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TEN YEARS FOR BOYD

(Continued from page one.)

then walked down town. His defence will attempt to set out a writ of habeas corpus in a few days.

When after a brief ten minutes' consultation the jury in the Boyd case found the former Land Commissioner guilty of embezzlement on three counts, there was a pretty general feeling throughout the community that he was destined to wear stripes, but this morning saw developments in the case by which he may yet gain his freedom.

With a view to getting the convicted man free his friends have added Judge A. S. Humphreys to the defence, and today the judge with S. F. Chillingworth took the first action in what promises to be a long legal battle.

The new issue to be raised is to be on a Federal question. A motion is to be made before Judge Robinson to arrest judgement so that the verdict of the jury finding Boyd guilty may be inoperative. Without anticipating the action of the court it may be assumed that this motion will be overruled in which case the defence will sue out a writ of habeas corpus in the Territorial Supreme Court. Should that court deny the writ then Judge Dole in the United States District Court will be appealed to and failing his granting the writ then the case will be carried before the Supreme Court of the United States at Washington.

The appeal will be made on two grounds, first that the act of the Legislature creating the office of Third Judge of the Circuit Court of the First Circuit was contrary to the Organic Act and secondly that the Legislature had no right to authorize the judges of the First Circuit of the Circuit Court to sit separately.

The importance of these contentions if established can be seen at a glance. If Judge Robinson is sitting by virtue of an act which it was not in the power of the Legislature to pass, it follows that every decree, judgement and sentence passed by him must be void and all work done by him since 1901 would be undone.

The question as to the power of the Legislature to appoint a third judge has never been raised in a case before, but when in Washington three years ago Judge Humphreys, at the request of Hon. P. C. Knox, then Attorney General of the United States, prepared an opinion as to the validity of the act creating the office of third judge in which he took the position that the act was void. Attorney General Knox at the time agreed with Judge Humphreys, but subsequently, on an opinion furnished by one of the Assistant Attorneys General, reaching on opposite conclusion, the Attorney General changed his mind.

The opinion furnished by Humphreys to the Attorney General of the United States runs, in part, as follows:

"As to the recent act passed by the Legislature of the Territory, my opinion is that it is ineffective by reason of the want of power in the Legislature to enact such legislation.

"Section 55 of the Organic Act (April 30, 1900) provides 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 locally applicable. It would seem that other portions of the same Act, not merely locally applicable but expressly enacted to be of local application, are inconsistent with the power attempted to be exercised by the Territorial Legislature. Such inconsistency fully appears, I think, from the following considerations:

"In the case of the Supreme Court of the United States it is true that the details of organization were committed by the Constitution to Congress, which thereupon acted, and properly acted. In the Hawaiian Organic Act, however, the details of organization of the courts established by that act, and specially named therein, were not committed to the legislature of Hawaii, but the existing courts of the Republic of Hawaii were adopted by said act, except that the number of Circuit Judges outside of the First Circuit was increased. While, therefore, Congress was by the Constitution given unlimited power to organize and establish any courts which, in its wisdom, it might deem necessary, subject only to the provision that there must be a Supreme Court, the Organic Act gives similar unlimited power to the Territorial Legislature to establish all courts which it may deem necessary provided that there must be a Supreme Court and Circuit Courts. In the former case the Constitution itself or-

the First Circuit the Legislature would seem to be without power to add to the number of Judges as provided by Congress. A reduction of absurdum arises if the power of the Legislature to add to the number of Judges be admitted, in that the correlative power must also be conceded to exist of reducing the number of Judges, whereby a judicial officer appointed by the president and confirmed by the Senate of the United States would be legislated out of office by the territorial legislature.

"Furthermore, Section 80 of the Organic Act prescribes a tenure of office for the circuit Judges and provides that they shall be appointed by the President of the United States. It seems to me evident that Congress did not intend to place it within the power of a Territorial Legislature to prescribe a duty to be performed by the President. Said Section also provides that the Presidential appointment shall be made by and with the advice and consent of the Senate, and it seems quite as unlikely that Congress should have provided that a Territorial legislature itself in part the creature of the Senate, might establish officers which it will become the duty of the Senate to assist in filling. If the statute can be so interpreted it will, so far as my knowledge goes, be the only instance in which Congress has permitted a Territorial legislature to lay out duties to be performed by the President and Senate of the United States.

Judges appointed by the President with the co-operation of the Senate are Constitutional officers, as determined by the Supreme Court in the German case (99 U. S., 508) under Article II, Section 2, of the Constitution. Said Section prescribes, in Paragraph 2, the officers which shall be so appointed, and includes certain named officers and all other officers of the United States whose appointments are not herein otherwise provided for, which shall be established by law. The law referred to evidently means laws passed by Congress and not laws passed by Territorial Legislatures. If, therefore, the office of additional Judge is established by act of the legislature of Hawaii there would seem to be no authority in the President and Senate to fill the office thus created. So the office must remain vacant or be filled by some other method of appointment if possible, in view of the provision of Section 80 of the Organic Act above quoted.

Furthermore, the Act of the Territorial Legislature, if valid, makes a draft on the Treasury of the United States by creating an office the compensation attached to which is paid from that Treasury. The salaries of circuit Judges holding Presidential appointments are, under Section 92 of the Organic Act, paid by the customary Treasury warrants. The Territorial Act made no provision for the salary of an additional Judge and, under the Organic Act, the Legislature would have had no authority to make such provision had it so attempted. If the attempted creation of this additional office by the Territorial Legislature was effective, it follows that the incumbent cannot be paid except by money in the Treasury of the United States, duly appropriated by Congress. The office would, therefore, remain in abeyance until Congress made such appropriation unless there be some fund in the Treasury which could be used for that purpose. If there is such a fund, the Territorial Legislature might establish any number of similar offices, each constituting a draft upon the treasury. If there is no such fund, the actual establishment of the office must necessarily await Congressional action, which would be much more properly taken in the usual course of such action than as a supplement to a territorial act.

"For the reasons above stated I believe the act of the Territorial Legislature providing for an additional judge, however great the necessity therefor may be, was ineffective for lack of power in the Legislature. I ought to say, however, that the Honorable Justices of the Supreme Court of the Territory were consulted at the time the proposed legislation was pending and unofficially expressed an opinion contrary to the views entertained by me as above set forth.

"Very respectfully,
A. S. HUMPHREYS."

MAIL TO COAST ON MONDAY

The S. S. Doric will arrive Monday afternoon from the Orient, en route to San Francisco. She will discharge 400 tons of freight at Honolulu and probably sail about Monday evening for the coast. She will take the first mail to the mainland.

IN TROUBLE WITH GOVERNMENT

Domingo Aveiro was charged with petty larceny today, in the police court. The case was continued until October 18. The defendant leased some government property on Kinu street, mauka of the Queen's Hospital property. It is claimed that the lease provided that all improvements should be left on the government land. Aveiro is charged with carting away four buildings, yesterday.

LAHAINA.

A large amount of lumber has been landed from the bark Albert, during the past few days. About 4 o'clock on Friday morning many persons were aroused by an earthquake. It was of brief duration, but there was ominous jolting, and some small damage resulted in several houses and stores.

ST. ANDREWS FAIR.

Remember this is the afternoon to visit the St. Andrew's Fair and select a few gifts for Christmas. You will find a grand art display and the ladies have marked all the goods low, in fact will be a bargain sale plain and simple. Take advantage of this opportunity and help on a worthy cause.

BLESS THE BABIES.

This is a fine year for heirs to thrones—Chicago Record-Herald.

Star Want Ads pay 25 cents.

Local Rice Industry Is In a Bad Way

RICE PLANTERS CAN NOT GET ANYBODY TO PURCHASE THEIR CROPS—A MEETING OF GROWERS TO BE HELD THIS AFTERNOON TO TRY AND DEVISE SOME RELIEF—JAPANESE ARE BLAMED FOR THE BAD CONDITION.

Rice planters of these islands are to hold a meeting at 2 p. m. today at the office of Sing Chong for the purpose of forming an association having in view the betterment of the rice industry in Hawaii. At the present time the rice industry in the islands is in a very bad condition and unless some steps are taken to help the rice planters numerous failures are likely to occur.

The Japanese are blamed partially for the condition. It is stated that the Japanese decline to purchase Hawaiian-grown rice. They insist on getting rice imported from Japan. Difference in price seems to make no difference to the Japanese. They are said to prefer to pay \$4.75 a hundred pounds for Japanese rice in preference to paying from \$3 to \$3.50 for Hawaiian rice.

The growers of Hawaiian rice state that while the season has been good and there is ample rice on hand, they can not find buyers. The proposition now is to effect a consolidation of local planters and try to reach an agreement with the sugar planters so that the sugar people will purchase Hawaiian-grown rice for their stores and sell only this commodity to the Japs in preference to the imported rice.

IS PURSUED BY A FIRE NEMESIS.

Chinese Family Endangered By Repeated Attempts on the Part of Unknown Countryman to Set Fire to Their Home.

A strange nemesis is pursuing Mrs. Su Lee and her two daughters. In this connection today the police secured information that may lead to the apprehension of the man who set fire to the buildings in Aala lane and King streets, and caused such a disastrous fire some weeks ago.

Early yesterday morning fire was discovered in the kitchen used by Mrs. Su in the two-story tenement building at the Ewa-mauka corner of Hotel street and Chinese-Theater lane. The old woman refused to make any statement. McDuffie found two empty bottles that had contained kerosene in the room where the fire had started.

The woman finally made a statement. The fire started in her kitchen in the Aala building. Ever since she has been living in the place attempts have been made to fire her quarters. At 11 o'clock Wednesday night fire was discovered in a vacant room on the second story. At 2 o'clock Thursday morning a second fire was discovered in a room on the second story, and on Friday morning at 5:30 o'clock a third fire in the kitchen was discovered. All of these fires were of incendiary origin and were extinguished without summoning the fire department. Mrs. Su stated that she saw a Chinese rush out of her kitchen yesterday morning and on her entering the room she discovered the fire. He had evidently set fire to the place. She claimed not to know his identity.

COL. LAUKEA WATCHES SMOKE

CAMPAIGN MEETING IN HILO BRINGS OUT REPUBLICAN ENTHUSIASM.

HILO, October 13.—One of the largest political meetings held in Hilo was that held by the Republican speakers at the Fishmarket on Friday night.

Among the crowd was a generous sprinkling of members of the opposition and they seemed to take a great interest in the remarks of the speakers. Hewitt told the crowd why he became a Republican after casting his vote for different Democratic candidates for President. He was a sympathizer with the Queen's cause in 1893 and has not changed his views materially since then. He spoke of the original annexationists as the leaders of the Democratic party on Hawaii and pointed particularly to W. A. Kinney as a Democrat seeking ballots for his party while in 1895 he was hunting down the Hawaiians as Judge Advocate General of the court martial that was organized for the purpose of utilizing a surplus stock of bullets on the Hawaiians who were trying to get back their country.

Referring to Laukea the speaker said he reminded him of the captain who left port without his compass and when rescued at sea and asked how he managed to get along answered "I steered by the smoke."

"But when the smoke shifted what did you do?" "I shifted too" answered the captain "and when at last the smoke was going up and down the stack I was stuck and ready to go anywhere."

THE LATE JAMES RENTON.

James Renton of Kohala, whose death was reported yesterday, was an old-time resident of the islands, having arrived in Honolulu in 1863. He leaves a wife, K. Kohala, two sons and two daughters, George F. Renton, manager of Ewa plantation, Henry H. Renton who will take charge of his business in Kohala, Mrs. B. D. Bond and Mrs. John Hind, both of Kohala. The deceased was a native of Nova Scotia, 74 years of age. He had for some time been president and manager of the Kohala Mill Company. He was a man of well known sterling character and was highly respected in his community. The funeral was held yesterday, the remains being interred in Kohala cemetery.

MAY GET CANDIDATE.

J. F. Langston the contractor, will, it is understood, accept the nomination for representative on the Democratic ticket from the Fourth District.

THE HALEIWA LIMITED

The most attractive day's outing is that afforded by the excursion down the railroad line. The HALEIWA LIMITED, a first class train, leaves Honolulu every Sunday morning at 8:22 o'clock making the run in two hours, the rate for round trip being only \$2. From 10:22 a. m. until 8:10 p. m. is spent at the beautiful HOTEL HALEIWA, with fresh and salt water bathing, tennis, golf, drives and walks, shooting or fishing, and you are back in town at 10:10 o'clock in the evening.

DEMOCRATS FINISH TRIP AROUND OAHU

HELD MEETINGS AT VARIOUS PLACES APPEAR TO HAVE BEEN WELL RECEIVED.

The Democrats return today from their campaigning tour of the island. Frank Harvey the nominee for senator arrived last night ahead of the main party, as he had some business matters to attend this morning. The remainder of the party consisting of the nominees for representatives from the Fifth District, are expected back this afternoon. The crowd left Honolulu Wednesday morning going by way of the Fall. They did not stop at Waimanalo, as that section lies in the Fourth District. The crowd stopped at various places on the other side of the island and, according to reports, were received with much enthusiasm and frequent luaus. At Waianae, the meeting was kept going until 2 o'clock in the morning. At Punaluu a large meeting was held and at Lale the Mormons turned out in large numbers. R. H. Trent one of the nominees, joined the party at Lale and delivered his maiden speech. He made a hit, according to reports. The party was entertained at a big luau at Wailua last night.

HONOLULU STOCK EXCHANGE.

Between Boar's—Sales: \$1,000 Oahu Sugar Co. 6s \$100.00	
Dividends—Oahu Sugar Co. 1/2 per cent; O. R. & L. Co. 1/2 per cent; Pepee-ko, 1/4.	
Quotations.	Bid. Asked.
C. Brewer & Co.	\$300.00 \$350.00
Ewa	23.75
Hawaiian Agri.	110.00
Hawaiian Com'l.	65.00 66.50
Hawaiian Sugar	27.00 28.00
Honoum	116.00
Hon. R. T. Co. 6s	105.00
Haku	130.00
Kabuku	17.50 20.00
Kihel	32.00
Kipahulu	40.00
McBryde	4.50
Oahu Sugar Co.	97.50
nomes	27.00
Ookala Sugar Co.	6.00
Olaa	3.50 4.00
Pacific	250.00
Pala	140.00
Pepeekeo	150.00
Pioneer Mill Co.	125.00
Waianae Agri.	48.00 50.50
Wailuku	300.00
Waimanalo	150.00
Inter-Island	100.00
Hilo, R. R. '98.	100.00
Hon. R. T. Co. 6s	70.00
Mutoa Telephone	10.00
Oahu Railway	70.00
Haw. Govt '98	100.00
Hawaiian Sugar 6s	100.00
Hon. R. T. Co. 6s	105.00
Oahu R. & L. Co. 6s	104.00
Olaa 6s	100.00
Olaa Sugar 6s	100.00
Pioneer Mill '68	100.00

Fine Jr's Printing, Star Office

NEW ADVERTISEMENTS

TERRITORY OF HAWAII—COURT of Land Registration. The Territory of Hawaii: To Paul Jarrett, of Ulupalakua, Island of Maui, Mrs. Kate Paiko, M. Eloise Castle

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If you wish to buy, sell or exchange real estate, stocks or bonds, to loan or borrow money on good securities, let us hear from you. We can fit you out.

THE HENRY WATERHOUSE TRUST CO. LTD.

Merchant and Fort Sts., Honolulu, Hawaii.

Mrs. H. Ethelyn A. Castle, Mrs. Claire Eloise Williams, John M. Dowsett, Administrator with Will annexed of Rebecca Montgomery, Charles M. Cooke, William L. Greve, John Dugan and E. B. Bridgewater of Honolulu, Island of Oahu, the Territory of Hawaii, by Lorin Andrews, Attorney General, and to all whom it may concern:

Whereas, a petition has been presented to said court by John Walker to register and confirm his title in the following described land:

That lot of land in Honolulu aforesaid having a frontage of 63 feet on the mauka side of Young street and a depth of 151 feet as described in a deed from Charles W. Baker to John Walker dated April 11th, 1904, recorded in book 258, page 194, and more particularly described and plotted in a map filed in this court and duly certified to which reference is hereby made, said lot being a part of the land described in Royal Patent (Grant) No. 10, containing an area of 9316 square feet.

You are hereby cited to appear at the Court of Land Registration, to be held at Honolulu, Island of Oahu, on the fourth day of November, A. D. 1904 at 1:30 o'clock in the afternoon to show cause, if any you have, why the prayer of said petition should not be granted. And unless you appear at said Court at the time and place aforesaid your default will be recorded, and the said petition will be taken as confessed, and you will be forever barred from contesting said petition or any decree entered thereon.

Witness, Philip L. Weaver, Esquire, Judge of said Court, this fourteenth day of October in the year nineteen hundred and four.

Attest with Seal of said Court. (Seal) WILLIAM SAVIDGE, Registrar.

BY AUTHORITY

RE-ADVERTISEMENT.

KAUPOO STEEL BRIDGE, OAHU.

Proposals will again be received at the office of the Superintendent of Public Works, Honolulu, T. H., until 12 o'clock m. of October 31, 1904, for the construction of a steel bridge with two concrete abutments and the removal of the present structure at Kaupoo, District of Waialua, Oahu, T. H.

Plans and specifications are on file at the office of the Assistant Superintendent of Public Works, Honolulu, T. H., copies of which will be furnished intending bidders on receipt of \$5, which sum will be returned to the bidder after he has deposited his bid and returned the plans and specifications.

Proposals must be submitted on the blank forms, which will be furnished by the Assistant Superintendent of Public Works and enclosed in a sealed envelope addressed to Hon. C. S. Holloway, Superintendent of Public Works, Honolulu, T. H., endorsed "Proposal for Kaupoo Steel Bridge, etc., Oahu."

Each proposal must contain the full name of the party or parties making the same and must be accompanied by a certified check of 5 per cent of the amount of the proposal payable to C. S. Holloway, Superintendent of Public Works, as surety that if the proposal be accepted a contract will be entered into.

No proposal will be entertained unless made on the blanks furnished by the Assistant Superintendent of Public Works, and delivered at the office of the Superintendent of Public Works previous to 12 o'clock m. on the day specified.

The Superintendent reserves the right to reject any or all bids.

C. S. HOLLOWAY, Superintendent of Public Works.

Honolulu, T. H., October 15, 1904.

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