

COMPILED LAWS.

OF THE

HAWAIIAN KINGDOM.

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COMPILER'S PREFACE.

The Legislature of 1880 passed an Act, which is Chapter XXXII of the Session Laws of that year, "To provide for the codification and revision of the Laws of the Kingdom." The corresponding item in the Appropriation Bill is "For codifying, printing and binding the Laws of the Kingdom in English and Hawaiian, \$5,000." His Majesty's Ministers having requested the opinion of the Justices of the Supreme Court as to what was required to be done in view of the special Act and of the terms of the appropriation Act, gave as their opinion that the direction to "print and bind" the laws implied that the intention of the Legislature was not that what is commonly called "a code;" should be prepared by the Commissioners provided for in the Act; for a code, which would imply new matter, and the old matter expressed in new forms, would require to be considered by the next Legislature, which would probably make numerous amendments to it, and must enact it to make it law. The direction to prepare a printed and bound edition for the public of a work which would be a mere legislative bill, would be unreasonable and unlikely. Neither did the Act provide for a report of the commissioners to the following legislature of such a code as they might frame.

On the other hand it appeared that the words of the statute might import a compilation of the existing laws. The want or "mischief," which existed and which the statute seemed to be framed to remedy, was two fold. First, following the Civil Code

passed in 1859, were the Session Laws passed in 1860, and biennially thereafter. Some of these session law volumes were very scarce and some even out of print. A full collection of the laws could not be procured, and it was a necessity to furnish the public with the statutes of the Kingdom.

Secondly. The legislation of twenty years had made many changes, session by session in what preceded. There were amendments by addition, by repeal and by variation of previous Acts and of the body of the Civil Code. It had become not an easy matter even for those who had complete collections of the statutes to ascertain how the law stood. It was then a public want that the laws should be republished under such an arrangement as would set out what were the statutes now in force without confusion by the reproduction of what had been repealed and without waiting for re-enactment by another legislature.

The Justices suggested that the compilation be made so as to present in a convenient arrangement all the laws now in force, and as they stand amended, but without any changes in the words and phrases of the statutes.

The present commissioners were appointed May 14th, 1881. It was considered that the work of compilation could not well be done by several persons. One person must have before him all the material in order to place every part where it belonged in the arrangement.

They accepted their commissions upon the understanding that Mr. Justice McCully was to prepare the English version, and that the Honorable J. M. Kapena would prepare the Hawaiian version from the proof sheets of the English. In no other way could there be secured an exact conformity of the two versions. Chief Justice Judd, at that date the First Associate, accepted the third place in the commission to complete the required number of three, not intending to take any other than a consulting part in the work, if the other two commissioners should carry through the two versions as above planned.

The first named commissioner immediately commenced on the English version. The general scheme was, beginning with the Civil Code as the basis of the work, to put in place all those amendments to sections of the Code which directly amend them in terms; the phrases commonly being "that section — is hereby amended to read as follows." The amended section, or as is frequently the case the latest amendment of the section is put in its place, with a marginal reference to the year or to the year and chapter. The system of chaptering the Session Laws commenced with the Laws of 1870, and whatever is taken from that and the following volumes is referred to by its chapter. Previous Acts are generally referred to only by the year as a statement of the day and month of enactment would not be useful or necessary in a reference to the original volumes.

Other statutes which take the place of sections or chapters of the Code have been placed in the same position, e. g., The Tax Act of 1882; the Board of Education Act of 1864, with its many subsequent amendments. But in no such case do we give the substituted statutes the numbers of the sections which are repealed. Many other statutes are drawn back and placed in the Code in proximity to matter upon the same subject.

The compilation is intended to present the law without variation from the published text. It will not require an enactment of the Legislature to give it force and in our opinion it is very desirable that there should be no such enactment, at least until after the scrutiny which it will receive by use for two years it may appear that there are no omissions or mistakes, and until after the Hawaiian version is also prepared and examined.

The letters P. C. in the margin indicate that the section or article or chapter also stands in the Penal Code of 1869. The compilers of that code considering that every provision of the law which was enforced by a penalty belonged to the Penal Code, took from the Civil Code material for thirty-six new chapters, embracing such subjects as Port Regulations, the Public Health,

Qualifications of Electors, Custom House Laws, etc., which had been very properly considered matter for the Civil Code. We have thus had since 1869 a considerable part of our law in two places and in two forms. The subsequent amendments have sometimes amended a statute as such a chapter and section of the Penal Code or such a section of the Civil Code, but in perhaps no case has the amendment referred to both the codes where the matter stood as law. It is hoped that the marginal note may call the attention of the Legislature when considering an amendment to either Code to the propriety of reference to both where the law stands in duplicate.

LAWRENCE McCULLY.

February, 1884.