p. 248; *T. A.*, 1825, p. 84; *T. A.*, 1826-27, p. 107; *T. A.*, 1828, pp. 124, 215; *T. A.*, 1829, p. 44; *T. A.*, 1833, p. 45.

75. *U. S. S. L.*, v. 3, pp. 656, 752, v. 4, p. 45.

76. *Ibid.*, v. 1, pp. 76-79, 334.

diction in all civil causes, in law and equity, whether arising under the laws of the territory or otherwise, where the sum in controversy-[amounted] to one hundred dollars” ; original, but not exclusive, jurisdiction of all suits to which the United States were parties, whatever might be the amount in controversy ; original and exclusive cognizance “of all civil causes of admiralty and maritime jurisdiction, including all seizures under the laws of impost, navigation, or trade of the United States, whether such seizures-[were] made on land or water, and of all suits for penalties and forfeitures incurred under the laws of the United States”; “and original and exclusive jurisdiction of all crimes and offences -cognisable, under the authority of the United States” committed either within the district or the court or upon the high seas.⁷⁷ Each superior court exercised such jurisdiction until the end of the territorial period.⁷⁸

Appeals and Review

During the territorial period, there were three methods by which proceedings or cases originating in an inferior court could be reviewed by a higher court: by appeal from an inferior to an appellate court, by writ of error from a court of error to an inferior court, and by writ of certiorari from a higher to an inferior court.

Justices of the Peace. Until February 1833 the decision of a justice of the peace in cases involving less than \$10 was final; after that time a justice's decision in such cases was final unless a point of law apparent on the record was involved.⁷⁹

77. *Ibid.*, v. 4, p. 164.

78. *Ibid.*, v. 4, p. 291, v. 5, p. 294.

79. *T. A.*, 1822, p. 91; *T. A.*, 1823, p. 27; *T. A.*, 1824-25, p. 239; *T. A.*, 1827-28, pp. 160-161; *T. A.*, 1828, p. 93; *T. A.*, 1833, pp. 42-43; *T. A.*, 1838, p. 38.

While it lasted the circuit court had appellate jurisdiction of judgments of justices of the peace. If an appeal were taken from a justice's decision he was required to deliver all papers in the case to the clerk of the circuit court wherein the appealed case was heard and determined "in a summary way without pleadings in writing, according to the justice of the case."⁸⁰ The superior and county courts had concurrent appellate jurisdiction of judgments of justices of the peace after June 1823. When an appeal was taken from a justice's decision he was required to deliver such papers and records as had been filed to the clerk of the appellate court, wherein the appealed case was tried *de novo*. A decision of the county court which affirmed the decision of the justice appealed from was final, unless a point of law alone was involved.⁸¹

Although either party to a case before a justice of the peace was permitted by law after July 1823 to file a bill of exceptions to the justice's decision, the county courts and superior courts were not specifically authorized to direct writs of error to justices of the peace until November 1829.⁸²

In 1823 and again in 1824 the Legislative Council had directed that the papers in a justice of the peace case should be transferred "to the court above" upon a writ of certiorari from the higher court. However, not until January 1828 were county courts, and not until February 1832 were superior courts, specifically authorized by territorial laws to direct such writs to justices of the peace.⁸³

80. *T. A.*, 1822, pp. 3, 91-92.

81. *T. A.*, 1823, pp. 8, 11, 30, 104; *U. S. S. L.*, v. 4, pp. 45, 164; *T. A.*, 1824-25, pp. 243-244, 247, 251; *T. A.*, 1827-28, pp. 135, 160-161; *T. A.*, 1828, pp. 99, 213, 218; *T. A.*, 1829, pp. 41-42, 48, 138; *T. A.*, 1832, p. 147; *T. A.*, 1833, pp. 42-43, 48, 49; *T. A.*, 1838, p. 38.

82. *T. A.*, 1823, p. 30; *T. A.*, 1824-25, p. 243; *T. A.*, 1827-28, pp. 135-136; *T. A.*, 1828, p. 40; *T. A.*, 1829, pp. 41-42; *T. A.*, 1833, pp. 42-43; *T. A.*, 1838, p. 38.

83. *T. A.*, 1823, p. 30; *T. A.*, 1824-25, p. 243; *T. A.*, 1827-28, pp. 135-136; *T. A.*, 1828, pp. 40, 213; *T. A.*, 1829, pp. 41-42; *T. A.*, 1832, pp. 146-147; *T. A.*, 1833, pp. 42-43; *T. A.*, 1838, p. 38.

Circuit Courts. Cases originating in the circuit court could be reviewed by the superior court upon appeal, or by writ of error or writ of certiorari.⁸⁴

County Courts. A litigant in the county court always had the right to appeal from the decision of the county court and might file a bill of exceptions and ask that it be made a part of the record on appeal. Failing to appeal, a litigant in the county court was always allowed to procure a copy of the record, assign error therein, present the assignment of error to the superior court, and secure a writ of error to the county court. Writs of certiorari always lay⁸⁵ from the superior courts to the county courts.

Superior Courts. Until March 1823 appeal might be taken from the decision of a superior court to the Supreme Court of the United States in the same kinds of cases and in the same way that appeals were taken from U. S. Circuit Courts to the Supreme Court. Likewise during that time writs of error in such cases lay from the Supreme Court to a superior court as from the Supreme Court to U. S. Circuit Courts. From March 1823 to May 1824 appeals might be taken and writs of error secured as previously, but only in cases involving more than \$1000 value.⁸⁶

When Congress established the court of appeals in May 1824, it provided that appeals might be taken from any decision of the superior courts to the court of appeals in such manner as the Legislative Council should provide, and that accordingly writs of error should lie to the superior courts from the court of appeals as the council should provide. The Council

84. *T. A.*, 1822, pp. 3, 4.

85. *T. A.*, 1823, pp. 8-9; *U. S. S. L.*, v. 4, pp. 45- 164, 165-166; *T. A.*, 1824-25, pp. 247-248; *T. A.*, 1827-28, pp. 111, 135-136; *T. A.*, 1828, pp. 40, 213, 217-218; *T. A.*, 1829, pp. 41-42, 47-48; *T. A.*, 1833, pp. 4243, 47-48.

86. *U. S. S. L.*, v. 3, pp. 656, 752.

provided that an appellant should secure a transcript of the record and file it with the clerk of the court of appeals, and that a plaintiff in error should file an assignment of error with the clerk of the court of appeals.⁸⁷

Substantially the same procedures for appeals and writs of error in the superior courts remained in effect during the rest of the territorial period, as far as cases arising under the laws of the territory were concerned. After May 1826, however, in superior court cases arising under the constitution and laws of the United States, appeal was made from a superior court to the court of appeals as from a U. S. District Court to a U. S. Circuit Court. Correspondingly, writs of error lay from the court of appeals to a superior court as from a U. S. Circuit Court to a U. S. District Court. No such appeal or writ of error was allowed in cases involving less than \$100.⁸⁸

Court of Appeals. The only decisions of the court of appeals which were subject to review by a higher court were its decisions in cases which originated under, or which involved, the constitution and laws of the United States. Until May 1826 no decision of the court of appeals in such cases could be reviewed unless more than \$1000 value was involved. The restriction on value was removed then but was again put into effect in July 1832. Appeals might be taken from such decisions of the court of appeals to the Supreme Court of the United States in the same way that appeals were taken from U. S. Circuit Courts to the Supreme Court, and correspondingly, writs of error lay from the Supreme Court to the court of appeals as from the Supreme Court to the U. S. Circuit Courts.⁸⁹

87. *Ibid.*, v. 4, pp. 45-46; *T. A.*, 1824-25, pp. 166-168.

88. *U. S. S. L.*, v. 4, pp. 165-166, 291, 600, v. 5, p. 294; *T. A.*, 1828, pp. 44-45, 46-47; *T. A.*, 1832, pp. 92-93, 94-95.

89. *U. S. S. L.*, v. 4, pp. 46, 165, 601.

*Appendix: Composition of Superior Court
Judicial Districts by Counties*

The judicial districts for the superior courts are listed below chronologically according to the date each was created. The date of creation follows the name of each district. Each county is listed under each district of which it was ever a part. The period during which each county was part of a district follows the name of the county.

Eastern District (1822)

Duval (1822-45)	Columbia (1832-45)
St. Johns (1822-45)	Hillsborough (1834-45)
Monroe (1823-28)	Hernando (1843-45)
Alachua (1824-45)	Marion (1844-45)
Mosquito (1824-45)	St. Lucia (1844-45)
Nassau (1824-45)	Levy (1845)

Western District (1822)

Escambia (1822-45)	Franklin (1832-34)
Jackson (1822-38)	Fayette (1832-34)
Gadsden (1823-24)	Calhoun (Jan.- July 1838)
Walton (1824-45)	Santa Rosa (1842-45)
Washington (1825-38)	

Middle District (1824)

Leon (1824-45)	Madison (1827-45)
Gadsden (1824-45)	Franklin (1834-38)
Jefferson (1827-45)	Wakulla (1843-45)
Hamilton (1827-45)	

Southern District (1828)

Monroe (1828-45)	Dade (1836-45)
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Apalachicola District (1838)

Jackson (1838-45)	Franklin (1838-45)
Washington (1838-45)	Calhoun (1838-45)

COLONIAL PENSACOLA
THE BRITISH PERIOD

PART III

The Administration of Governor Chester, 1770-1781

By CLINTON L. HOWARD

Governor Peter Chester arrived in Pensacola, capital of the province of West Florida, during the summer of 1770. On the eleventh of August the new governor, together with the members of his council, took the oaths and subscribed to the declaration required of all colonial officials.¹

At a meeting on the thirteenth of August Mr. Comyn produced a *Mandamus* appointing him a member of the council. The governor said that Messrs. Durnford, Clifton, Bruce, and Blackwell were appointed members of the council by His Majesty's instructions. Their mandamuses were made out in England and they must apply for them or the mandamuses would lose their authority. The governor himself named David Hodge, James Jones, George Raincock, and Philip Livingston, Jr., as members. All persons in public employment then appeared and took the oaths applicable to their offices.²

Note - Due to a misreading of original manuscript material, there is an error in Part II of the present series (p. 246 Jan. 1941). Instead of "until his [Browne's] departure for England in 1768" the text should read "until his removal from office in 1769 by the arrival of Governor Eliot . . ."

1. *Minutes of the Council, Public Record Office* (London) *C. O.*, 5: 629; Present were: Chester, Durnford, Clifton, Bruce, Hodge, Alexander Moore, James Jones, and Phillips Comyn. The required oaths are listed in the governor's instructions in *Public Record Office, C. O.*, 5: 599-600; they are printed in Leonard W. Labaree, *Royal Instructions to British Colonial Governors*, 1670-1776 (2 vols., New York and London, D. Appleton-Century, [1935]).
2. Unless otherwise attributed the materials in this study may be assumed to have been drawn from the *Minutes of the Council* (or Assembly) of the province in *Public Record Office, C. O.* 5, 623-628, 630-631, 633-635.

Governor Chester informed the council that he had found the house in the garrison untenable and had moved to a house which he leased from Brigadier-General Haldimand. He proposed to the council that an inspection be made of the house in the garrison with a view to the necessary repairs and also that an estimate be made of the cost of construction of a new house for the governor.

Concerning provincial affairs the governor told the council that Lord Hillsborough desired a full report of the lands granted in the colony, for he suspected large unfulfilled grants.

Chester seems to have spent the summer months putting the affairs of the province in order. The settlement of the western part of the province was again considered by the council, for they had received reports of the fertility of the land around Natchez and of the willingness of many settlers from the back country of Virginia and Pennsylvania to go there if they were given some assurance of protection against the Indians. Enthusiastic over the possibility of the western settlements, the governor applied to Haldimand for troops to protect the settlers but the latter replied that General Gage had received orders not to send troops inland to the Mississippi.

When the estimate on the cost of a new government house was submitted, it was found that the total cost would amount to 1500.

Alexander MacCulloch was appointed clerk of the council and Charles Stuart a member, and the first commission of the peace under Governor Chester was now appointed also. The governor had written to Lord Hillsborough giving notice of the appointment to the council of several gentlemen besides those named in his instructions "as there would not otherwise have been a sufficient Quorum in the Province to transact Public Business . . ." He

wrote to Hillsborough in terms which show that he understood the old quarrel between the civil and military officials : "The making of an application to General Haldimand of this sort by Public Letter, I did not think so eligible a step until I had in private character consulted him upon the propriety of this measure, being as yet a Stranger in the Province, and whether it was in his power to comply with the public requisition if made to him? For I was fearful that if such demand was made upon my first coming into the Province, and refused, it might by some evil-minded People be construed as the forerunner of future breach between Civil and Military commanders ; which has already proved so disadvantageous to the Settlement of this Province. Not that it would have had that effect as the General and myself are upon the best Terms, and I have always found him very ready and willing to communicate his opinion to me, and give me every information relative to the Province that is in his power, but I chose to avoid every appearance that could have a tendency to create even a suspicion. Upon mentioning this matter to the General he told me as I imagined . . . One regiment being thought proper to be fixed at Pensacola." The governor also wrote that since it was against military orders to send troops to the Mississippi and since he felt that it would be a want of humanity to deny any protection to the settlers he was setting aside some money from the contingent fund to provide at least some measure of protection.³

Chester soon received a report on the condition of the government house. The foundation had been found to consist of posts in the ground, the interstices filled up with stone about two feet above the surface and above that with clay and moss and

3. *Public Record Office, C. O.*, 5: 578: 59-67.

covered with a coat of plaster on the outside. The posts were entirely rotten at the surface of the ground and the house was supported only by a brick chimney which had been built by Governor Johnstone and a few cedar posts which ran as props through the center of the house underneath the large rooms. These were the entire support of a very heavy floor composed of large timbers and planks overlaid with two courses of brick. The kitchen, which was built of posts imbedded in the ground, had a new shingled roof but the sides were only of bark; the posts supporting the kitchen were very rotten and the greater part of it had fallen down. Adjoining the kitchen was a house built entirely of bark with posts in the ground much of which had already fallen in. It was their opinion that the house could not be repaired to any advantage because the roof of the greater part was very poorly built. The committee of inspection consisted of John Ames, John Coan, Andrew Allsop, and William Marshall.⁴

Colonial Taxation. An echo of the colonial taxation controversy which was to play such a large part in the beginnings of the American Revolution, was heard at this time at Pensacola when Governor Chester was requested by the lords of the treasury to ascertain the wishes and opinions of the merchants in the colony concerning the several articles on the customs list.⁵ This survey in West Florida was part of an all-colonial investigation of customs fees, and was intended to precede a thorough reorganization of the commercial fee system of the empire. It was intended to be authorized, when completed, by

4. *Public Record Office, C. O.*, 5: 518: 91.

5. John Robinson, for the Lords Commissioners of the Treasury, to Chester, from the Treasury Chambers, November 7, 1770. *Public Record Office, C. O.*, 5 : 578: 161. Chester sent a copy of his reply to Hillsborough.

an act of parliament.⁶ Their Lordships also suggested that if possible a tentative list be prepared with the joint consent of the commissioners of customs and the merchants.⁷

The assembly met in December. Philip Livingston, Jr., in his capacity as Chester's private secretary, certified Thomas Hardy, Gentleman, as clerk of the Commons House of Assembly, and Alexander MacCulloch was certified as clerk of the Council House of the Assembly.

Late in December illness, combined with bad weather, caused Governor Chester to defer a trip to Natchez until February. He remained in Pensacola and spent much of his time writing to the Earl of Hillsborough,⁸ among other matters a letter asking for more troops in the province. In another long letter he inclosed the laws which had been passed at the last session of the assembly and commenting at some length on other laws of the province. He felt that legislation against fraudulent mortgages and conveyances and legislation to allow foreign converts to transfer their estates and to make valid deeds of bargain and sale would greatly increase the security of property. The Governor doubted that the recent act for regulation of the Indian trade would be effective "for want of proper Evidence from the Indian Country against delinquents, most of the Traders of the Indian Nation being in a league, and they will not readily accuse each other." He noted that several of the other acts appeared to be useful, but could have been

6. This tariff reorganization was only one aspect of the extended and far reaching imperial reorganization, which got under way at the close of the Seven years' War and was only partially disrupted in its North American and West Indian aspects by the successful revolt of the thirteen colonies.

7. This procedure was authorized by 10 Geo. III Cap. 2, which provided sanction for existing fees until information for a new table could be gathered.

8. *Public Record Office, C. O.*, 5: 578: 9-12.

more correctly drawn and might need revising. He added :

“In reading over the Laws of Province I find several Acts which formerly passed here in the administration of Governor Johnstone and Lieutenant-Governor Browne, which appear liable to objection, and may be thought to require His Majesty’s Disallowance.”

“The first of these,” wrote the governor, “is an act entitled ‘An Act for Granting of licenses to retailers of Spirituous Liquors, imposing a duty on said Licenses: and for regulating of Taverns and Public Houses, passed 2nd of January, 1767.’ The objection to this act is that the payment of the Duty imposed is to be applied in the building of a public Market House in the Town of Pensacola, in such manner as the Justices, Church Wardens and Vestry shall appoint; and the money levied within the District of Mobile to be applied in such manner as the Justices in Quarter Session shall think necessary: whereas all public monies should be paid into the hands of His Majesty’s Treasurer; and no monies should be applied to any purposes without an Order of the Governor in Council.”⁹

Among other former acts which Governor Chester questioned was one entitled “An Act for the Order and Government of Slaves, passed the 2d of June, 1767.” This measure directed the mode of trial of slaves for capital offenses and authorized the major part of the court, one of them being a Justice, if they judged the accused guilty of a capital offense, to give sentence of death. This sentence, by virtue of a warrant of the Court directed to the provost marshal, was to be carried out at once by

9. Few points show more clearly, probably, how similar the constitutional structure of West Florida and most of the colonies was to that of England under Charles I.

the common or any other executioners. Such an action, the governor pointed out, deprived the Crown of its power of relieving, pardoning, or extending mercy in any shape to the criminal.¹⁰

About this time the home government, in pursuance of its policy to decrease absenteeism in colonial offices, brought pressure upon non-resident officials to go to their provinces or be removed. The news of the enforcement of this policy was received by Chester in a letter from John Ellis, agent for the colony in London. James Macpherson, provincial secretary and registrar, reputed translator and editor of the Ossian poems, was one of the outstanding absentee office holders of West Florida. Philip Livingston, Jr., Governor Chester's private secretary, was Macpherson's deputy and he, upon receipt of the news, applied for Mr. Macpherson's offices should that gentleman decide to remain in England.¹¹

In March 1771 the governor received a report from a Mr. Flowers, an engineer, stating that in consequence of His Excellency's application to Brigadier-general Haldimand, he, Mr. Flowers, had been desired by Haldimand to inform the governor that there were no other fortified works going on in the province than those which the general had previously mentioned to the governor, *viz.* four batteries at Red Cliffs, one opposite Santa Rosa, one on Tartar Point, and one at Signal House. Each had a powder magazine and a block house in the

10. There is a good deal of scattered material on indentured service and negro slavery in West Florida. F. J. Klingberg of the University of California, Los Angeles, has done a great deal of work on the negro in America, especially in connection with the activities of the Society for the Propagation of the Gospel in Foreign Parts. One of his students is at present working on slave codes in the old South.

11. His application was dated the twenty-sixth of December, 1770, and was accompanied by a letter from Governor Chester to the Earl of Hillsborough recommending him; **Public Record Office, C. O.**, 5: 578: 107, 115-117.

rear, a battery to protect it, and a block house to lodge the troops to work the guns. The buildings were all of wood and the facines were on a loose sandy soil which was the very worst of materials for constructing works of this kind, for it required the expenditure of much time and labor because of the thickness of construction necessary to make them proof against cannon. Even so, when completed the works lasted only a short time. All of the guns which could be spared would be mounted, but they were only small caliber and not much good, so Haldimand had applied to General Gage for eight twenty-four pounders, sixteen eighteen-pounders, and some large mortars. The stockaded fort in the center of Pensacola had new pickets in it because of the Indian menace. As for the Mobile fort, nothing had been done there except to repair the officers' barracks and stockade the entrance to it as a protection against the Indians. This was in accordance with a joint decision made earlier by the governor and Haldimand.

During March Chester wrote to Hillsborough that he was glad that Superintendent Stuart was coming to Pensacola, because the Indian trouble was causing him concern. He wrote ". . . most of the towns to which the traders resort who obtain their business from hence, are in the Creek, Choctaw and Chickasaw Nations beyond the limits and Jurisdiction of this Province, so that the breach of any Regulation committed there, can not [be] cognizable in our Courts . . ." ¹² At a meeting of the council on the eighth of April a letter from Deputy Superintendent Charles Stuart concerning Indian affairs was read. Stuart said that the Chickasaws complained of encroachment on their lands and of the actions of the traders, particularly in bringing rum

12. *Public Record Office, C. O.*, 5: 578, 129-134.

so freely among their people. The Choctaws especially objected to the importation of rum. The Chickasaws also complained that white settlers were hunting on their lands; the Creeks were less exposed to the whites. "They are a more haughty, stirring, Interprising, warlike Nation, restless in their own disposition and relentless, they are so self Conceited as to think no other Nation like them and are fond of mischief." White vagabonds, wrote Stuart, gave the Creeks a bad opinion of whites in general.

The deputy superintendent likewise discussed in his letter the chaotic state of the Indian regulations and added: "Nor can it ever Well be otherwise while the Colonies severally have [the] making [of] laws and regulations and the granting particular of general luxuries, as it is in some measure to be apprehended that each Colony will consult its own Interest, and particularly those where the principal People Concerned in the Indian Trade composed part of the Legislature." He wrote that the Mortar¹³ was a handsome fellow, who was also very wily and was certainly up to no good at that time. He thought it especially necessary to retain the friendship of the Chickasaws.¹⁴ "Wherefore the greatest Caution becomes necessary," he wrote, "as well to avoid giving the Indians in General cause of discontent as to avoid involving us in a Indian war the Expenses and Calamities of which are but too well known for me to Enumerate here, particularly at this Juncture when we may by the Warlike preparations making in Europe be upon the eve of a War, if it is not already declared . . ."

13. "The most influential [Creek] warrior, the one whom the French entitled *Chef de Guerre*, was called by the English 'the Mortar,' and by the French, whose cause had always espoused, **Le Loup**. His native name was Yaha Tasky Stonake, but Adair spells it Yahyah Tustenage." Peter J. Hamilton, **Colonial Mobile** (Boston, 1910), 229.

14. **Public Record Office, C. O.**, 5: 629: 42 *et seq.*

Defense seems to have been one of the pressing problems of the province in these years as well as earlier. The merchants of Pensacola and Mobile as well as the planters were concerned over it. During March Haldimand asked Chester to send Durnford to Iberville to estimate the cost of making a channel there for vessels; a Captain Sawers had already been sent there by General Gage. Chester replied that he would send Durnford. He himself had not yet gone to Iberville but he was awaiting information from Captain Sawers ; he was busy in Pensacola and was awaiting the arrival of the Indian presents. He wrote to Hillsborough that he was very greatly concerned over the threat of the Spanish danger to which Hillsborough had referred in his letter of the twentieth of September.¹⁵

Reports of Indian troubles continued to come in to the council. On April eighth Andrew Hampton and Thomas Fleming testified before the council that the Indians had sacked some of the settlements on the Alabama river. On April twenty-third the council heard a petition from the settlers on Point Coupee for protection; they "apprehended by sundry accounts that we are on the point of having a war with the Spaniards." They also complained of Indian troubles, which they said were in large part caused by liquor distributed among the Indians and the lack of any regulation of the traders.

On the twenty-third of April the governor and council ordered writs to be issued for an election to the Assembly. The writs were dated April twenty-seventh and were returnable within forty days. Eight members were to be elected from Pensacola and eight members from Mobile and Charlotte county together.¹⁶

15. Chester to Hillsborough, March, 1771; *Public Record Office, C. O.*, 5: 578 : 141.

16. Since Campbelltown was now apparently entirely deserted,

On April twenty-fifth Major Farmar addressed the council on the recent Indian trouble in Mobile. The Indians said this trouble was caused by the encroachment of the whites on their lands.

Instructions arrived from General Gage for Thomas Hutchins, acting engineer at Fort Chartres, to proceed down the Mississippi to observe the river, the Spanish settlements, troops, forts, etc., and from thence to proceed to Pensacola.¹⁷ Chester wrote to Hillsborough that he was more and more convinced of the benefits of the Mississippi and Natchez settlements.¹⁸

The assembly, which was due to meet on June 6 but had been twice prorogued, was to meet on the twenty-fourth of June. Mr. Wegg,¹⁹ summoned to the council, reported that there were only six members at his house but that several were hourly expected from Mobile. The House could not be formed until their arrival, and the governor "dissolved" the assembly, but this dissolution may actually have been a prorogation, for the assembly met from

the Governor felt that no writ need be issued for it ; however, Elias Durnford, told the council that he knew of several electors in Campbelltown, "And as many of the Mobile Members seldom attended there is very often so few Members in Town that Busines can not be carried on." He therefore suggested that two memberships in the assembly be allotted to Campbelltown. The council agreed to this suggestion. Presumably, however, they intended these writs to be issued, not at once, but at the next general election. **Public Record Office, C. O.**, 5: 629.

17. On the eighth of May 1777, Hutchins was in England petitioning for a reimbursement of his expenses; **Public Record Office, C. O.**, 5:580: 71-83. Hutchins; American born, had been an ensign, lieutenant, and captain in the British army in America; he took no part in the Revolution, and after it went to the United States, where he became Geographer General. In 1784 he published his **Historical Narrative, and Topographical Description of Louisiana and West Florida**. **Public Record Office, C. O.** 5: 578: 209.
18. Edmund Rush Wegg, attorney general for the province. He had earlier been suspended by Governor Johnstone as a result of a quarrel with that governor. See the writer's "Governor Johnstone in West Florida" in this **Quarterly** for April, 1939.

June 25 to July 30, when it was prorogued until April 23, 1772.²⁰

As a whole the first session of the Fifth Assembly was extraordinarily quiet; little business was done. Major Farmar played a prominent part in the session. The governor had informed the council on the second of April that the government house and the garrison house were in danger of collapsing. The council had ordered Mr. Durnford to inspect them. On the basis of Durnford's report the council on the second of August ordered the necessary repairs to be made rather than rent another building.

Chester wrote to Hillsborough on the twenty-fifth of August reporting the death of the Reverend Mr. Nathaniel Cotton, the Pensacola minister. He named no possible successor but suggested that the post be combined with that of chaplain of the garrison ;

20. Unless I am mistaken in my reading, the minutes of the council for the twenty-fourth of June, 1771, (**Public Record Office, C. O.**, 5: 628) state that the governor "dissolved" the assembly. On the other hand, however, the minutes of the assembly for the twenty-fifth of June, 1771, (**Public Record Office, C. O.**, 5: 628) carry Chester's opening speech to the assembly. Likewise, the minutes of the assembly show that that body transacted business throughout June and July, and that it was prorogued on July 30. As nearly as I am able to work it out, the schedule of meetings of the assembly after the twenty-third of April, 1771, was as follows:

- April 23, writs ordered to be issued as of April 27.
- June 6, assembly to meet in accordance with original writs of summons, but prorogued until
- June, when it was prorogued until
- June 24, when the governor "dissolved" or prorogued it until
- June 25, when it (apparently the same session) met and continued in session until
- July 30, at which time the governor again prorogued it (whether once or several times I am uncertain) until
- April 23, 1772, when what was apparently intended to be the second session of the fifth assembly was summoned to meet. This session, however, was dissolved by the governor, apparently before it met. (See *infra*.)

each of the appointments carried a salary of 100 a year and so the two posts together would provide a living salary. The governor said that he could not recommend Mr. Gordon, the minister in Mobile, because he was unpopular in Pensacola, both as a person and as a preacher.²¹

During this summer the old dispute between the civil and military authorities in the colony flared up once more.²² The argument revolved about the wording of the clause in the king's regulations which read: "That the Civil Governor of the Province shall give the word [*i.e.* pass-word, countersign] in all places when he shall be within His Province except when the Commander in Chief *Brigadier General* shall be in the *same place*." The Governor interpreted "the same place" to mean Pensacola, whereas Brigadier-General Haldimand thought it meant the province.²³

This dissolution involved a quarrel which had arisen between the governor and the Mobile electorate (see *infra*.) Chester refused to summon any more assemblies until the provincial situation forced him to do so in 1778. The first session of the sixth assembly was summoned to meet on June 6, 1778, but the governor prorogued it at various times; it finally met on October 1 of that year, but it seems at that time to have been called the first session of the seventh assembly. I find, however, no record of a new election. On November 5, the assembly was again prorogued, to meet on the first Monday in September, 1779. (**Public Record Office, C. O.**, 5: 628).

The minutes of the council and assembly were sent to England and were read there on March 16, 1779 (**Public Record Office, C. O.**, 5: 627). This assembly of 1778 had an interesting representation, which tells something of the growth of the provincial population. There were four representatives from the town of Pensacola, four from the district of Pensacola, four from the district of Mobile, four from the district of Manchac, and four from the Natchez district. It is to be noted that there was, apparently, no representation from the town of Mobile.

21. **Public Record Office, C. O.**, 5: 578: 243.
22. See "Governor Johnstone in West Florida" in this *Quarterly* for April, 1939.
23. Chester to Hillsborough, August 27, 1771: **Public Record Office, C. O.**, 5: 578: 255.

In August the governor again wrote to Hillsborough concerning a dispute with Haldimand over the control of the garrison. The governor had heard of a parliamentary grant for a government house to be erected in the garrison, but Haldimand claimed the control of the garrison. It seems that at this time Haldimand was at the Red Cliffs battery at Pensacola.²⁴

Chester announced to Hillsborough the appointment of Philip Livingston, Jr., as His Majesty's receiver-general to collect the quit-rents which were now due from all of Governor Johnstone's land grants and some of Lieutenant-Governor Browne's grants.²⁵

During September the governor was concerned, among other things, with Indian troubles around Natchez.²⁶

On the fifth of November the council thanked a Captain Onslow for his crew's help in assisting the inhabitants of Pensacola in extinguishing a fire "last night" and asked if the crew could make fire buckets if the council furnished the canvas and paid their wages. In a letter of the twenty-third of the month the captain assented to the council's request and stipulated the wages of three "bitts" a day.

Meanwhile at Saint James' the home government had disallowed (on June 7, 1771) some of the acts of the West Florida assembly. These were: an act which regulated attachments and the provost marshal's proceedings; an act making liable to attachment the real and personal estate of absent debtors in the custody or power of any person or

24. *Ibid.*, 265-68. There is a contemporaneous colored plan and sections of these batteries, of which there were two, and the blockhouses and quarters, all as of March 1771, in the library of J. C. Yonge, Pensacola.

25. *Ibid.*, 283; See Beverley W. Bond, *The Quit-Rent System in the American Colonies*. (New Haven, Yale Univ. Press, 1919).

26. *Public Record Office, C. O.*, 5: 578: 319.

persons within the province; and an act empowering the magistrates and freeholders of Charlotte occasionally to prohibit the selling of rum or other strong liquors to the Indians. The governor, on July 9, 1772, issued a proclamation of the disallowance of these laws.²⁷

On the twenty-third of April 1772, Governor Chester informed the council that the assembly had been prorogued until that day, but that since there was not yet a sufficient membership the question arose whether he should further prorogue the assembly or dissolve it. There had been no return from Campbelltown, and the Mobile officials had refused to sign the indenture unless a time limit of a year was set. The council accordingly advised the governor to dissolve the assembly, which he did.

At a meeting on the seventh of October, the council passed an ordinance forbidding the firing of muskets and fuses in the streets of Pensacola except for purposes of defense. At the same meeting a proclamation was ordered published warning the inhabitants that "a great Number of light half Johannies²⁸ have lately been brought into this Town and are now passing Current, which Customs of passing light Gold may in the future become very detrimental to the Inhabitants of this Province." The practice was forbidden.

During the spring of 1773 the governor was negotiating with Haldimand for the purchase of the latter's house which he would sell for 1600, to be paid in two annual installments. He would relinquish 133-16s-6d which had been paid to "the London office"²⁹ for insurance on the house. Like-

27. The disallowances mentioned in this study are selected, not inclusive. There were many others; for instance on January 15, 1772, the Crown disallowed "An Act to Erect Mobile into a County and to Establish a Court of Common Pleas therein" and "An Act for the Order and Government of Slaves."

28. A Portuguese gold coin worth about 2-16s-6d.

29. Apparently a London insurance firm, perhaps Lloyd's.

wise, he was agreeable to the terms of the lease, which was then due.³⁰ In May Chester wrote to Dartmouth³¹ that the old government house would be demolished and recommended that the government purchase Haldimand's house for use as a church, court house, and government offices. He inclosed Haldimand's letter to him and added "but should there be any plan intended for removing the seat of Government from hence to the Mississippi which has been before recommended," then he would recommend that the 1600 be appropriated to the government house there.³²

At its meeting on the twentieth of October 1773, the governor laid before the council a letter from James Rodney, dated the nineteenth : "On my Arrival here [Pensacola] I found in the absence of the men of war the inhabitants of this place had totally destroyed the Navy Guard ; as I think this treating the Navy in General with Great Disrespect I cannot pass it over unnoticed therefore I have taken this Method of Applying to Your Excelency for Redress and I make no doubt you will enquire into it and have the offenders Punished or oblige them to repair the damages they have done there." The council said that the fence had blown and the ground left waste during Captain Hay's and Captain Cornwallis' time in the Province-beyond that it was the work of vagabonds and implied no more disrespect to the navy than to anyone else.

On the twenty-fourth of November the governor appointed Alexander Dickson and William Johnston members of the council.

30. **Public Record Office, C. O.**, 5: 579: 353.

31. On the seventeenth of February 1773, Governor Chester wrote to Dartmouth offering him congratulations on his succession to Hillsborough as Secretary of State for the American Colonies; **Public Record Office, C. O.**, 5 : 579: 313.

32. **Public Record Office, C. O.**, 5: 579: 349.

On the eleventh of February 1774, the council ordered all who had ordnance firearms to turn them in at once for inspection and cleaning. Others might get firearms from the Ordnance upon application. It seems likely that this order was caused by fear of trouble with the Creek Indians, for on the thirteenth of June the governor laid before the council a letter from Governor Wright of Georgia, dated the fifteenth of April, desiring a West Florida proclamation to forbid all trade with the Creeks until the latter gave satisfaction for the murders which they had committed. This was done. Earlier, on the twenty-eighth of March, Chester and the council had ordered a proclamation forbidding the sale or gift of rum or ammunition to the Indians.

Notice of the growing revolution in the northern colonies was taken in the minutes of the council.³³ Eighteen artificers in the Engineers Department, engaged on "Works carried on at this Place having been lately discontinued," were discharged and were to have been sent back to New York at His Majesty's expense. They chose to remain in West Florida "on Account of the Encreasing Troubles in that and the West of the Northern Provinces." One petitioner for land moved from South Carolina to avoid trouble in the northern provinces. Some of the petitioners learned that the governor "can now pass Grants to such Persons as have taken such Previous Steps as in Equity can give them a claim thereto."³⁴

33. The council records are undated but are probably those of January 6, 1776.

34. This may be in accordance with Chester's proclamation of the eleventh of November, 1775; *Public Record Office, C. O.*, 5: 631.

Immigration

The year 1776 saw the beginning of immigration to West Florida in large numbers. The land grant petitions show immigration from Connecticut, Georgia, North Carolina, South Carolina, Pennsylvania, New York, and Jamaica. Several petitioners seem to have come from New York City and Philadelphia. A number of residents of Georgia, which was becoming rebellious, moved to East Florida and Bermuda, where they engaged chiefly in viniculture.

A letter to Governor Chester from Major Dickson, laid before the council on the twenty-seventh of February 1776, reenforced the sense of danger from the Indians. "I think it proper to represent to Your Excellency in Council that the present State of the Colonies in Open Rebellion and their late attack upon Canada makes it a probable conjecture that some attempt may be made on the Colony not only to gain over all the Southern Indians to their Interests to effect which will no doubt be thought Necessary to prevent any Person in this Colony Supplying them with Ammunition and Goods the only place they can now with Safety be sent from. Besides there are other Capital Reasons that might be assigned was it Necessary. I am of the opinion the small Number of Troops in this Province ought to be kept together in a Body either at this place at the Harbours Mouth, or at Mobile . . ." ³⁵

In March of 1776 the Governor issued a proclamation forbidding persons to tamper with the Spanish Indians.

Apparently the influx of immigration into the province, presumably down the Mississippi and the long valleys of the Appalachians, was considerable, for in the same month the Governor issued a proclamation admonishing certain persons, lately come

35. *Public Record Office, C. O.*, 5: 631.

into the province, and who lived chiefly by hunting, for having built themselves huts on the lands reserved for the Indians.

Hillsborough had written to Chester on the eleventh of February 1771, that the lords of trade proposed to allow 2550 for the building of the governor's house and that the cost was not to exceed this sum. On the twenty-second of April 1775, Chester wrote to Dartmouth that in spite of the assurances of Mr. Durnford, who was now in England, the cost had exceeded this sum. It had originally been planned for the house to cost 2000 and fences, etc., 550. Chester asked permission to draw on the balance from the Indian contingent funds of former years to the extent of 800 to be expended for the governor's house and the remainder of the balance to be expended for roads, bridges, etc.³⁶

Influence of the Revolution. The revolution to the north appears to have accelerated the development of the province and with it, no doubt, Pensacola. The development to the west continued strong, and the council on the twenty-seventh of February 1776 ordered Mr. Durnford to lay out a town on the reserved land at Natchez. The council minutes of the sixth of May, however, show the clearer approach of the revolution. A report had been brought from Jamacia by the schooner *Sally Thomas* that Americans had arrived at New Providence with seven armed vessels and had seized Governor Browne and his secretary and the cannon and military stores. The council ordered West Florida put in a state of defense and the works mentioned in Durnford's report of defense completed.³⁷

36. **Public Record Office, C. O.**, 5: 580: 13-17.

37. These were: (1) Bay front, six feet parallel, ten feet thick, ditch, palisades, cannon mount to lower bay and flank fort; (2) Swivels mounted on stockade banquet within for troops to stand and fire over, small ordnance (1 piece) each block house; (3) Each block house salient angles covered with small Redan with good parapet and ditch contain four cannons or two mounted; **Public Record Office, C. O.**, 5: 631.

On the twentieth or twenty-eighth of May ³⁸ the Governor appointed John Stephenson and Andrew Rainsford to the council in the places of Jacob Blackwell, deceased, and George Raincock, who was in England. At the same meeting the council sent a request to the commanding officer to bring to Pensacola the troops from Red Cliffs, Tartar Point, and Rose Island and four or six large guns.

On the thirteenth of August 1776 the governor and council agreed that good and loyal people of New Providence were entitled to the bounty which, by the Earl of Dartmouth's letter of the fifth of July 1775, was to be given to all well affected people in America who should remove to West Florida as an asylum. The governor's proclamation of the eleventh of November 1775 had offered these terms to settlers from North America who should prove their disapprobation of and nonconcurrence in the rebellion.

On the fourth of September 1776, there was laid before the council an extract from a letter of Alexander Fraser which had been sent to John Stuart by his brother Charles. "No news at present in the Choctaws only that they have got a talk amongst them that the Virginians [a general name for all the Northern colonists] have sent a talk in to the Chickasaw Nation that they are like the trees in the woods and their intention is to take Mobile and that they have sent word to the Chickasaws either to fight for them or sit still and not trouble themselves with either party."

"We have nothing of this talk," Stuart added, "from any white People, only some Chickasaws that are coming here told the flats [?] of it."

The council was of the opinion that the communications received manifested the designs of the rebels

38. I am unable to decipher the date of this meeting of the council.

to attack West Florida. On the fourth of November Colonel William Stiell of the third battalion of the Sixtieth Regiment of Foot wrote the governor concerning a letter from Mr. McIntosh, the commissioner of the Creek nation, which had been sent by express to Pensacola on the previous Tuesday. The letter had been received by John Stuart, Superintendent of Indian Affairs, and its contents communicated to the governor. Mr. McIntosh reported that a large body of the rebel army had penetrated into the Creek country and that this had occasioned the sudden return of the Creek chiefs to their nation. Colonel Stiell wrote the governor that since this body of troops might be intended to attack Pensacola he thought it his duty in order to prevent a surprise to lay before him the necessity of having a horse patrol established immediately between Pensacola and the Escambia River. Stuart wrote that the bearer of his letter would be willing to act as conductor of the patrol between Pensacola and the ford of the Escambia, at the old Spanish cowpen. The conductor should receive five shillings a day and should be accompanied by ten men who should receive forty shillings each a month in addition to provisions,³⁹ guns, and ammunition. The men should find their own horses. An Indian interpreter should accompany the party and should receive 40 a year. The council recommended this plan and likewise, on November seventh, ordered the provincial sloop to Rose Island to protect Pensacola and to transport such guns as might be necessary.

At a meeting of the council on the fifth of November Daniel McGillivray was granted land in the province⁴⁰ with one thousand acres as a bounty. He

39. One ration per diem or the money equivalent.

40. About fifty miles up the Mobile river, adjoining the land of John McGillivray.

had had to leave Georgia because of the troubles there and he set forth in his petition that one of his ships in the harbor of Savannah had been burnt by the rebels. The governor told the council that he expected a letter from England by the next packet in answer to his request to spend emergency money for defense of the province.

At its meeting on the seventh the council advised the repair of Fort Charlotte in Mobile⁴¹ and accepted John McGillivray's offer to raise two companies of volunteers to hold the fort if necessary. An embargo had been laid on vessels going down the Mississippi but this was cancelled on the advice of Attorney-General Wegg.

November saw no letdown in the excitement. William Struthers was examined by the council on the accusation of being a rebel officer, but was set free under bond upon taking the oath of allegiance. Apparently, however, the rebel scare did not deter a great many would-be grantees. The council records for the year 1777 were almost wholly devoted to land grants to Loyalist refugees.⁴²

On the fifth of November 1777 John Stuart asked Governor Chester to prohibit trade with the Creek Indians temporarily. The request arose from talks which he had had with Emistisegu and some other Creek chiefs concerning the proceedings of some of their towns against the King's Commissioners [Mr. Cameron, Mr. Taitt, and Mr. William McIntosh] in plundering them and dragging them out of the

41. At a cost of "\$930."

42. **Public Record Office, C. O.**, 5: 631. An interesting grant during this period was to Sir William Dunbar. Ordinary sources, as J. F. H. Claiborne, **Mississippi as a Province, Territory and State** (Jackson, Miss., 1880), I, 200, and Franklin L. Riley in the **Publications of the Mississippi Historical Society**, II (1889, reprinted 1919), 86, discuss the grant he received in 1773; the records show that in addition, on September 16, 1777, he petitioned for 1200 acres on Thompson's Creek, and was granted 200 acres as of right and 1000 by purchase. **Ibid.**, p. 161.

Creek country. The Creek chiefs assured Stuart that the situation was difficult because of the ferment of affairs in their nation brought about by the great influence of the rebel agent Galphin. His talks had much influence upon the minds of their chiefs and head men. They also pointed out to Stuart that the traders on the east side of Pensacola Bay gave much rum to their young warriors.

In January 1778 the council set aside four acres on the north side of the run at Pensacola for use as a burial ground.

Matters were disturbed in West Florida during 1777 and continued to be so throughout the next year. The list of the council members sent home by Chester shows that the meetings had by no means a full attendance.⁴³ Elias Durnford and William Clifton were present at most of the meetings; James Bruce had been at his plantation on the Amite River since 1773 without the governor's permission. Philip Comyn was deceased; Philip Livingston, Jr., had gone to his Amite River plantation without permission. Alexander Dickson, John Stephenson, and Andrew Rainsford were present in Pensacola for most of the meetings of the council. On the eighteenth of June 1778 Governor Chester wrote to Lord George Germain that he had suspended James Jones from the council for being absent without leave since October 1773 and for taking the oath of allegiance to the crown of Spain.⁴⁴

In the autumn of 1778 the assembly convened. In his opening speech addressed to the upper house the governor said: "At this Critical Conjunction of Public affairs I flatter myself that you are all met with hearty dispositions to exert your most Vigorous endeavours to promote his Majesty's service and the true Interest of the Province.

43. *Public Record Office, C. O.*, 5: 580: 101.

44. *Public Record Office, C. O.*, 5: 580: 97.

“The Calamitous and distressed Situation to which the Western parts of the Colony have been reduced by the unexpected Invasion of the Rebels in the last Spring has created me the most anxiety ... ”⁴⁵

The governor also informed his hearers of the new commission of conciliation with America, of which former Governor George Johnstone was a member. The governor pointed out that the commission, it was hoped, “would re-establish Peace on the basis of Equal Freedom and perpetuate a Cordial and Permanent union between the Mother County and the Colonies: so essential to the Welfare and prosperity of the whole British Empire.”⁴⁶ The governor informed the council that His Majesty, having been informed of the order of the French king that a treaty of amity and commerce had been signed between the court of France and “Certain Persons employed by His Majesty’s revolted Subjects in North America,” had withdrawn his Ambassador from the court of France and had ordered his governors to warn all faithful subjects to be on their guard to prevent any surprise or sudden mischief; at the same time Chester was instructed to inform the inhabitants of West Florida that in the event of war the province would receive every protection which could be afforded and that the

45. Kathryn T. Abbey, in “Peter Chester’s Defense of the Mississippi after the Willing Raid,” *Mississippi Valley Historical Review*, XXII (July, 1935), 17-32, accepts and attempts to substantiate Chester’s apologia that “every measure has been taken that the King’s Principal servants in this Colony thought most conducive to His Majesty’s service. . . .”
46. Johnstone was later removed after the American charged him with an attempt to tamper with the American delegates and the Continental Congress had passed a resolution that “it is incompatible with the honor of Congress to hold any manner of correspondence or intercourse with the said Governor Johnstone, Esq., especially to negotiate with him upon affairs in which the cause of liberty is interested.” *Journals of the Continental Congress* (34 vols., Washington, 1904-1937), XI, 770-774.

Jamaica station would be considerably re-enforced. The governor likewise informed the council that a body of troops had been detached from the main army of America and might be daily expected in the province. He recommended, however, that the assembly adopt every precautionary measure in its power and especially recommended to them the passage of an act for the establishing and proper regulating of a militia "which as the Province Encreases in Numbers must add greatly to our Safety and defence." He informed the assembly that he would apply to them to make provision for maintenance and other expenses which might attend the confinement of any such prisoners as might be taken in any rebel privateer or armed cruiser or of such other rebel prisoners as might be brought into the province.

The governor concluded ". . . impressed with the most favourable Opinion of your real wishes to promote the Public welfare I think it unnecessary at this time (when the disposition of His Majesty and Parliament are to settle and fix a permanent Constitution for all the Colonies) to recommend to you to cultivate Union and Harmony between the different Branches of the Legislature as you may be Conscious that such Conduct will be the most likely means of recommending the Colony to the favor and protection of Government . . ."

This session of the general assembly, meeting in October and November, was a short-lived but tumultuous one. The town of Pensacola was represented by Arthur Strothers, John Miller, John Mitchell, and James Amross. The district of Pensacola was represented by George Gauld, Robert Tait, Elihu Hall [?] Bay, and Daniel Holmes [?]. The districts of Mobile, Manchac, and Natchez were represented in the assembly but the town of Mobile had

no representatives.⁴⁷ The governor opened the session on the first of October and the following days were spent in organization, the drafting of standing rules, and similar business. The business of the assembly was interrupted for six days in the middle of October.

The Hurricane of 1778 - The reason for the interruption was noted in the margin of the minute book of the House: "N. B. The Reason of no business being done in the House of Assembly from the 9th to the 15th of October was owing to a very melancholy cause-the severest Hurricane ever felt or known in this part of the world since West Florida has belonged to the Crown of Great Britain happened on the night of the 9th with such irresistible fury and violence as entirely to Sweep away all the wharfs, Stores and Houses contiguous to the Water Side, with part of the front Batteries of the Garrison besides destroying Several Houses and making a general Havock of the Ferries in the Town of Pensacola. All the Ships and Vessels in the Harbour were either lost, or driven ashore, except His Majesty's Sloop of War the Sylph which with difficulty rode out the Gale. The great loss of property by this General Calamity affected the whole Community and particularly some Members of the Assembly, which prevented their Attending the House, and therefore it was thought proper to put a stop to going on Business till matters were a little Settled and all the Members Could and with Some degree of Convenience Attend . . ." ⁴⁸

The standing rules of the Commons House were adopted on the nineteenth of October. The great dispute which characterized this assembly first appeared in the council record for the twenty-third of October, when a bill regulating representation

47. See note 22.

48. *Public Record Office, C. O.*, 5: 628; 246.

came before the council for a first reading. On the twenty-sixth a second reading was postponed and a committee of the council composed of Colonel Stiell, Mr. Stuart, and Colonel Dickson waited upon the governor and asked why no writs had been issued for the town of Mobile. So began again a long stubborn quarrel between the governor and the assembly which interrupted other business. At the request of the council Mr. Livingston secured from the governor copies of the article of his instructions that said that: "you do not upon any pretence whatsoever, give your assent to any Law or Laws to be Passed in our Province under Your Government by which the number of the assembly shall be enlarged or diminished, the duration of it ascertained, the Qualification of the Electors or the Elected Fixed or altered or by which any Regulations shall be Established with respect thereto, inconsistent with our Instructions to you our Governor, as prejudicial to that right or Authority which you derive from us in Virtue of our Royal Commission and Instructions."⁴⁹ The governor also sent his own explanation through Mr. Livingston to the council: "In answer to your message . . . why Writs were not Issued for Electing the same number of Members to represent the Town and District of Mobile as has been usual in former assemblies I think it proper to acquaint you that in consequence of the Irregular and unwarrantable proceeding of the Electors of Mobile (when Writts were issued for

49. This will be found in Labaree, *op. cit.*, I, No. 174. This struggle between the executive and the legislature to control the duration of sessions was of course an old one in England. Cf. the Triennial Act of 1641 (16 Car. I Cap. 1) ; the Triennial Act of 1694 (6 and 7 Will. and Mar. Gap 2) ; the Septennial Act of 1716 (1 Geo. I. Stat. 2, Cap. 38) ; and the Parliament Act of 1911 (1 and 2 Geo. v. Cap. 13). For a discussion of this same question in the American colonies, see Leonard W. Labaree, ***Royal Government in America*** (New Haven, Yale University Press, 1930).

calling the last assembly) in refusing to Execute any other Indenture between the returning officer and the Electors than such as limited the term for which the representative was to serve to one year, His Majesty did think proper to leave to my discretion whether or not in a future assembly to issue any Writt for Mobile unless it should appear that the Electors were entitled to representatives by some law of the Colony."

In reply to a request from the committee appointed by the House the council replied that their assistance to the House in memorializing the governor to issue writs for Mobile would be ineffectual. Each house urged the provision for public defense in the present crisis as a reason for settling the issue according to its desires: "we might proceed to business with that unanimity which is necessary at all times, but more especially the present time when perhaps the very Existence of the Province is at Stake."

On the fifth of November the governor adjourned the assembly until the first Monday of the following September, saying : "But sorry am I to say that instead of Attending to those important matters after so long a delay only one Bill has passed Your House and that a Bill Ascertaining the Number of Members, and limiting the duration of Assemblies ; and I am equally Sorry to find from a Report lately entered upon Your Journals and from the General tenor thereof that you have matters of Privileges more in view than His Majesty's Interests and the Internal Economy and Defence of the Colony . . . I flatter myself I shall meet you with minds more truly disposed to promote the Interest of the Province. . . ."

Last Session of the Assembly. This was the last session of the general assembly in West Florida. The official records show only a small degree of

the agitation which was seething in the province. Quarrels between the governor and the fur-trading and land-jobbing parties in the province, temporarily in alliance against him, broke into open warfare after the dissolution of this assembly and were carried on in the committee rooms and council chambers at Whitehall even after Bernardo de Galvez had conquered West Florida for Spain. The population in the western part of the province had been growing steadily since 1767, and with its growing influence there naturally arose a demand for the extension of all the functions of civil government on a status equal with that of Pensacola and Mobile and this demand was complicated by the infiltration of rebel ideas from the north, added to the natural ferment of a frontier population and the presence of ardent adherents of the rebel cause or opportunists who saw the advantage of dickerings with the government of Spanish Louisiana.

In 1779 a petition for the recall of Governor Chester was sent home. It seems to have been the work largely of those classes mentioned as opposing him.⁵⁰ The story of this long quarrel is of no

50. The chronology of this case against Chester is involved and long-drawnout. The signers of the memorial against him prayed for relief from the problems besetting them and that a "Gentleman of Talents, spirits and . . . [missing] . . . may be appointed governor . . ." On the sixteenth of November 1779 the governor wrote to the lords of trade that he thought the petition for his removal was probably by the party of factious land-jobbers in the province. On the eleventh of May 1780 he wrote that he would show that the charges were false and that almost all the signers had been collected from among the lowest classes of the people who had been persuaded by the leaders of the faction which took its origin in the assembly of 1778. Later, in support of his "Defence," he forwarded to the lords of trade depositions of a number of persons who had been persuaded to sign the memorial against him and now regretted it. He likewise forwarded an itemized list of the persons signing the complaint showing that many of them were connected with John McGillivray and Company; Thomas Kirton, the deputy provost marshal, accused this company of circulating the memorial against the governor. Chester also forwarded favorable testimonials from persons

immediate concern here, save perhaps the conclusion which bears some interesting reference to Pensacola. On the nineteenth of February 1782 Lord George Germain, secretary of state for the American Colonies, sent to the board of trade the petitions of Governor Chester and Elias Durnford addressed to the secretary.⁵¹ On the twelfth of April the governor wrote a second letter to the treasury⁵² to re-enforce his petition. He had, he wrote, been appointed governor of West Florida in 1769. He had embarked for Pensacola early in 1770 and had remained in that province until the Spanish took it. He flattered himself that he was in no way responsible for the loss of the province. He himself had suffered considerably; his own house and furniture had been burnt by the Indians and he had been obliged by the Spanish general to leave his personal furniture in the Government House to accommodate several Spanish officers there. The governor then detailed his career in the army since he was commissioned as a lieutenant in 1740.⁵³ His petition had desired that in the annual estimates an allowance be continued to him as the late governor until His Majesty should confer some other mark

in Natchez, Mobile and Pensacola.

The original drafts of Chester's "Defence" are in the Manuscript Division of the New York Public Library; see Evarts B. Greene and Richard B. Morris, **A Guide to the Principal Sources for Early American History (1600-1800) in the City of New York**. (New York, Columbia University Press, 1929). See also in **Public Record Office, C. O.**, 5: 580: 13, 223, 227-28, 231-53, 261-63, 261-71, 279-81, 335-37.

51. **Public Record Office, C. O.**, 5: 581. The governor's petition had been submitted on the thirty-first of January, 1782. He stated that upon application to the lords of the treasury for his salary he had been informed that the salaries were paid only to the time of the capitulation to Spain and that his salary had been paid to that date and would be paid no further.
52. On the first of April he had addressed a letter from Holles Street, Cavendish Square, to the lords of the treasury.
53. **Public Record Office, C. O.**, 5: 581.

of favor upon him. The lords of trade recommended his petition to the lords of the treasury.

Mr. Durnford also had submitted a petition. He stated that at the begining of 1778 provisions and baggage had been sent to the river Amite for his use and for that of a party of men to explore the inland parts of the Mississippi to establish communication with Pensacola by land. The provisions and baggage had been taken by the rebels, causing a loss of 112-12s-9d. In May of 1779 his baggage had been taken by the Spanish troops at Iberville ; it had been sent there for his use in building a fort on the Mississippi in accordance with the order of Lord George Germain and General Campbell. He thereby incurred a loss of 59-7s-5 1/2d. In February of 1780 the Spanish Indians had destroyed his plantations and other properties on Mobile Bay while he was repairing Fort Charlotte, resulting in a loss to him of 500. Likewise the Spaniards seized his boat "it having been hastily used against them," causing a loss of 210. In 1780-81 his plantation near Belle Fontaine had been burnt by the enemy. His stock of fourteen hundred cows and horses, pastured near Pensacola to supply the army and navy under his contract of the previous six years, had been destroyed by the Spaniards or Spanish or English Indians. Their value had been not less than 4 apiece, which made a total loss of 5600. Two of his slaves had been captured and killed by the enemy, causing him a loss of 200. His Pensacola house had been taken over by the Spaniards, a loss of 800. Also he had been deprived of his land grants in West Florida. His total loss he therefore computed at 7369-7s-5 1/2d, and he petitioned for some reimbursement.⁵⁴ In all probability the losses of Chester and Durnford were typical of those of the larger land-holders of loyalist sym-

^{54.} *Ibid.*

pathies in Pensacola and throughout the province. The imperial government later tried to reimburse many of them, if not always in money, at least with grants in Canada.⁵⁵

APPENDIX

GOVERNORS OF BRITISH WEST FLORIDA

The dates of the governors' administrations of West Florida are as follows:

George Johnstone arrived in the Province October 21, 1764. The last meeting of the Council at which he presided was January 10, 1767. He had been granted a leave of absence which seems to have been taken by him during that month and word of his dismissal was received from England in February of 1767.

Montfort Browne was in charge of the Province by virtue of his commission as lieutenant governor from January (presumably January 10) 1767 until April 3, 1769. John Eliot's commission as governor was published on April 3, 1769 and he died on the morning of May 2, 1769, according to an announcement made by Lieutenant Governor Browne to the Council at its meeting on May 3. Browne was automatically in charge of the Province by virtue of his commission from the time of Eliot's death until his removal from office in 1769. Browne ceased to preside at the Council meetings and presumably ceased to be in charge of the Province sometime after November 7, 1769. His removal from office took place sometime after November 7 and he was replaced by Elias Durnford as lieutenant governor

55. See Additional Instructions to Haldimand, July 16, 1783, and Instructions to Lord Dorchester, August 23, 1786, in Adam Shortt and Arthur George Doughty, ed., *Documents relating to the Constitutional History of Canada*, 1758-1791 (second edn., Otta, 1918), I, 730-732 and 816-840.

sometime between November 7 and December 29, 1769.

Durnford's name as the presiding officer at the Council meetings first appears on December 29, 1769. He continued in charge of the Province as lieutenant governor until August 11, 1770, on which day Governor Peter Chester's commission was published. Governor Chester continued in charge of the Province until the capitulation to Spain on May 10, 1781.

These dates are somewhat varied in their significance since they are based upon a variety of evidence. October 21, 1764, is the date of Johnstone's arrival and January 10, 1767, is the date of his last Council meeting. Presumably, his leave of absence took effect at the end of that meeting but we are not certain. Browne was presiding from sometime in January, 1767, until April 3, 1769, at which meeting Eliot's commission was published. Browne was again presiding at the Council meeting on May 3, 1769, at which time he announced Eliot's death. The last Council meeting at which Browne presided was on November 7, 1769. The Council records are incomplete at this point and the next legible record is that of December 29, 1769, at which meeting of the Council Durnford was acting in the capacity of Lieutenant Governor. Browne was given permission by the Council on February 18, 1770, to leave the Province and he presumably left soon thereafter. He continued in that office and in charge of the Province until the Council meeting of August 11, 1770.

The capitulation of the Province on May 10, 1781, was certainly the *de facto* termination of Chester's governorship and the home government appears to have accepted it as the official termination also. Most of the dates given above are applicable in the Province. Appointments and removals by the home

government were made in England as a rule several months earlier. I have not given these dates of official action by the English Privy Council because the actual arrival of the new governor is usually of greater importance than the date of his official appointment in London. In any case, too, presumably the new governor's commission would take effect only upon his arrival in the Province and his commission would be presumably a dormant one until that time. The dates of the official appointments in England are in the original minute books of the Privy Council.

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FROM A REMOTE FRONTIER

(CONTINUED)

LETTERS PASSING BETWEEN CAPTAIN HARRIES IN COMMAND AT APALACHE (ST. MARKS) 1763-1764 AND THE COMMANDERS-IN-CHIEF, AMHERST AND GAGE.

Harries to Amherst

Pensacola, Dec. 11, 1763.

Sir

I have represented to Coll Robertson the situation of Apalache & the improbability of preserving it long without cannon swivels & a considerable reinforcement & then (that) no emolument will accrue to the British nation by such a possession: he has ordered two cannon two swivels & three artillery men with some ammunition, but no reinforcement could be spared. (that) garrison is situated on the confluence of two rivers wch unite & discharge themselves into the bay of Apalache, at the distance of forty or fifty yards from the fortification; it is a small fort with a stone wall round it, in the summer months it has been subject to an inundation, tho the wall is abt ten feet high & with difficulty the people were preserved ; to avoid wch inconvenience for (the) future there is a new fortification begun & four rooms bomb-proof finished, it was intended it shd be surrounded with a wall of sixteen or eighteen feet in heighth. an inundation had destroyed sevl years ago a fortification erected nearer the point of land joining the bay. the Spaniards had twelve cannon in the garrison & sixteen swivels, two great guns in a little fort, something

Note - This series of documents has been edited, with an introduction, by Mark F. Boyd ; see the leading article in the last issue of this *Quarterly*. The originals of these letters are in the W. L. Clements Library of the University of Michigan, and grateful acknowledgment is made to Mr. Howard Peckham, curator of manuscripts, for copies of them. - *Ed.*

more than (the) distance of a mile, wch the garrison commands. there is neither water no more than wood within the garrison, that the Spaniards are obliged to go up three or four miles one river for the first, & cross another at (the) distance of a mile & half for the last. by wch the men are exposed to (the) lying in wait of Indians concealed in the high reeds by the water-side, and sevl Spaniards have been destroyed by them, three a short time before our arrival; notwithstanding the king of Spain allows the commanding officer to make them presents of fourteen hundred gallons of spirits with many species of provisions & some cloathing every year. there is an house not twenty yards from the garrison, appropriated for their living in: I must keep at peace if possible with them, wch cannot be done without some presents otherwise they will alarm their brethren : and (the) Commanding officer assured me that (the) country is so very populous (that) in three or four days there may be collected together four or five hundred Indians. Apalache by what I could learn was of no other advantage to the Spaniards, but as it could supply them with plenty of good timber for building of ships: the bay is so dangerous (that) the Curacoa sloop could sail no nearer than four leagues of (the) garrison (that) it can never become a port for trade, did the Country produce any thing valuable for exportation. Pensacola is most conveniently situated for supplying that garrison with provisions & ammunition when wanted. we shall carry with us provisions till August next, but we ought always to have three or four months in store for fear of any accident. except some small craft be stationed there our wants and grievances cannot be made known, & so excluded from all correspondence with the other parts of the globe. was (the) present number of men now under my command to enjoy their health & none of them to

be cut off by the Indians, whenever I shd have occasion to send out parties for wood and water, there would be no danger of loosing the place, but if the number shd be considerably lessened by death or sickness, & not a proper complement to mount guard & have (the) necessary sentries, what must then become of us? in such a situation we must be in great danger or liable to a surprise to prevent wch evil the Spaniards had never less than eighty four. they send out a large party for wood & water & it was always necessary to have a covering party to defend the working men. if you Sir shd be of the opinion (that) the place is of such importance as to be worth keeping it in our possession I realy believe (that) it will be requisite (that) such a reinforcement be sent, as at least to compleat the whole to seventy rank & file. and if two or three or three six pounders were added, they might be found useful. I have now no less than eight men in a flux.

Permit me sir to remind you of your promise to give me leave of absence the ensuing spring, multiplicity of business may occasion its elapsing yr memory. the welfare of a wife & one only child, & (the) natural desire of recovering my former state of health, are such considerations, as I hope will prevail with you. Sir to gratify my request: there will then be a greater number of Captains wth the 9th than with the 34 and 35 & sevl other regiments in America. if I have your permission I shall take my servant with me, who is but an ordinary looking soldier, and in stature not above five feet two inches & will readily pay the regiment for a recruit in his room. I must rely upon yr goodness &

I am Sir Your most obedient and most humble servant

Jon. Harries, Capt. in the 9th regiment.

Harries to Amherst

Pensacola Dec. 14th 1763

Sir

Some omissions in my other letter I hope will apologize for this additional trouble given you. I have had the misfortune of a rupture wch is the particular distemper (that) I am afflicted with, during the siege of Havannah, possibly I might find a proper remedy in London, or at least be supplied there with a truss to prevent the parts descending into the scrotum, the reduction wherof to their natural situation is attended with some pain & difficulty ; wch end the truss I now have made by a soldier in the regiment ; doth not effectually answer. by the means of a good one I shd be in a manner as well as ever. as the recovery of my health and the welfare of my family prove the only motives of solliciting for my leave of absence I hope you will grant my desire.

The sickness amongst the men has exhausted the greatest part of the few medicines allowed me at St. Augustine, I have now eight men in the flux and one scorbutick. shd there be an increase of sickness, wch god forbid, I shall be reduced to a dismal situation: I dread agues in the spring, so (the) medicines will be now much wanted, particularly rhubarb and bark. I am so unfortunate as not to understand the Spanish tongue, nor have I an interpreter for either (the) Spanish or Indian language, these are difficulties, great difficulties to combat with. If yr Excellency is determined to have possession of Apalache, in my humble opinion it will be absolutely necessary to have such a reinforcement in the spring, as (thus) the whole might amount to at least seventy men, a good supply of medicines, a small craft stationed there, and an English Indian trader residing in the garrison with goods to vend to the Indians, and some presents for me to give them,

in order to conciliate their minds to the English government, as I suppose it will be most prudent to be at amity with those barbarians. I shall sail for Apalache the first fair wind.

I am with due respect Sir Your most obedient and most humble servant

Jon. Harries, Capt. in the 9th regiment.

P. S. In English garrisons it is usual to have English colours hoisted, but I have none for Apalache.

Harries to Gage

Pensacola Fby. 7th 1764

Sir

I have wrote two letters to Sir Jeffery Amherst by Coll Provost wch will be for yr perusal, as I understand he is on his way for England, and therein have represented the situation of the garrison of Apalache. there is no ascent or eminence near it as far as I could observe, but an entire level country, to trouble you with a repetition would be needless. Coll Robertson was pleased to supply me with two six pounders, ten swivels, some ammunitiion & three artillery men in order to enable me to make a better defense of that place ; when we had got ourselves in readiness for sailing from hence, we were detained for some time by contrary winds. However the thirtieth of Deer the Curacoa sloop sailed for Apalache, and the fifth of January we were so unfortunate as to strike on a sand bank, after (this) the Master Mr Henry Whyte the bearer hereof had sounded a considerable time all round for to find out a proper channel it was his opinion (that) it wd be impossible to get off without throwing a great quantity of the heavy baggage overboard, to wch I consented, prefering a lesser to a greater evil. in the evening of the sixth day the wind blew fresh, and notwithstanding the great quantity of provisions &c. thrown overboard, the sloop was not so far

lightened as to produce the desired effect. between the hours of eight and ten of that same night the wind rather increasing than abating, and the sloop beating with such violence against the ground, that each stroke was expected to prove the last it was then proposed to the master to cut down the mast, as the only probable expedient for the preservation of all the lives on board, to wch he readily acquiesced. the seventh in the morning a boat load of soldiers were sent on shore, whom with difficulty the master landed, for the sea ran high & the boat was obliged to be emptied two or three different times as he himself informed me. as the weather by ten or eleven of the clock of the same day was become much more moderate it was thought advisable to throw more of the heavy baggage overboard as the only distant hope of getting off the ship, reserving a proper quantity of provisions to bring us into some harbour, wch was attended with success. we had the carriages of the two guns, swivels, chests, boxes &c thrown overboard, and Ensign Hawkins as well as myself suffered much in the time of our genl calamity. and some of the soldiers in (their) consternation threw their knapsacks overboard. the eighth sent for the soldiers from shore & by the eleventh got up a Jury mast and the sloop was equipped in the best manner (that) (the) time and place would admit of: but (the) fourteenth in (the) evening we had (the) misfortune to loose the anchor, & (the) poor mate was killed. In such a situation it was thought (the) only expedient to return to Pensacola, where (the) sloop arrived the seventeenth in a distressed condition, a brigg then in the harbour, commiserating our appearance, sent some assisting hands to bring us safe to anchor.

We are to sail immediately for Apalache, but with a handful of men & in a most defenseless condition, having no guns or swivels, but two wch I was obliged

to buy for the use of the garrison, not being able to procure any supply from this place to render us more defensible. I have but one Serjt., one corpl. & twenty four men fit for duty, one Serjt. & one Corpl. so much indisposed (that) I fear they will never recover. a Serjt. with ten or twelve men ought to mount every day & (the) garrison will require five or six sentries at night & gradually to relieve each other every two hours & but one night in bed, if more dye, fall sick &c, as is most probable when they come upon such hard duty, the consequence is very evident, if the Indians prove of a malevolent disposition. besides large parties will be necessary for cutting wood &c.

The welfare of a wife & one only child a daughter, my decline in life being the worst side of fifty, and the misfortune of a rupture during the siege of the Havannah, make me anxious to see Great Britain once more before I dye. for want of a proper truss I labour under great inconvenience when the parts descend from their natural situation, the reduction whereof must be attended with some pain & trouble, but a good one made in London by an ingenious artist will prevent that evil. Sir Jeffery Amherst had promised me leave of absence this spring, but he is gone to England, I hope you will be so good as to commiserate my case & gratify my request. I have laid out some money for the use of the government, but time will not permit me to send you a particular account thereof, and believe shall be under a necessity of laying out more for the use of that garrison, for without boats or canoes there is no possibility of living there.

I am Sir Yr most obdt & most humble servant
Jon. Harries, Capt. in the 9th regiment.

There are four seemingly good swivels lying useless on the ground near water-port gate within this

garrison, quite neglected and unemployed, tho I was refused any upon my application.

I have advanced about forty pounds sterling on acct of the government during this expedition, upward of twenty pounds sterling whereof to Pilots.

I shall inform Major Ogilvie at St. Augustine of our calamitous circumstances, in hopes (that) he will send us a proper quantity of provisions, and such a reinforcement as will compleat the Company with all possible expedition. having only three months provisions from the day of our embarkation.

Gage to Harries

New York, 31st March 1764

Sir :

I have received your Letters of the 11th & 14th Decr to Sir Jeffery Amherst together with that of the 7th of Feby directed to me. It is to be wished that you had thought proper to relieve the Spanish Officer on your first going to Apalachi, and the misfortune & Accidents which happened afterwards to your Detachment, would have been avoided. you must certainly have had other Reasons for neglecting that Service when you was upon the Spot & going away for Pensacola than merely your orders not to furnish the Spaniards with Shipping which they only demanded to Pensacola, and which could not in any Shape have been detrimental to the Service. I could not have blamed the Spanish Commandant had He abandoned the Fort, & left you to answer for the Consequences. I hope that this will find you safe Arrived there at last, and that you will have put every thing in the best order. By the Description you have given me of the Fort, it seems Impregnable against all the Savages on the Continent, and I believe they are the only People you need be under any Apprehension about.

As Major Ogilvie has orders to send you a reinforcement to compleat your Garrison to Sixty Rank & File, they will probably Join you by this Opportunity ,and I hope he will send you at the same time a Supply of Medecines, Provisions, and two Hogsheads of Rum. I have ordered Carriages to be made here for the two Six Pounders you left behind at Pensacola and I am providing everything I can foresee you will be in immediate want of. A list of all you will receive herewith.

You mention Rum as the Chief Article you stand in need of, to conciliate the Affections of the Savages, which occasions my ordering you the two Hogsheads from St. Augustine. I must remark to you that tho it may be right & proper to make a few Presents to the Indians to keep them in good Temper, it should not be done profusely but given them with Judgment & Economy. I hope you will see Mr. Stuart the Indian Agent by this opportunity -who will regulate this Matter & Settle on what Occasions Presents are to be distributed & put them under proper Limitations & Restrictions.

I send you herewith a Permission to go to Europe and you will Please to leave all the orders you have received with the officer who is to Command at Appalachi in your absence, & every Information necessary for him to be acquainted with the better Government of the Post.

If I should mention anything which properly belongs to the Governor of East-Florida it's on a supposition that he is not arrived; but should he have taken Possession of his Government, all Civil Matters will of Course go through Him. All Orders relating to the Military which you shall receive from the Commander in Chief at any Time, you are however to Obey.

As you seem apprehensive of the bad Intentions of The Indians, you will no Doubt be upon your Guard

constantly, so as never to put it in their Power to you hurt by their Treachery. you will certainly find Traders very desirous of going to the Fort, as by all accts it so advantageous to Trade: and as you take notice of the great number of Indians near you, It's proper that the Country between you & them should be explored, that the Nature of it may be Ascertained and a thorough Knowledge be had of the Distance they are from you, and of the easiest & best Road by which they can be Attacked to most Advantage. you will please to send exact information as to these particulars, as well as of the Numbers of the Savages, distinguishing the Several Nations & how they are situated. you will not fail to leave these with the rest of the orders you have received with the Officer who commands in your absence. A description & Plan of your fort, should likewise be sent as soon as it can be done.

You will receive herewith a Copy of a Protest of the Master of the Sloop Curasoa, together with an Acct of the King's Commissary of the Quantity of Provisions, which it appears you have overdrawn, you will please to Settle this Matter with the Commissary where you are, giving the Crown Credit for what is overdrawn.

I likewise transmit you an order Just Arrived from England, which you will publish and act agreeable thereto.

I have also the Pleasure to acquaint you measures are concerting at Home to relieve the Corps in America, for which Purpose, two Regiments from England & four from Ireland, are to embark at certain periods to keep up a Rotation.

You will appoint no Staff in your Garrison except it be a Barrack Master, some faithful old Serjeant should be appointed for this Business who can write and understand Accts.

I am, Sir, &ca.

P. S. You will please to order all the Stores destined for Apalachi to be unloaded within Five Days After the Arrival of the Vessel. She otherwise will come upon Demurrage.

Captain Harries Apalachi.

(This series will be continued in the next number)

FLORIDA, LAND OF CHANGE

A Review by James O. Knauss

Florida, Land of Change by Kathryn Trimmer Abbey. (Chapel Hill : the University of North Carolina Press, 1941, XII, 426 pp. Illustrations, maps, appendices, bibliography and index. \$3.50).

At length there is an accurate and scholarly history of Florida, covering the entire period from its discovery to the twentieth century. To include all this in one medium-sized volume, the author must be highly selective in material used, and unless such selection is made on the basis of a definite viewpoint consistently followed, the work will be superficial and fragmentary. This criticism can not be made, as Dr. Abbey approached the subject with recognized objectives. She gives them succinctly in the preface: "Its [the book's] purposes are confined to relating the Florida of the present to the larger tides of human thought and behavior, tracing the factors which have contributed to making her what she is, and seeking to explain what she has done with the stuff of her existence." So the reader will not expect to find detailed accounts of the development of localities or even of important happenings unless the episodes help to illustrate the author's theme.

The book may be divided into three parts: chapters one to seven which are concerned with Florida

Note - Dr. Knauss, professor of history in Western State Teachers College, Kalamazoo, Michigan, is the author of *Territorial Florida Journalism* and of a number of articles relating to Florida's history published in this *Quarterly* and elsewhere. His appraisal of Dr. Abbey's volume may be had in a word: "The book is a dandy-by all odds the best general history of the state." He notes, but has omitted mention of it in his review, a minor imperfection which occurs now and then throughout: an inexact choice of word or usage, e.g. "anti-corporationists" held Florida politics for fifteen years," a "triumvirate of factors," "legal opinions . . . confirm the plan." etc. - *Ed.*

when the territory was Spanish (including the twenty year occupation by the British), chapters eight to thirteen which show the development as territory and state during the period of plantation economy, and chapters fourteen to sixteen which treat of modern Florida, extending from the chaos and nightmare of reconstruction to the present.

The first part of the work, dealing with the period prior to 1821, has greater unity than the other two parts. This is undoubtedly due to two chief factors, the comparative lack of complexity of life in the territory and the relative paucity of available records. These conditions enabled the author to center her almost undivided attention on Florida as a piece on the chessboard of diplomacy. She has succeeded remarkably well in tracing the attempts of Spain to prevent Florida from falling into the hands of her international rivals, France, England and the United States. In fact, the reviewer knows of no other work which shows as clearly and concisely the implications and complications of international rivalry in the Gulf area prior to 1821.

The second part of the book which is concerned with the period between 1821 and 1865 falls short of achieving the unity of the earlier part, although the author stresses the dominant idea of plantation economy. Life in Florida was becoming more complex, and available historical material of the period is more abundant, even if it has not been sufficiently evaluated. However, although details may have been introduced which form digressions from the main theme, there are some sections which will appeal particularly to the scholar, and other sections which will probably have greater interest for the general reader. Among the former should be included the accounts of railroad development and of banking in territorial days; among the latter the discussion of the Seminole troubles and of the War Between the States.

The third part is shorter. It includes a chapter on reconstruction after the war, another on the political history of the state prior to 1921, and a fascinating one on the economic development of the state with the chief emphasis on the contributions by Disston, Plant and Flagler. No account of the development of modern good roads and of aviation facilities is given, although surely these activities are illustrative of the theme on which the book closes: "She [Florida] was born in one Pan-American world; after drifting far away, she has come back to another." The reviewer would wish that the author had added to her work a short account of the state in the last three decades, even if the historian's "chances of error multiply speedily and his horizons become cloudy and perplexing" in attempting to evaluate the recent past.

The work is written in a good straightforward style with few ambiguities. The appendix contains a list of the governors, and of the counties with the years of their establishment. The "footnotes" are located at the end of the text, not at the bottom of each page. The extensive bibliography is composed mostly of secondary material deliberately selected by the author for its accessibility and accuracy.

The mechanical make up of the volume is very good. The numerous maps and illustrations serve as a valuable aid to the reader.

Florida, Land of Change, should have a wide circulation, not only among Florida historians and laymen but among those in other states who are interested in the factors which determined the development of the nation.

A REVIEW BY FLORENCE GLASS PALMER

As Dr. Abbey's history was written for both the historian and the general reader, and because it is the first history of Florida that is more than a historical record, the *Quarterly* reviews it from two angles. Though Mrs. Palmer is a writer of fiction,

her last book, *Spring Will Come Again*, (Bobbs-Merrill 1940), is written against a historical background, and her keen interest in our State's history might well give her the viewpoint of many of our readers. - *Ed.*

The well-advertised geography of Florida has brought the state large returns ; yet Captain Nathaniel Butler long ago declared that "geography without history seemeth a carcasse without motion", and in our day Miss Agnes Repplier maintains that "there is no beauty . . . without constant and not casual intercourse with human life." Native and adopted Floridians, vaguely conscious of our complex cultural heritage, but baffled by the lack of a comprehending history, will welcome Dr. Kathryn Abbey's Florida.

The recent vogue for historical novels has served to merge both the matter and the method of fact-and fiction-writing - doubtless for the benefit of both. Let a writer shape his story true to its geography - the red hills of Georgia or the hammock-lands of northeast Florida - and a waiting public takes the book to its heart. The rewards for writing history are seldom so evident. But the historian, too, can know a comparable satisfaction of creation - if only, as in Dr. Abbey's book, he can brush the dust from ancient manuscripts and quicken the men and women of the past into flesh and blood again.

Regarding Florida as "a region which has shared in the unfoldment of larger areas, a section, a nation, or a colonial empire," the author enlivens the scene of colonial Florida. Carefully she unravels the maze of Europe's colonizing efforts through three centuries and traces the delayed birth and retarded growth of Florida's Americanism, hinting finally at the state's present concern with an embryonic internationalism.

The trained historian's acquaintance with world history fixed Dr. Abbey's point of view for her suc-

cessful evaluation of Florida's past. We feel the often fruitless efforts at empire-building as she comes down across the centuries. Upon this stage of world intrigue much that seemed accidental or mystifying in Florida's history is rationalized; and the listless colony that lost its opportunity to win a stripe in Betsy Ross's flag is given logic for its course.

A vigorous, richly-figured style, vivifies our age-old legends. Ghosts that haunt our Spanish ruins are reembodyed. We are conscious of the hopes and courage of the pioneers forgetting disappointment and scornful of defeat.

Nowhere does the story bog down in trivialities of local economics or politics and a rare sympathy for local character and controversy, sprung perhaps from Dr. Abbey's identity with many interests in the state, pervades a book where no Floridian, no southerner will detect a prejudice inherited from the author's background. Reading her chapters on "Florida at War" and "Reconstruction," one marvels that the same lake's breezes can have blown on Kathryn Abbey that blew, years ago, on a vitriolic editor of the *Chicago Tribune*. Her story of salt-makers along the Florida coast, routed often from their stills by Federal forces, but finding new ways and means to inject saline into a dying Confederacy, is one of many that lift this from the common run of dry state histories.

With the scholar's fine discrimination for source material, Dr. Abbey has written a spirited history of the earlier and obscurer periods of the state. Even the eagle's eye must lose sight of some events and interests in such a panorama, and Dr. Abbey has only a casual word for Florida's citrus industry. The First World War is overlooked, tho the new weapon of aviation for the present struggle was, even then, working out its use at Florida, bases. She

explains her neglect of modern development as due to the difficulty of appraising men and events of one's own time. The reader wonders if knowing the South's traditional resentment of the exposure of its faults, Dr. Abbey has not deliberately chosen a tactful silence. Some of us who love the state, whose pride is quickened at this able statement of its evolution, must regret that her keen but lenient mind passed lightly over gross evils in our body politic-legacies, often, of the past and so within the historian's province. Be that as it may, her book, with its lucid presentation of that past, can serve our understanding of the present, and thus aid in solving the problems of our times.

LOCAL FLORIDA HISTORICAL SOCIETIES

THE JACKSONVILLE HISTORICAL SOCIETY

The last program meeting of the Jacksonville Historical Society was devoted to the Confederate States Navy. Mr. D. J. Carrison read a paper on Secretary Mallory, and Mr. Herbert Lamson one on Admiral Semmes. A picnic is planned for mid-March at Palm Valley near the site of old fort San Diego which will be visited and recalled. In the same month a program meeting will be held at which Dr. Kathryn T. Abbey will make the address. The present offices are: Mr. D. J. Carrison president, Mr. Charles E. Bennett and Miss Margaret Fairlie vice presidents, Miss Dorothy Knoeppel and Miss Fannie W. Holt recording and corresponding secretaries, Mr. J. D. Holmes treasurer.

The publication of an annual later this year is under consideration, We shall all look with interest for its appearance. Perhaps the local societies do not fully realize this interest which is always aroused outside their own circle, and even throughout the State among those who care for the State's history. Our own *Quarterly* with its limited space must limit its treatment of local history to a far greater extent than its importance warrants. Many of the papers prepared for local meetings because of research, of interest, and of historical value are well worthy of preservation through publication. The last issue of the Jacksonville Historical Society's Annual has taken a place in the bibliography of Florida's history, such as future issues will.

THE ST. AUGUSTINE HISTORICAL SOCIETY

On January 22 the St. Augustine Historical Society and Institute of Science honored Stephen Vincent Benet with a luncheon and program on his first

visit to the home of his ancestors. He came with his uncle, Mr. Laurence V. Benet of Washington, who is a member of the executive board of the Society. Among the speakers was Dr. Robert McElroy, Oxford professor emeritus of American history, who told of the recognition given by English authorities to Benet's poem, "John Brown's Body." Later Mr. Benet gave his lecture "The Human Side of History" which he had prepared for the occasion. The day was also in commemoration of General Laurence V. Benet, an ancestor, born in St. Augustine more than a century ago.

At the annual meeting of the Society on January 11, Judge David R. Dunham was reelected president, Mr. X. L. Pellicer, vice president, and Mr. Milton Bacon Jr. was added to the executive board.

THE HISTORICAL ASSOCIATION OF SOUTHERN FLORIDA

Such was the spontaneous and widespread response shown by the history-minded in South Florida at the regional meeting of the Florida Historical Society in that district last year which resulted in the organization of their Association, and such has been the continuous interest in, and the well-planned work of the body, that the Historical Association of Southern Florida seems almost to have been born fullgrown. Within the year it has reached a membership of two hundred. It has already held two notable program meetings, the last one on March 1 at the University of Miami, at which several original papers were read including one on "The Mission of San Ignacio" by J. Marquette Phillips, and "The Food Plants of DeSoto" by Adin Baber.

While this issue of the *Quarterly* is in press the Association will be hosts to the annual meeting of the Florida Historical Society (March 26-28). The program for the meeting appeared in our last issue, and an account of it will be in our next.

Crowning this successful year an annual will be issued by the Association in April, in cooperation with the University of Miami : *Tequesta; The Journal of the Historical Association of Southern Florida*. Professor Lewis Leary of the University staff is editor, and the advisory editorial board includes Hervey Allen, Pauline Corley, Ruby Leach Carson, Marjory Stoneman Douglas, John C. Gifford, and Robert E. McNicoll. Subscription is one dollar. Nine historical articles have been prepared relating to the region and there will be a column of Notes and Queries. We look eagerly for the first number; it will be cordially welcomed throughout Florida.

The council of the Inter-American Bibliographical and Library Association has determined to begin the publication of a bibliographical *Quarterly*, in the place of its *Proceedings*, as soon as the necessary subscribers (300) are secured. Those interested should write to the president, Professor A. Curtis Wilgus, George Washington University, Washington, D. C. The publication will include articles, reviews, notes, abstracts of pertinent works, and other information of value to teachers, students, librarians, and others interested in the field of Inter-American literature.

The Irving Bacheller Essay Contest, which has been familiar to our readers for many years, was held under the auspices of Rollins College on February 21. This is open to all Florida high school students and the essays are written on some subject of Florida's history. This year the subject was "A Notable Personality of Florida." Eighty-five essays were submitted from fifteen high schools throughout the State. The winners were: Eleanor Struble, Orlando ; who wrote on Dr. John Gorrie ; and Bettie Blanchard, Mt. Dora High School, who wrote on Henry M. Flagler.

THE FLORIDA HISTORICAL SOCIETY

An account of the annual meeting of the Society, to be held while this number of the *Quarterly* is in press, together with the Minutes, will be included in our next issue.

The chairmen of several committees and other members of the Society met at luncheon at the Ponce de Leon in St. Augustine on March 3. This was the first visit of some of these members to our new home, and they were all pleased with what Mr. Marchman has accomplished. Chairman A. J. Hanna reported for the committee on bibliography, Mrs. F. B. Crowninshield on antiquities, Mr. W. B. Goodwin on archeology, Mrs. W. C. Bowers on the library, and Mrs. E. W. Lawson on Florida music.

As a memorial to Dr. James Alexander Robertson, Mrs. Robertson has given his private Florida library to our library, to which it is a noteworthy addition. Among its valuable pieces are many Florida state documents including legislative journals, and numerous autographed and inscribed volumes and pamphlets relating to the state's history. The Society is grateful for this reminder of one who accomplished so much towards the writing of Florida's history.

LIBRARY ACCESSIONS

The library has received a large number of gifts during the past quarter; in fact, nearly all accessions have been through donations. A few of these are :

Transcriptions of Spanish documents relating to Florida from Papeles de Cuba. Presented by Dr. Verne E. Chatelain.

Educational Directory of Florida, 1940.

Address at the dedication of Fort Clinch State Park by T. Frederick Davis. Gift of Mr. Davis.

Presented by Miss Emily L. Wilson, St. Augustine: *Am. State Papers*; *Pub. Lands v. 2*; *Poems of Sidney Lanier*; *Guide to Florida*. N. Y. 1874; *Garcilaso de la Vega. Hernando de Soto. Madrid 1829*; *Constance Fenimore Woolson, East Angels*, N. Y. 1886; Musick, *St. Augustine, The Age of Conflict*. N. Y. 1909
Winter, Florida the Land of Enchantment. Boston, 1918.

Florida Municipal Record

An almost complete file. Twelve volumes. Presented by the Florida League of Municipalities.

News Notes, Florida Engineering Society.

Journal, Florida State Dental Society. Presented by Dr. and Mrs. A. B. Whitman.

The Future of Florida Archeological Research by Sidney A. Stubbs. Presented by A. J. Hanna.

MS. *Dr. John Gorrie* by Mrs. W. I. Kirkhuff.

The Continent of Florida by Herbert M. Corse.

Spanish Missions of Florida. Gift of Clotilde Fernandez.

A History of St. Mark's Parish, Palatka. Presented by John H. Cooper.

Appleton's American Travel. N. Y. 1867.

Autobiography of an English Soldier in the U. S. Army. N. Y. 1853.

Inventory of Church Archives of Florida. Baptist Bodies. Additional volumes. Presented by Historical Records Survey.

Miscellaneous publications from the Pan-American Union. Presented by Mrs. W. F. Kirtland.

Bibliography on the Seminole Indians. Univ. of Fla. N. Y. A. project. Presented by Mr. Walter B. Hill.

Trial and Imprisonment of Jonathan Walker at Pensacola, Florida. Boston 1845. Presented by Theodore Walton.

Photograph of Samuel A. Swann. Presented by Mrs. Elizabeth Swann Carroll.

Quarterly Bulletin, New York Historical Society. Bound vols. 1931-1940. Presented by A. J. Wall, director.

Narrative History of the Orange in the Floridian Peninsular by T. Frederick Davis, MS. Presented by the author.

Presented by Mary Lamar Davis, Tallahassee: *Hayden, A Century of Tallahassee Girls*; sketches of Fanny Downing and Charles Downing; photograph of Robert Butler, Adj. Gen. Fla. ; photograph of State capitol.

Catalog of David S. Walker Library, Tallahassee. Gift of A. H. Roberts.

Spanish Land Grants & Florida v. 2. Confirmed Land Claims A-B-C. Gift of Historical Records Survey.

Inventory of Federal Archives. Veterans Administration. Florida. Gift of Historical Records Survey.

Industrial Survey of Orange County, Florida. Gift of C. A. Sims.

Indian pottery of Fort George Island. Gift of Mrs. W. S. Manning.

Brevard, *Around the Lightwood Fire*. Gift of Mrs. W. S. Manning.

Photostat copy. Map Mexia, Florida East Coast 1568-1601. photo copy *Planta costa Florida*. Presented by C. D. Higgs.

Guide to Manuscripts in the Southern Historical Collection, Univ. of North Carolina.

- Annual Report of Smithsonian Institution, 1938, 1939.
Holman Hamilton, **Zachary Taylor, Soldier of the Republic.** 1941. For review.
Kathryn Trimmer Abbey, **Florida, Land of Change.** Chapel Hill, 1941.
William B. Goodwin, **The Lure of Gold.** Boston 1940. **The Truth About Leif Ericsson,** Boston, 1941. Presented by the author.
Bancroft, **History of the United States,** 6 v. N. Y. 1883.
Map of Collier County locating mounds. Prepared by and presented by D. Graham Copeland.
Map of Polk County locating mounds. Presented by W. R. Van Fleet.
Mr. and Mrs. M. H. Westberry have given the library two large chairs and a library table.

NEW MEMBERS

The following have become members of the Society during the past month:

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|---|--|
| Appleby, Miss Madeline, Fostproof | Kaplan, Dr. Jacob H., Miami Beach |
| Ashe, Dr. Bowman Foster, Coral Gables. | Longyear, Dr. J. M., III, Belmont, Mass. Contributing member for archeology. |
| Bullard, Bern K., Lake Wales. Life member. | MacPherson, C. R., Palatka. Contributing member. |
| Clasby, Rev. Michael C., Jacksonville. | Mays, Eugene D., Tampa. |
| Cummins, Mortimer L., Brooklyn, N. Y. | Merritt, Miss Mary B., Coral Gables. |
| Davis, Edward M., Rollins College, Winter Park. | Pancoast, J. Arthur, Miami Beach. |
| Dodge, Mrs. J. P., St. Augustine. | Perkins, Miss Elizabeth B., Winter Park. |
| Dunaway, Mrs. C. E., Miami. | O'Keeffe, Rev. J. H., St. Augustine. |
| Edwards, Mrs. Ray O., Jacksonville. | Scarlett, Mrs. Joseph, Jr., DeLand. |
| Egger, Mrs. Henry J., Miami. | Stanton, Mrs. Edith P., Ormond Beach. |
| Emmons, Mrs. Marjorie B., Jacksonville. | Towers, Mrs. C. D., Jacksonville. |
| Erwin, Harrison V., St. Augustine. | Wells, Prof. W. J. Jr., Longwood. |
| Fay, Mrs. Rush Southgate, Miami Beach. | Wood, Mrs. F. H., Miami. |
| Gimbel, Lt. Col. Richard, Miami. | Wilson, D. Earl, Miami. |
| Greenlee, Robert Fargo, Sanford. | Wylie, Philip, Miami Beach. |
| Griffin, Mrs. Willa V., Orlando. | State Historical Society of Wisconsin, Madison. (exchange). |
| Harris, George G., Daytona Beach. | Coral Gables Public Library, Coral Gables. |
| Holgerson, Mrs. P. A., Havana, Cuba | |

Mr. A. J. Wall, director of the New York Historical Society, whose interest extends to our own, has donated twenty-five dollars for lettering the Society's name in gold leaf on two of our larger windows.

TO THE MEMBERS

Now, when are *you* coming to see the Society's new home in the Alcazar which our librarian has been working on so assiduously, building the shelves and doing much of the painting himself. It is virtually completed—bookcases and tables and files are in place and already in frequent use, and the new fire-proof safe holds the rarest of our treasures. Visitors are plentiful and those seeking history now usually find what they want with Mr. Marchman's help. A visit would benefit you and the Society, and you'd realize that in being a member you are taking a small or a larger part in bringing our State's long history to light and making it widely known.

OUR CONTRIBUTORS

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