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MUST GET CITIZEN LABOR

SECRETARY ATKINSON DECLARES THAT THERE ARE ENOUGH CITIZENS IN THE TERRITORY TO DO ALL THE PUBLIC WORKS AND THAT THEY WILL HAVE TO BE EMPLOYED—NOTICE TO CONTRACTORS.

"There are enough citizens in Hawaii to perform all of Hawaii's public works," said Secretary Atkinson this morning, "and contractors may as well understand that."

The remark was caused by the following item from the Maui News: "It is creditable on the part of the government officials to desire to employ none but citizen labor on public works, and if the situation demanded such a course, no other would be excusable. But on Maui the conditions are averse to this course. Every Maui citizen who can or will work has no trouble in finding work, and prefers a steady job to desultory work on roads and other public improvements. Consequently on Maui, as well as on the other islands when a contractor takes a job it is extremely difficult to secure citizen labor, and sometimes practically impossible to do so, as illustrated by the Wilson & Duggan contract on Maui. Such being the conditions, the government should realize that a new policy should be formulated which will allow the employment of the necessary alien labor so that the public interests will be properly served."

"Contractors are making a bluff at advertising for labor," said Atkinson, "but they can get all of the citizen labor they want if they will pay a fair price. Perhaps it may cost them more than it would for Japanese labor but that has nothing to do with the question. Why in one valley alone on Maui when I asked men if they would go to work for a dollar a day, thirty stepped forward at once. It may as well be understood that the clause as to the employment of citizen labor on government contracts is a binding one."

DENIES WRIGHT'S APPEAL

(Continued from page one.)

Government, is guilty of embezzlement of any money, note, or other effects or property belonging to the Government."

"Defendants' receipt of \$3,289.53 as chief clerk of the department of Public Works, receipted for by him as such clerk, his failure on demand to account for the money, offer to give his check for it, asking that the matter be kept quiet, his failure, when asked, to say what he had done with the money, and his concealment of it, not making any deposit of it in the official safe in the office, and failing to pay it into the treasury, constitute in law the offense of embezzlement as defined in Sec. 157, P. L."

"The foregoing acts and conduct of the defendant are evidence of his fraudulent conversion or disposition of the money to his own use and benefit or the use and benefit of another than the owner or person entitled thereto under Sec. 157, P. L."

"A witness for the prosecution testified that the Acting Superintendent of Public Works told the defendant that he suspended him. The objection made by the defendant to the evidence that 'conversations could not be shown until proof of embezzlement of some specific sum' did not sufficiently raise the question as to the relevancy of the evidence of the suspension of the defendant."

"A stub book of receipts, cash receipts, and auxiliary cash book kept by clerks in the Department of Public Works under the defendant's supervision were admissible in evidence to show the method of transacting business in the office and that no entry was made in those books of the receipts of the money alleged to have been embezzled, the audit act of 1898 not requiring that the Auditor General establish a uniform system of keeping public accounts, the absence of evidence that he had done so does not take from these books their character as public records."

"Refusal of the court to allow a witness to the defendant's signature to a receipt for money to be asked on cross-examination whether he had compared the writing with other writings of defendant held not to be prejudicial error, the defendant having substantially admitted the receipt of the money."

B. H. Wright's case was the first of a long and sensational series of embezzlement cases in the Public Works Department and Treasury Department. He was arrested in August, 1902, in the absence of Superintendent Boyd, who was in San Francisco and had left the department in charge of Treasurer W. H. Wright. The latter suspended B. H. Wright and took the steps which brought about the arrest, shortly before W. H. Wright himself skipped, \$18,000 short in his own department. There were two counts in the charges against B. H. Wright, the first alleging the embezzlement of \$3,289.53, in the form of a check paid to him for the department by the

Hawaiian Electric Company, and the second alleging the embezzlement of \$4,982.10. The conviction was on the first charge. The trial took place at the February term, 1903, and the appeal has been pending ever since. J. W. Cathcart, as Deputy Attorney General, prosecuted the case and J. J. Dunne and George A. Davis defended. As the case went to the Supreme Court Attorney General Andrews and Cathcart & Milverton appeared for the prosecution and J. J. Dunne, George A. Davis and Smith & Lewis were for the defence. With this array of counsel the cause was elaborately presented, both by oral argument and briefs, in the Supreme Court on August 4 last. The decision today was a unanimous one.

The decision is in part as follows: "We can not concede the validity of the defendant's contention based on the claim that his employment as chief clerk of the Department of Public Works and of the market was not authorized by law, and that no law authorized the entrusting him with the public money in question. The evidence shows that at the time of his alleged embezzlement he was employed in the alleged capacity, receiving his appointment from the superintendent, the legislature having made an appropriation for salary of chief clerk and clerk of the market, in its appropriations for the Department of Public Works."

"The case above cited sustains our view that it was not requisite that in order to charge the defendant as a 'clerk or other person employed in the Department of Public Works,' his custody of public money as such clerk should be expressly authorized by statute."

"There is no requirement of statute that the appointment to receive public money shall be explicitly provided for or authorized by statute. The use in the section of the act above quoted of the words 'by any law, regulation or appointment,' implies that the regulation or appointment is something distinct from an appointment authorized by statute. The evidence that the Superintendent placed the defendant in charge of the public money in the office is equivalent to appointing him to do so."

"The defendant's counsel strenuously contended that the evidence does not sustain or justify the verdict or show that the defendant received the money and fraudulently converted it to his own use."

"The evidence justifies findings as follows: That on August 16, 1902, the defendant, while employed as chief clerk of the Department of Public Works and of the market, and by virtue of that employment and in no other capacity had possession by the consent or authority of the Territory of the sum of \$3,289.53 belonging to the Territory, being money received by him on a check of the Hawaiian Electric Company, Limited, drawn on the Bank of Hawaii in favor of the Department of Public Works, which check he that day cashed. That on September 9, 1902, at the office of the Superintendent of Public Works, in the presence of Attorney General E. P. Dole, High Sheriff Brown, Acting Superintendent and Treasurer William H. Wright, Deputy Auditor Meyers, and Siemsen and Cook, clerks in the Department of Public Works, the defendant, being requested to open the combination safe in the office, after trying to open it, said he had forgotten the combination, ran to the telephone and rang up his attorney, Long, who soon after came, when the defendant opened the safe, and also unlocked and opened the inner drawer of the safe containing money. The Deputy Auditor counted the money in the defendant's presence and announced that there was \$5,252.10 short in the accounts of the Public Works office; that at that time the check above mentioned was shown to the Deputy Auditor and then to the defendant, who asked the Deputy Auditor what it all amounted to, and being told that it was \$8,541.63, and asked whether it was right, said that is about it. The defendant then said he would give his check for that amount. Dole asked him 'Will the check be paid?' He said he would require four days to raise the amount, and requested that the matter be kept quiet. To the question asked by the Attorney General, 'And what did you do with the money?' the defendant, upon the instruction of his attorney, made no answer."

"The defendant's receipt of the said sum of \$3,289.53 in his capacity as chief clerk of the Department of Public Works, which was receipted for by him as chief clerk, his failure when called upon to do so to account for that money, his offer to give his check for that money, and for other public money admitted by him as a part of the shortage in the accounts of the Public Works office, his failure, when asked, to say what he had done with the money, his concealment of the money and his request that the matter be kept quiet constitute in law the offense of embezzlement as defined by the statute. It is true that the defendant's fraudulent converting or disposing of this money 'to his own use and benefit or to the use and benefit of another than its owner or the person thereto entitled' is not to be inferred from his having received the money and failed to pay it over to the Territorial treasurer; but the case shows more than a mere shortage of accounts; it shows that the defendant concealed the fact that he had received this money, and also concealed the money, the concealment consisting in his either retaining it or placing it in some place which he declined when requested to mention, in not paying it into the treasury from the date of its receipt by him on August 16 until September 9 or at all nor keeping it in the official safe in which it was usual to deposit such money. Not only the defendant did not account for the money when required to do so, or pay it to the person thereto entitled, namely, the Treasurer, but after admitting its receipt, when asked what he had done with it, he would not say. The money being traced to his possession, was as effectually converted or disposed of by him to his own use and benefit, or to the use and benefit of some other than the person thereto entitled by his retaining it and when called upon to account for it by failure to produce it or to tell where it was, as if he had expended or invested the money, given it away or shared it with others."

"As to the defendant having intended fraudulently to convert or dispose of the money to his own use, 'Every one shall be presumed to intend the natural and plainly probable consequences of his own acts.'"

"We are of the opinion that the evidence justified a finding that the defendant received the money on the Electric Company's check and fraudulently converted or disposed of it to his own use and benefit or to the use and benefit of another than the Territory of Hawaii."

WILL GET JURY TODAY

(Continued from page one.)

be challenged and that in all probability this would be the only other rejected. A special venire was therefore issued by Judge Gear returnable at 3 o'clock this afternoon and there is every reason to suppose that the jury will be completed before the court rises today.

This morning's proceedings were made interesting by several lively tilts between counsel and from the showing made it was obvious that Attorney Davis and Thompson, the appointed counsel for the defence intend to use every proper legal device in the interest of the client they were by no means enthusiastic about defending.

At one stage of the proceedings it looked very much as if Judge Gear would refuse to proceed with the case. He plainly expressed his dislike for it but the trouble blew over and proceedings continued.

A. B. Arleigh was one of the special venire drawn for appearance this morning but he was excused on account of pressure of his business affairs. E. A. Lewis got off on account of his conscientious scruple as to capital punishment. Harry Armitage was allowed to go to attend to business as was the keeper of the Kakaako rifle range. Three Hawaiians were excused as they could not understand English. Then came Jonathan Shaw. He answered the questions of both Assistant Attorney General Prosser and of Attorney Davis and Thompson to their satisfaction. He had formed no opinion as to the guilt or innocence of the accused. He had no objection to the imposition of the death penalty in proper cases. He understood the presumption of innocence in the prisoner's behalf until he was pronounced guilty and he would give him a fair and impartial trial. There was no loophole for a challenge for cause in Shaw's answers and he was passed. Kaihi, a Hawaiian, was allowed to go in short order.

"Do you know of any reason why you could not give the accused a fair and impartial trial?" asked the Assistant Attorney General.

"No," said the guileless juror, "except that I am sure he is guilty." Samuel B. Paulo was also passed for cause. He had read the accounts of the killing of Damon in the morning paper, he said, but he did not believe the paper so he had formed no opinion as to the position of the accused in the matter.

E. P. Chapin had formed an opinion and was excused, then John McCandless and different counsel engaged in a discussion, both academic and pro-

fessional, as to whether the theory of the presumption of the innocence of the accused was honored more in the breach than in the observance by the average unit in any twelve good men and true.

Attorney Thompson challenged him for cause apparently on general principles and the challenge was disallowed by Judge Gear, an exception being noted.

W. Matlock Campbell, J. Naukana, F. J. Dutra and W. C. Wilder were passed for cause in short order and the necessary dozen then filled the box.

The jury as constituted apparently was satisfactory to the Attorney General as he waived the first right for peremptory challenge. The defence at once challenged Juror McCandless peremptorily and intimated that it would pursue a similar course with Juror Axtell.

Charles S. Crane, the last of the special venire, was called but he had made up his mind on the case and was allowed to go.

The panel being exhausted it was agreed between counsel and his honor to have a special venire drawn returnable this afternoon.

With the jury completed today the trial should begin in earnest tomorrow.

SHIPPING INTELLIGENCE TO BATTLE ON KAUAI

ARRIVING.

Monday, October 3.
Br. ship Fairport, Armstrong, 137 days from Hamburg, anchored off port at 5:30 p. m.

Tuesday, October 4.
Am. schr. Matthew Turner, Tremor, 60 days from Newcastle, anchored off port at 11 a. m.

PASSENGERS.

Departing.

Per steamer, Mauna Loa, October 4, for Lahaina, Molokai, Kona and Kii ports—Sam Kellinui, W. F. Drake, Mrs. S. K. Aull, Charles Nottley and wife, G. E. Bryant, Mr. Greenwell, D. Kahaulelo, J. Kumalea, G. H. Dunn, Mrs. G. Gibbs and 2 children, A. Hocking, H. G. Ramsey, O. Walkalo, Julia Luahini, Mrs. Henriquez, Mr. Henriquez, Dr. Carter and child, Miss Peabody.

Per steamer, W. G. Hall, October 4, for Kauai ports—J. C. Davis, Miss E. H. Wilcox, J. B. Hanouke, C. P. Iaukea, J. Menae, D. Kalaokalani Jr., Prince Kuhio Kainiamaole, H. Gorman, A. S. Mehaulu, J. B. Hanouke, John Gandall, G. H. Fairchild, E. A. Knudsen, Miss M. I. Wilcox.

Per steamer, Kauai, October 4, for Hanalei—H. Duncan.

HONOLULU STOCK EXCHANGE.

Between Boards—Sales: 25 Waihalu, \$59.00; 34 Inter-Island S. N. Co., \$102.50; 6 Inter-Island S. N. Co., 102.50; 45 Haw'n Sugar Co., \$27.50; 20 Haw'n Sugar Co., \$27.50; 39 Hawaiian Electric Co., \$102.50; 40 Ewa, \$24.00; 10 Kihai, \$12.75; \$1,000 Hon. R. T. & L. Co. Bonds, \$105.00; 25 Honolulu \$16.00.		
Quotations.	Bid.	Asked.
C. Brewer & Co.	\$95.00	\$95.00
Ewa	24.00	24.50
Hawaiian Com'l.	60.00	63.50
Hawaiian Sugar	28.00	28.00
Honolulu	115.00	115.00
Honolulu	115.00	122.50
Hulu	125.00	125.00
Kahuku	17.50	20.00
Kihai	12.75	12.75
McBryde	7.75	7.75
Oahu Sugar Co.	95.00	95.00
Waimanalo	27.00	27.00
Ookala	5.00	7.00
Oahu Sugar Co.	4.50	4.50
Olanui	60.00	60.00
Pepee	150.00	150.00
Waialua Agri.	50.00	52.00
Waimanalo	100.00	150.00
Inter-Island	100.00	100.00
Hawaiian Electric Co.	100.00	100.00
Hon. A. T. Co. p.	100.00	100.00
Hon. R. T. Co.	70.00	70.00
Mutual Telephone	8.50	10.00
Fire Claims	90.00	90.00
Haw'n Govt.	99.00	99.00
Hulu	100.00	100.00
Hawaiian Sugar Co.	100.00	100.00
Hilo R. R. Co.	100.00	100.00
Hon. R. T. Co.	105.00	105.00
Kahuku	103.00	103.00
Oahu R. & L. Co.	104.00	104.00
Oahu Sugar Co.	100.00	100.00
Pioneer Mill	100.00	100.00
Waialua Agri.	100.00	100.00

MAIL DUE TOMORROW

The S. S. Sonoma is due tomorrow morning from San Francisco, with nine days later mail. The Sonoma will sail in the evening for Pago Pago, Auckland and Sydney.

FAIRPORT ARRIVED.

The British ship Fairport arrived off the port yesterday afternoon, 137 days from Hamburg. She was towed from around Diamond Head by the steamer Maui. The Fairport brought 2,650 tons of fertilizer for the Hawaiian Fertilizer Company and has 1,200 tons of cement for Portland.

WAS A THREATENING LODGER.

Kaiharo a Jap. was taken to the police station this morning to be examined for his sanity. He went to a Japanese lodging house on King street last night. During the entire evening, he amused himself whetting two big knives against each other. The proprietor of the place became alarmed and gave him fifty cents to depart. The police took the supposed insane Jap to the police station.

NEW ADVERTISEMENT

HOOPHI SILVA ESTATE.

Notice to Creditors.

The undersigned William O. Smith, having been duly appointed Executor of the Will of Hoopii Silva (w), late of Honolulu, deceased, hereby gives notice to all persons having claims against the Estate of said decedent to present the same, duly authenticated and with the proper vouchers, if any exist, whether such claims be secured by mortgage or otherwise, at the office of the undersigned, Room 206 Judd Building, Honolulu, Oahu, within six months from the date hereof, or they will be forever barred.

Dated, Honolulu, T. H., October 4th, 1904.

WILLIAM O. SMITH,
Executor of the Will of Hoopii Silva,
deceased.
5th—Oct. 4, 11, 18, 25, Nov. 1.

TO BATTLE ON KAUAI

GARDEN ISLE WILL SEE REPUBLICAN AND DEMOCRATIC CONGRESSIONAL CANDIDATES.

There is a scattering of the political camps today. At noon Charles Nottley, Jonah Kumalea and D. Kahaulelo of the Home Rule forces left by the Mauna Loa for Lahaina to start the Home Rule campaign on Maui.

This evening at 5 o'clock, C. P. Iaukea and John Manase will go to Kauai to start the Democratic congressional fight on the Garden Isle and on the same steamer, the W. G. Hall, Prince Kuhio, Archie Mehaulu and D. Kaiano, Kalani Jr., for the Republicans, will start for the same island. Inasmuch as Kuhio and Iaukea are to be on Kauai at the same time politics on the Garden Isle, ought to hum.

INDICTMENT RETURNED.

The grand jury this morning returned an indictment for having been present at a gambling game against Ah Quon Ah Sam, Ah Chong, Ah Lin, Qui Mi and Ah See. The men were arraigned before Judge Gear but pleadings were postponed.

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THE HENRY WATERHOUSE TRUST CO. LTD.

Merchant and Fort Sts., Honolulu, Hawaii.

NEW ADVERTISEMENTS

IN THE CIRCUIT COURT OF THE First Circuit, Territory of Hawaii.—At Chambers.—In Probate.

In the matter of the Estate of Lum Tuck Joe, deceased.

Order of Notice of Hearing Petition for Allowance of Final Accounts, Distribution and Discharge.

On Reading and Filing the Petition and Accounts of Lum Hop Chee of Honolulu, Oahu, Executor of the Will of Lum Tuck Joe, where he asks to be allowed \$2,365.50 and charges himself with \$5,095.00, and asks that the same may be examined and approved, and that a final order may be made of distribution of the property remaining in his hands to the persons thereto entitled, and discharging him and his sureties from all further responsibility as such Executor.

It is Ordered, that Monday, the 7th day of November, A. D. 1904, at ten o'clock a. m., before the Judge of said Court at the Court Room of the said Court at Honolulu, Island of Oahu, be and the same hereby is appointed as the time and place for hearing said Petition and Accounts, and that all persons interested may then and there appear and show cause, if any they have, why the same should not be granted, and may present evidence as to who are entitled to the said property. And that notice of this Order, in the English language, be published in The Hawaiian Star, newspaper printed and published in Honolulu, once a week, for three successive weeks, the last publication to be not less than two weeks previous to the time therein appointed for said hearing.

Dated at Honolulu this 26th day of September, 1904.

W. J. ROBINSON,
Third Judge, First Circuit Court.
4th—Sept. 27, Oct. 4, 11, 18.

THIS PAPER is kept on file at E. G. Dale's Advertising Agency, 64 and 6 Merchants Exchange, San Francisco, California, where contracts for advertising can be made for it.