

# FORBES' EXPENSE FUND TORPEDOED BY JUDGE STUART

(Continued from page one)

At Attorney-general I. M. Stainback and his deputy, Arthur G. Smith, representing the territory, also Robert W. Breckons, attorney for Wilder, and Wilder himself.

Stainback Asks Interlocutory Appeal. Attorney-general Stainback was evidently much moved with the decision, rising as soon as the judge had finished to ask for an interlocutory appeal. The appeal was denied, however, Judge Stuart declaring that the supreme court objects to such action.

Then both territorial attorneys asked for time in the case of Treasurer McCarthy, stating that he is absent on the mainland and that he alone was familiar with the details of his case. Stainback declared that Wilder had asked for some postponement in regard to it when McCarthy had been in the territory.

"Falsehood!" Shouts Wilder. "That's an absolute falsehood," shouted Wilder across the few feet of space that separated them at the table, and hot words from both parties ensued.

As the two men passed out from the court room Stainback informed Wilder that he objected to having his veracity questioned in such a manner, at which the latter replied, "You can go to —, then."

Attorney Breckons stepped between the two men as they passed out of the corridor with loud words, a crowd gathering hastily from all corners of the judiciary building in expectation of more serious trouble.

Stuart Decision an Essay.

Judge Stuart's decision is a veritable essay of 21 pages, which goes into the history of the case, the arguments on both sides, the cases cited by each, and finally ends with a decision, "each of the demurrers should be overruled and it is so ordered and adjudged."

As the judge finished reading his long list of court decisions he paused, cleared his throat, and began on his final words.

"I take it," he said, "that no one will deny that a public office is a public trust, and that in the administration of it and the handling of the funds that belong to it, the trustee is held to strict accountability."

"He must place his finger upon the law that authorized him to pay out public funds. Nothing is taken by indictment except that which is embraced within the plain letter of the law. It is not left to the discretion of any public officer as to how he will use public funds."

"Public morals are at a low ebb when officers conceive the idea that they can pay out public funds according to their liking until the appropriation is exhausted. Some of them assume that they may take joy rides over the country and hold luses at the expense of the taxpayers. Nothing is further from the truth than such a proposition. Necessity must lie behind and enforce the paying out of every dollar of public funds that is paid out by them, absolute necessity in the performance of their sworn duties."

"Where the payment of the fund is for and on behalf of a matter wholly unknown to its appropriation, or for an illegal purpose, or a corrupt purpose, or a purpose contrary to public policy, I take it that the officer may be enjoined at any time by any taxpayer who is endangered by the unlawful acts and threats of such officer. There is a class of cases where there is a continued action contemplated by the same or different officers in mat-

ters upon which they have the right to adjudicate and the right to use a 'discretion'.

"In this class of cases, the courts are slow in issuing injunctions, but in a case where the officers paying out the money have no 'discretion' whatever, where the threatened payment is absolutely in contravention of the law, and would be no more authorized by the language of the act than the buying of 36-inch guns for our Territorial Navy, courts do not temporize in the matter."

Blocking Contemplated Action. As to the argument of the defense that the bringing of the cases was premature, and that threats alone will not justify the granting of an injunction, the judge recalled that the actual payment of the money would have required only a short time after the parties began to act.

He declared that the making out and filing of a claim was a very distinct step in the wrongful act, as was also the consideration of such claims by officers, the declaration by officers that they would allow and pay the claims.

Not Contended As Legal. "It is not seriously contended by the defendants," Judge Stuart continued, "that such contemplated action is legal. As regards the acts of the governor, the attorney general refused to justify them in any respect, or to argue the demurrer."

"As regards the other expenditures of money, no citation of any authority has been made that would justify it."

"If Mr. Forbes has the right to travel on the mainland at public expense, so does every other member of the board that he belongs to have the same right. He and the other members cannot make any contract that would bind the board when they are thus acting separately. And when they would get through their travels, then they would all have to go together to make a contract, even if they could make a contract outside of the territory."

"Mr. Forbes has no right to contract with himself as a member of either of these boards. Where traveling is spoken of, as for instance, where agents must be sent to the mainland, I take it that it means the agents and engineers that the board is entitled to employ outside of its own membership. To adopt a different construction would establish a leakage of public funds that would be ruinous."

To Judge regretted that Attorney General Stainback had not seen fit to bring the actions into court, but since he had not done so, having instead defended the territorial officials in the case, stated that he believed the matter would never have been brought before Judge Wilder or some other citizen.

"I think that Mr. Wilder is entitled to much credit for taking upon himself the burden of defending the public treasury," he said.

Slowly and carefully Judge Stuart read as he cited his last supreme court decision:

"We trust that the time will never come in Hawaii when taxpayers shall not care to seek by appropriate proceedings in court to avert unlawful use of public money in connection with an unconstitutional statute."

Refers to "Poverty of Courts." In concluding his decision Judge Stuart referred to the fact that men are now being held in prison awaiting trials long overdue, because of the poverty of the courts.

"It seems proper," he said, "as we are considering the objections of the attorney general, and the contingent fund appropriation of \$50,000 controlled by the governor for urgent needs for which no specific appropriation or an insufficient specific appropriation is made, to call attention to the condition of the circuit court in this judicial circuit."

"It is declared that we are entirely out of money to pay ordinary running expenses, including the per diem of jurors. The courts have been virtually closed for months, in which time

# NORMAL HOOKIPA CLUB FOLLOWS GIRLS' MEETING

The Normal Hookipa Club was organized yesterday afternoon by the Young Women's Christian Association with 22 students of the Normal school as charter members. The officers elected were as follows: President, Miss Margaret Shaw; vice-president, Miss Jean Pritchard; secretary, Miss Paimyra Reid; treasurer, Miss Minna Janssen. Mrs. H. Stuart Johnson is the club leader appointed by the association.

Chairmen of committees were chosen as follows: Membership, Miss Mabel Whittle; educational, Miss Esther Kawai; social, Miss Eliza Kamaikawiole; service, Miss Rose Gomez. An informal discussion as to the club activities brought forth many games to be played in competition for the pennant offered all the clubs of the association; picnics and socials, occasional talks, singing, Bible study and sunshine work. All these suggestions will be considered by the executive committee at a meeting called for next Monday, and a definite program will be made for the three months remaining in the present school year.

Gold and Copenhagen blue were selected as club colors, and it was voted to wear this insignia as an arm band. Yesterday's meeting demonstrated an enthusiasm and a capacity for initiative which promises well for the communities which a few years hence these girls will lead as teachers in the schools.

# MURPHY WILL PROBE PROXY VOTE ON MAUI

Attorney Eugene Murphy of Welluku is to make a personal investigation of alleged fraud in connection with the Democratic direct primary election held in Hana, Maui, last Saturday, according to advices received today by J. H. Wilson, national committeeman.

Murphy expects to visit Hana within the next few days and get sworn statements and affidavits from persons said to have information regarding a system of voting by proxy which, it is claimed, was resorted to by several representatives of Dr. J. H. Raymond, defeated candidate for delegate to the Democratic national convention. Murphy intends to present these statements to the Maui county committee, which also may probe the matter.

They could have entirely cleared their dockets of jury cases.

Should Try for Funds. "Persons charged with crime are held in jail and deprived of trial. All jury trials are continued. The conditions could not be worse. Perhaps a taxpayer could not gain for us the relief we need; but would not an action by the attorney general in the higher court cause for our courts a necessary amount of this fund to enable them to be kept open and discharge their duty?"

"We would surely feel thankful to the attorney general if he would try it. It may be that this might stop the further enlistment of Filipinos for the present, but even in that case would it not be justifiable?"

# WRIT NOW ABOLISHED, RESCINDED BY COURT

The writ of "ne exeat" in the case of Jose P. Sanchez, issued by Judge T. B. Stuart of the circuit court, has been rescinded by him as erroneously issued, the writ of "ne exeat" having been abolished in this territory more than a year ago.

Further discussion over this case arose in police court this morning when Police Magistrate J. M. Monsarrat held that a case of non-support couldn't be processed through the police court when at the same time a libel suit for divorce was pending in circuit court. Counsel for Mrs. Sanchez, complainant in the police court charge and libellant in the circuit court, maintained that as the divorce suit wouldn't be brought up until the final disposition of the police court charge, it was perfectly proper. The district magistrate then pointed out that the nature of both cases was the same, non-support and cruelty.

The prosecuting attorney announced that the county attorney favored dismissing the case and discharging the defendant.

This afternoon Young Hoo and Ah Tam were arrested for having chefa tickets in their possession. They were released under \$10 bonds each.

Officer A. T. Kazuki arrested a Japanese named Mura for concealing stolen goods.

# ESTATE NAWELU KAHAKULANI.

NOTICE TO CREDITORS. The undersigned, having been appointed Administrator of the Estate of Nawelu Kahakulani, deceased intestate, late of Kahana, Oahu, hereby gives notice to all persons having claims against said estate to present the same to the undersigned at his office, Bank of Hawaii Building, Honolulu, within six months from the date of the publication of this notice, or they will be forever barred therefrom.

Honolulu, March 30, 1916.  
W. O. SMITH,  
Administrator Estate of Nawelu Kahakulani.  
6436—Mar. 30, Apr. 6, 13, 20, 27.

# LOCAL AND GENERAL

With a fair wind blowing down from the Koolau range across Manoa valley 200 Mills School boys are vying this afternoon in the annual kite contests of the institution.

The influence of Baby Week propaganda was evident in police court this morning when Judge J. M. Monsarrat delivered a severe lecture to John Uahinu for slapping his seven months' old baby so hard that its right cheek was very badly swollen.

The local branch of the Japanese Red Cross will hold a meeting Sunday afternoon at 3 o'clock on April 23 at the Japanese consulate on Nuuanu street. It is expected that the members of the society will elect Consul R. Moroi as honorary chairman. Reports of the various committees will be received.

Instead of the usual rehearsal of "The Taming of the Shrew" last evening at the Kilohana Art rooms, the evening was spent trying on costumes. Honolulu playgoers and lovers of Shakespeare will be enthusiastic over the Italian courtiers, tradesmen, serving people, ladies and other characters arrayed in the raiment of three or four centuries ago. There are lights of many hues, trunks that catch the eye, tunics that are rich in color and material, and hats that make a happy contrast to the plain and severe head gear of men today.

Sheriff Charles H. Rose and J. M. Monsarrat, district magistrate, have been requested by Henry Van Gieson, secretary to the civil service commission, to examine the testimony of Policemen J. J. Hawright, John Hulihui, W. R. Chilton and Fred Wright in the trial of John Gaspar on the charge of reckless driving and determine whether charges should be preferred against any two, or all of them. Chilton and Wright contradicted the testimony of Hulihui and Enwright. The commission declined to act on a statement of the facts in the case made by the city attorney's office, declaring that it could take no action unless charges were preferred. The city attorney declared this was not his duty and the testimony was ordered sent to the sheriff and the magistrate before whom the case was tried.

Six men arrested for gambling yesterday forfeited \$10 bonds each by not appearing in police court this morning when their cases were called. Every one of the men had been convicted of similar charges in court prior to their last arrest and release under bond.

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