

Thirtieth Congress.
Second Session.

BE IT ENACTED

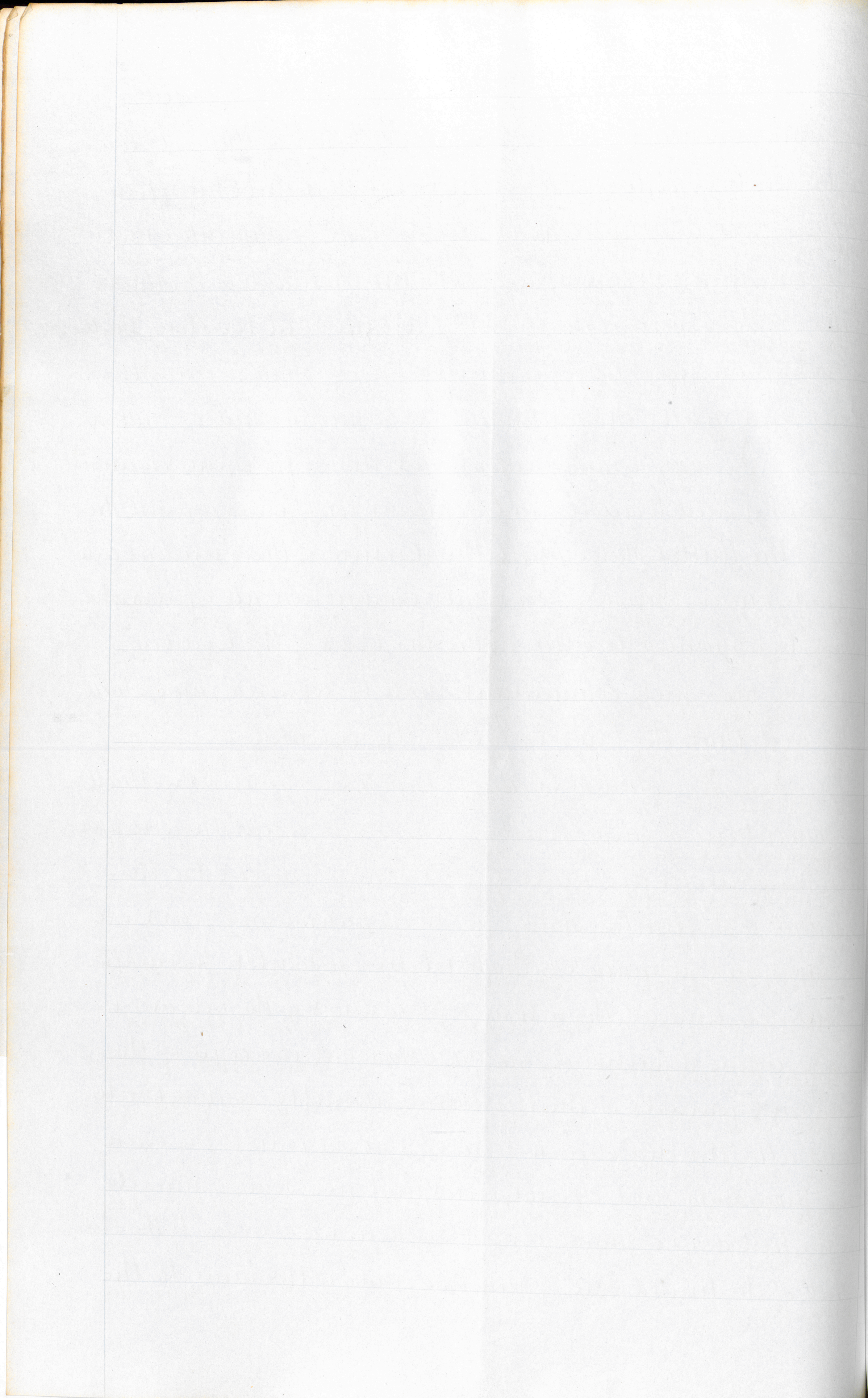
By the Senate and House of Representatives of the United States of America in

Congress Assembled.

That from and after the first day of April, in the year of our Lord eighteen hundred and forty-nine, all that part of the territory of the United States, known and designated as Upper California, shall be organized into and constitute a temporary government by the name of the territory of Upper California. Provided, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unquestioned by treaty between the United States and such Indians, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make, if this act had never passed: Provided, further, That nothing in this act contained shall be construed to prohibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said territory to any other State or territory of the United States.

Sec. 2. And be it further enacted, That the executive power and authority in and over said territory of Upper California shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of Superintendent of Indian affairs. He may grant pardons and respites for offences against the laws of said territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon. He shall commission all officers who shall be appointed to office under the laws of the territory, where by law such commissions shall be required, and shall take care that the laws be faithfully executed.

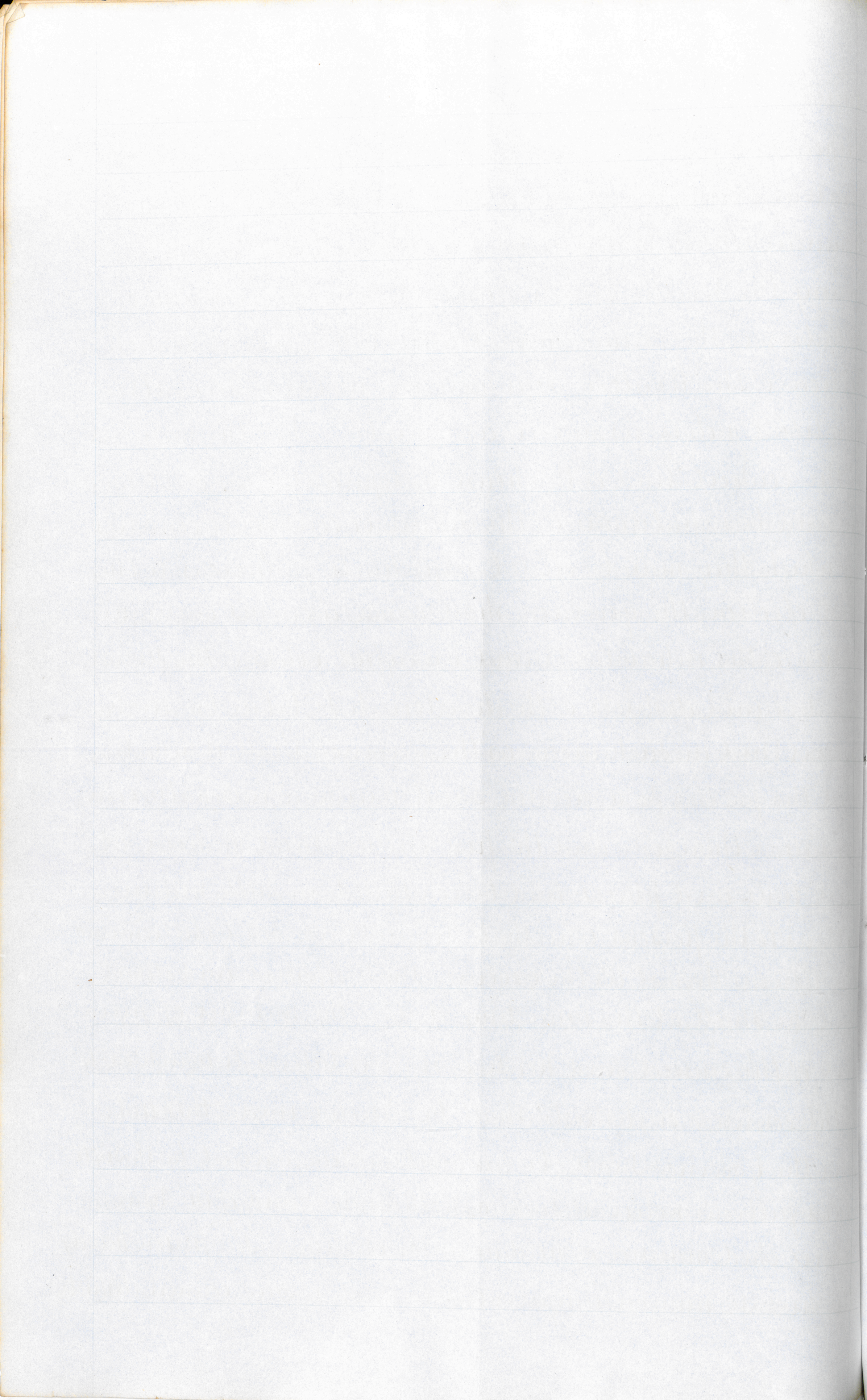
Sec. 3. And be it further enacted. That there shall be a secretary of said territory, who shall reside therein and hold his office for five years, unless sooner removed by the President of the United States; he shall preserve and record all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the



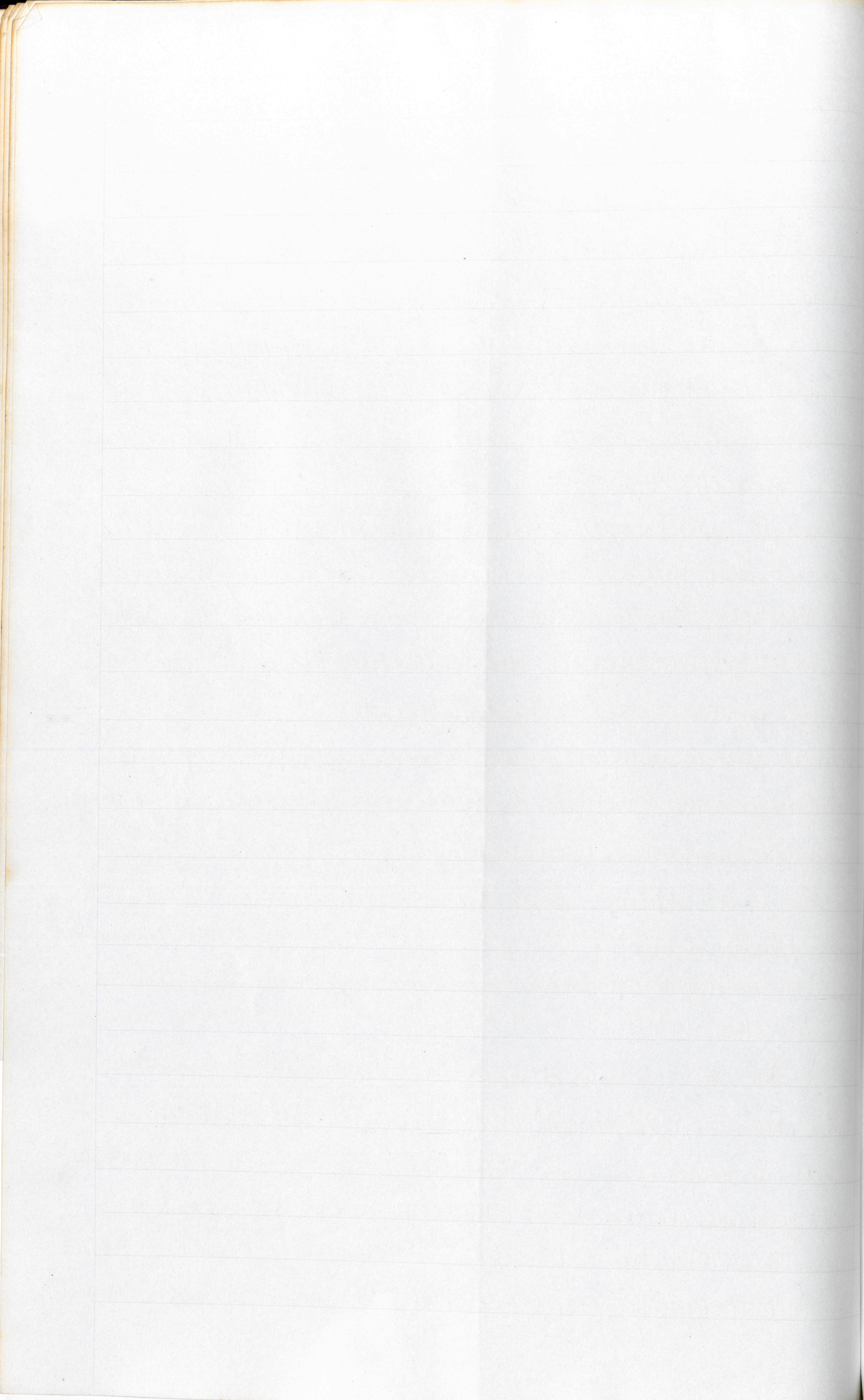
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President of the Senate and the Speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence or until another governor shall be duly appointed and qualified to fill such vacancy.

Sec. 4. And be it further enacted, That the legislative power and authority of said territory shall be vested in a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled under the first election, they shall be divided as equally as may be into three classes. The seats of the members of the first class shall be vacated at the expiration of the first year, of the second class at the expiration of the second year, and of the third class at the expiration of the third year, so that one third may be chosen every year. And if vacancies happen by resignation or otherwise, the same shall be filled at the next ensuing election. The house of representatives, shall at its first session, consist of eighteen members, possessing the same qualifications as those prescribed for members of the council, and whose term of service shall continue one year. The number of representatives may be



increased by the legislative assembly, from time to time, in proportion to the increase of qualified voters: Provided, That the whole number shall never exceed thirty-six, apportionment shall be made as nearly equal as practicable among the several counties or districts for the election of members of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of the district or county, or counties for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory, to be taken by such persons and in such mode as the governor shall designate; and the persons so appointed shall receive a reasonable compensation therefor; and the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend said election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act; and the governor shall, by his proclamation, give at least sixty days previous notice of such apportionment, and of the time, places, and manner of holding such election. The person having the highest number of legal votes in each of said council districts



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for members of the council shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives, shall be declared by the governor duly elected members of the said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur, in either branch of the legislative assembly, the governor shall order a new election. And the persons thus elected to the legislative assembly shall meet at such place, and on such day, within ninety days after such elections, as the governor shall appoint: but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts, to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assemblies: *Provided*: That no session in any one year shall exceed the term of sixty days, except the first session, which shall not be prolonged beyond one hundred days.

Sec. 5. And be it further enacted, That every free male citizen of the United States, above the age of twenty-one years, (Indians not taxed and Africans, and the descendants of Africans, excepted,) who shall have been an inhabitant of said territory at the time of its organization shall be entitled to vote at the first election, and shall be eligible

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to any office within the said territory; but the qualifications of voters and of holding offices at all subsequent elections, shall be such as shall be determined by the legislative assembly.

Provided, That the right of suffrage, and of holding office shall be exercised only by citizens of the United States;

And provided further, That no officer, soldier, seaman or marine, or other person in the army or navy of the United States, shall be allowed to vote in said territory by reason of being on service therein, unless said territory shall have been for the period of six months his permanent domicile:

Provided further, That no person belonging to the army or navy of the United States shall be elected to or hold any civil office or appointment in said territory.

Sec. 6. And be it further enacted, That the legislative power of the territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect; Provided, That nothing in this act shall be construed to give power to incorporate a bank, or any institution with banking powers, or to borrow money in the name of the territory or to pledge the faith of the people of the same for any loan.

whatever, either directly or indirectly. No charter granting any privilege of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange or obligations, or granting any other banking powers or privileges, shall be passed by the legislative assembly, nor shall the establishment of any branch or agency, of any such corporation derived from other authority, be allowed in said territory; nor shall said legislative assembly authorize the issue of any obligation, scrip, or evidence of debt by said territory in any mode or manner whatever, except certificates for services to said territory; and all such laws, or any law or laws inconsistent with the provisions of this act shall be utterly null and void.

All taxes shall be equal and uniform, and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title.

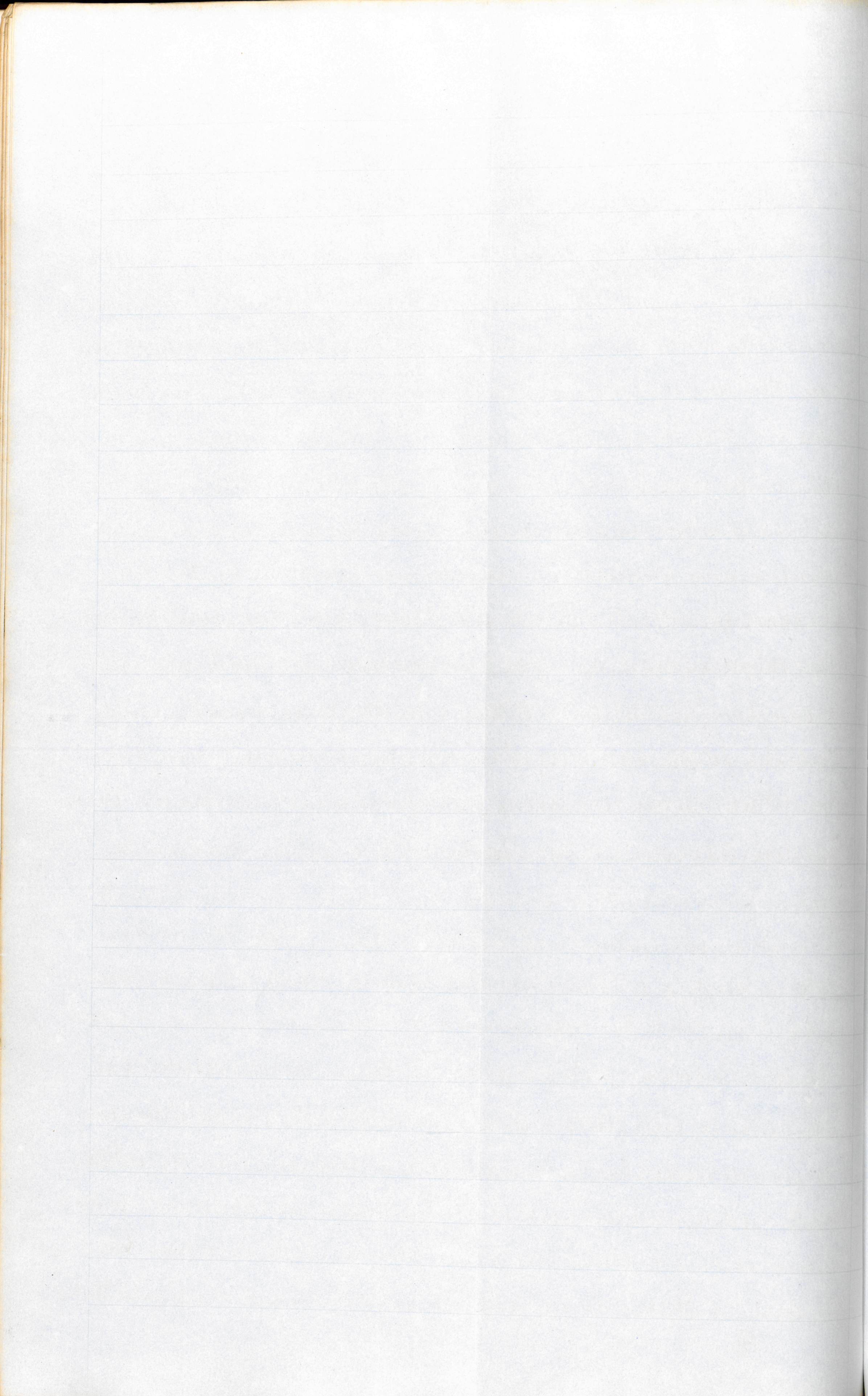
Sec. 7. And be it further enacted, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected in such manner as shall be provided by the legislative assembly.

Sec. 8. And be it further enacted, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased, while he shall

have been a member, during the term for which he shall have been elected, or for one year thereafter; but this restriction shall not be applicable to members of the first legislative assembly, and no person holding a commission or appointment, under the United States, shall be a member of the legislative assembly, or shall hold any office under the government of the territory.

Sec. 9. And be it further enacted, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and shall hold a term of said court at the seat of government of said territory annually, and they shall hold their office during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall after their appointment respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts therein provided for, both appellate and original, and that of the probate courts and justices of the peace, shall be as limited by law: Provided That justices of the peace shall not have jurisdiction of any case in which the title to land shall in any wise come in question, or where the debt or damages claimed shall exceed one hundred dollars; and the said supreme and district

courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court under such regulations as may be prescribed by law, but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, and in all cases where the constitution of the United States or acts of Congress, or a treaty of the United States is brought in question; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States, and the laws of said territory, as is vested in the circuit and district courts of the United States. Writs of error and appeals, in all such cases, shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the



clerks of the district courts of the Territory of Oregon receive for similar services.

Sec. 10. And be it further enacted, That there shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as are provided by law for the Attorney of the United States for the Territory of Oregon. There shall also be appointed a marshal for the said territory, who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as are provided by law for the marshal of the district courts of the United States for the Territory of Oregon.

Sec. 11. And be it further enacted, That the governor, secretary, judges, attorney, and marshal, shall be nominated, and by and with the advice and consent of the Senate, appointed by the President of the United States. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation, before the district judge or some justice of the peace in the limits of said territory, or before some one of the judges of the Supreme Court of the United States, to support the constitution of the United States.

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and faithfully to discharge the duties of their respective offices; which said oaths when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said secretary among the executive proceedings. And the chief justice and associate justices, and all other civil officers of said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified; which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid.

The governor shall receive an annual salary of fifteen hundred dollars as governor, and fifteen hundred dollars as superintendent of Indian affairs. The chief justice and associate justices shall each receive an annual salary of two thousand dollars.

The secretary shall receive an annual salary of fifteen hundred dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars each for every twenty miles travel in going to and returning from said sessions, estimated according to the nearest usually travelled route.

A chief clerk, one assistant clerk, a sergeant-at-arms, and door keeper, may be chosen for each house. The chief clerk shall

receive five dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: Provided, That there shall be but one session of the legislature annually, unless on an extraordinary occasion, the governor shall think proper to call the legislature together. There shall be appropriated annually the sum of fifteen hundred dollars, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of a clerk of the executive department. And there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws and other incidental expenses. And the governor and secretary of the territory shall, in the disbursement of all monies entrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall semi-annually account to the said secretary for the manner in which the aforesaid sum shall have been expended; and no expenditure, to be paid out of money appropriated by Congress, shall be made by said legislative assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Sec. 12. And be it further enacted, That the inhabitants of said Territory shall be entitled to enjoy all and singular the rights privileges, and advantages granted and secured to the people of the

territory of the United States northwest of the Ohio river, by the articles of compact contained in the ordinance for the government of said territory, ^{passed} on the thirtieth day of July, seventeen hundred and eighty-seven, and shall be subject to all the conditions, restrictions, and prohibitions in said articles of compact imposed upon the people of said territory.

Sec. 13. And be it further enacted, That the legislative assembly of the territory of Upper California shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible: which place, however, shall thereafter be subject to be changed by the legislative assembly. And the sum of five thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said territory of Upper California, to be applied by the governor to the erection of suitable buildings at the seat of government.

Sec. 14. And be it further enacted, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as have been heretofore exercised and enjoyed by the delegates from the several other territories of the United States to the House of Representatives; but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first

election shall be held at such time and place, and be conducted in such manner, as the governor shall appoint and direct: of which, and the time, places, and manner of holding the election, shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. The delegate from said territory shall not be entitled to receive more than twenty-five hundred dollars at any one session of Congress, as a compensation for his mileage, in going to and returning from the seat of government of the United States, any act of Congress to the contrary notwithstanding.

Sec. 15. And be it further enacted, That the legislative assembly of said territory shall provide for the appointment or election of such number of justices of the Peace, constables, sheriffs, and other judicial and ministerial officers as they may deem necessary or expedient. Until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper.

Sec. 16. And be it further enacted, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the territory of Upper California, who, by virtue

of the provisions of any law now existing, or which may hereafter be enacted, are required to give security for any moneys which may be entrusted to them for disbursement, shall give such security at such time and place and in such manner as the Secretary of the Treasury may prescribe.

Sec. 17. And be it further enacted, That all the ports, harbors, shores, and waters of the main land of the territory aforesaid, shall constitute a collection district, to be called the district of Upper California, and a port of entry shall be established at San Francisco, and a collector of customs shall be appointed by the President, by and with the advice and consent of the Senate, to reside at such port of entry. And the President of the United States is hereby authorized to establish such ports of delivery in the district created by this act, not exceeding four in number as he may deem expedient, and may appoint, by and with the advice and consent of the Senate, surveyors to reside thereat.

Sec. 18. And be it further enacted, That the collector of said district shall be allowed a compensation of one thousand dollars per annum, and the fees allowed by law; and the compensation to any surveyor, appointed in pursuance of this act, shall not exceed five hundred dollars per annum, including in said amount the fees allowed by law; and the amount collected by any of said surveyors, for fees in any one year, exceeding the sum of five hundred dollars, shall be accounted for and paid into the treasury of the United States. And the revenue laws of the United States are hereby extended over the territory of Upper California.

Passed the House of Representatives, 27th February, 1849

Attest -

Thos. Campbell
Clerk

H. R. . . . 685

An Act
To establish the territorial
government of Upper California.

In Senate of the United States

Resolved, That this bill

Attest

Secretary

Territories
Clerk

Return
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