

Act of March 3, 1845.

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sir, your obedient ser-

J. Y. MASON.

#### THE ACT OF MARCH

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 the act of March 3, 1845.  
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AL'S OFFICE,

April 14, 1845.

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Appointment of Judges, &c., for Iowa and Florida.

1834 within the meaning of the act of March 3, 1845. By the death of her husband in battle, Mrs. Ross was entitled under the act of 1834. The fact of her being placed on the pension roll by virtue of the more comprehensive terms of the act of 1837, does not affect her rights under the act of March 3, 1845. The purpose of Congress was manifestly to extend a pension for five years to those widows who had previously received pensions in consequence of the death of their husbands, (being officers, seamen, and marines,) who had been killed in battle, or who had died by reason of a wound received in the line of their duty, or who had died from disease contracted, or of a casualty by drowning or otherwise, or of injury received, while in the line of their duty. This intention would be defeated in cases of the most meritorious character, if the words employed be construed to embrace only such cases of pension as were granted for five years. The terms of the act are fully satisfied by extending its provisions to cases which were within the act of 1834, although the pensions were granted for an indefinite period; and I am of opinion that this may be done whether the pensions were granted by the Commissioner of Pensions under the act of 1834, or under that of 1837, provided the pension granted would have been authorized by the act of 1834. Mrs. Ross is, therefore, entitled to the benefit of the act of March 3, 1845, subject to its restriction.

I have the honor to be, respectfully, sir, your obedient servant,

J. Y. MASON.

Hon. GEORGE BENCHOLT,

*Secretary of the Navy.*

#### APPOINTMENT OF JUDGES, &c., FOR IOWA AND FLORIDA.

The President cannot appoint district judges, attorneys, and marshals, during a recess of the Senate, for newly-admitted States, where the offices were created and took effect during the session of that body.

If vacancies are known to exist during the session of the Senate, and nominations are not then made to fill them, they cannot be filled by the Executive during the subsequent recess.

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 Appointment of Judges, &c., for Iowa and Florida.
 

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Nevertheless, the new States thus circumstanced are not left without their Territorial judiciary; for it will not be presumed that Congress intended that the means of administering the law should be held in abeyance until other officers should be appointed.

The district attorney may, therefore, proceed with the business of the United States in the existing courts.

ATTORNEY GENERAL'S OFFICE,

April 18, 1845.

SIR: I have had the honor to receive your communication of the 12th instant referring to me a letter addressed to you by the Solicitor of the Treasury of that date, and asking my opinion, in writing, on the questions therein presented for your consideration. By the first section of the act of the 3d March, 1845, it is enacted that "the States of Iowa and Florida be, and the same are hereby declared to be, States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever." The judicial system established by the laws of the United States for the Territory of Florida was in full force at the time of the passage of this act. When she became a State of the Union, and at what time the jurisdiction of these courts shall terminate—whether on the passage of the act, or when her organization shall have been completed by her own State authorities acting under her State constitution, as to all subjects within the control of her legislature, and as to others by complete organization of the federal courts authorized by the act supplemental to the act before referred to—are questions of much interest. They are, however, questions for the judiciary itself, and must be settled by the courts. I will only remark that it cannot be presumed to have been the intention of Congress to have produced an abeyance of all government in Florida from the passage of the act of admission to the organization of a new order of things—that there was to be no government, executive or judicial, and no law but the fundamental law established by their constitution. On general principles I am clear in the opinion that this is not the result; and such has been the practice, it is believed, in at least ten of the thirteen new States heretofore admitted into the Union. I therefore entirely approve of the course indicated by the Solici-

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 Transfers of Approp
 

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tor of the Treasury, of proceed with the business courts. But, as I have judicial authority, on which controlling influence will The only question involved have you now, in the record the district judge, the district offices were created by the act to the act for the admission into the Union," approval has often occurred, and has been so well established precedents are known to exist and nominations are not executive appointments rule is the same where during the session of the As the act referred to causes, it is, perhaps, approved by the Senate, that no meeting of Congress.

I have the honor to  
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To the PRESIDENT.

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 TRANSFERS OF APPROPRI
 

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The President may, if he deems transfers of appropriations from of the Quartermaster's department &c., and of transportation

SIR: I have the honor papers transmitted by you that I would give you a part of the appropriation of the army,

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 Transfers of Appropriations for the War Department.
 

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of the Treasury, of instructing the district attorneys to proceed with the business of the United States in the existing courts. But, as I have before remarked, this is a question of judicial authority, on which my official opinion would have no controlling influence with those on whom its decision devolves. The only question involving executive authority and action is, have you now, in the recess of the Senate, the power to appoint the district judge, the district attorney, and the marshal, whose offices were created by the act entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved 3d March, 1845? The question has often occurred, and the interpretation of the constitution has been so well established, that I cannot doubt on it. If vacancies are known to exist during the session of the Senate, and nominations are not then made, they cannot be filled by executive appointments in the recess of the Senate. And the rule is the same where offices are created by law, taking effect during the session of the Senate, and no nominations are made. As the act referred to made no provision for the transfer of causes, it is, perhaps, fortunate, and may have been expected by the Senate, that no appointments can be made until the next meeting of Congress.

I have the honor to be, respectfully, sir, your obedient servant,

J. Y. MASON.

To the PRESIDENT.

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 TRANSFERS OF APPROPRIATIONS FOR THE WAR DEPARTMENT.
 

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The President may, if he deems it conducive to the public interest, direct transfers of appropriations from the branch of expenditure of incidental expenses of the Quartermaster's department to the other branches of barracks, quarters, &c., and of transportation of officers' baggage.

ATTORNEY GENERAL'S OFFICE,

April 21, 1845.

SIR: I have the honor to acknowledge the receipt of the papers transmitted by you this day, and your written request that I would give you my opinion on the legality of a transfer of a part of the appropriation made for the Quartermaster's department of the army, under the head of incidental expenses,

Iowa and Florida.

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GENERAL'S OFFICE,

April 18, 1845.

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