

# CONGRESS PASSING SHIP SUBSIDY BILL

## VICTORY FOR FERN

SUPREME COURT SUSTAINS THE MAYOR AS FAR AS IT GOES, BUT DOES NOT SETTLE THE QUESTION OF POWERS OF MAYOR AND SUPERVISORS—LEGISLATURE MAY AMEND THE ACT OR PARTIES MAY ATTEMPT TO REACH AGREEMENT.

The Supreme Court this morning gave a decision in the Municipal test case which knocks out the system of government established by the Board of Supervisors so far as appointments of employees is concerned. The board's system, of having committees make appointments, is declared unauthorized.

The court does not decide anything definitely as to where the power of appointment lies, but implies that it is with the mayor, and avoids a ruling as to whether confirmation by the board is needed.

It is said that an effort will be made to have the present legislature make the act definite, as the decision admits that it is contradictory. The decision, leaves matters open for a new conflict, though both sides are said to be ready to try to "get together."

The syllabus and decision are as follows:

Under the Municipal Act (Act 118 S. L. 1907) the board of supervisors has no power to appoint or employ employees of the road department.

Under Section 138 of the Municipal Act the city and county treasurer may refuse to pay a warrant based on an illegal claim.

Opinion of the court by Chief Justice Hartwell.

This is an appeal by the defendant from an order of the circuit judge for a peremptory writ of mandamus and from the writ commanding the defendant to pay to the plaintiff the sum of \$39.15 upon a warrant in his favor issued by the auditor of the city and county of Honolulu, hereinafter referred to as the city, payable out of the appropriation made by the board of supervisors for Maintenance of Roads Honolulu District, Pay Roll, and being plaintiff's wages at \$5 a month fixed by the board of supervisors for his service as foreman of the fourth district stables maintained by the city in connection with the care and maintenance of its public roads. The plaintiff was employed by supervisors Quinn, Aylett and Kane, the board's committee on roads, bridges, garbage, parks and public improvements. The defendant's objection to paying the warrant was that the plaintiff was not lawfully employed by the committee of the board.

The pleadings and briefs are voluminous, reciting the proceedings of the board of supervisors, an opinion of the city and county attorney and a letter or message to the board by the mayor giving his version of the law, but when

everything possible is written and said on the subject the controversy comes down to the question whether under the municipal act the board of supervisors has power to select and engage employees as well as to fix their wages for public service in connection with the care and maintenance of the public highways, for if it has not this power it cannot delegate it nor can the power be evolved from or based upon any legislative act, ordinance, rule or procedure or resolution of the board whatsoever.

The evidence was properly rejected which the defendant offered to show the purpose of the action taken by the Board of Supervisors of the county of Oahu on January 4, 1909, just before the hour of noon when its office expired, in abolishing all "boards, committees, commissions, officers, positions and employments heretofore created" by it and repealing "all motions, votes, orders, resolutions, rules and regulations creating or tending to create" the same, as well as "the rules and regulations heretofore adopted by this board and now in force."

The petition showing that in this case the warrant had been examined, allowed and ordered paid the plaintiff contends that under McClanahan v. Trent, 17 Haw. 190, 193, there is no "power which the treasurer himself has to decline to pay a warrant which has been legally examined, allowed and ordered paid by the board of supervisors; as the law does not constitute him an authority to scrutinize the acts of the board and to pay or refuse to pay warrants in payment of claims passed by the board according, as in his opinion, the action of the board was legal or illegal." The opinion goes on to state: "The only way in which payment of an unauthorized, fraudulent or illegal claim can be prevented after a warrant has been issued by the auditor would be by an injunction of a court having jurisdiction of such matters; but no illegality, fraud or lack of authority appears in this case." The defendant insists that since under Section 138 of the Municipal Act, (which is Act 118 S. L., 1907), which was not in the County Act, he would be liable to the city and county and on his bond if he "pay any demand on the treasury not authorized by law, ordinance or this charter," he has the power to refuse to pay if he thinks that the claim is illegal." In Lyman v. Maguire, 17 Haw. 142, refusal to grant a writ of mandamus to compel

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## SUBSIDY BILL IS PASSING

(Associated Press Cable to The Star.)

WASHINGTON, March 1.—The House will attempt to pass the ocean steamship subsidy bill tomorrow.

## "LUCKY" BALDWIN IS DEAD

(Associated Press Cable to The Star.)

LOS ANGELES, March 1.—"Lucky" Baldwin is dead at the age of 81. It is estimated that he leaves a fortune of twenty-five millions (\$25,000,000).

## JEFFRIES WON'T FIGHT

CHICAGO, Ill., March 1.—Jeffries denies the report that he will fight Johnson.

## GEO. TERRY CONFIRMED

WASHINGTON, March 1.—George Terry's appointment as assistant treasurer of the United States at New York has been confirmed by the Senate.

## PITTSBURG GRAFTERS

PITTSBURG, March 1.—Three city councilmen have been convicted of graft.

FORTIFICATIONS BILL PASSES. WASHINGTON, March 1.—The Senate has adopted the conference report on the army fortifications bill.

You are never late, no time is lost and you are always satisfied if you have a perfect watch. H. Culman, Fort near Hotel has one for you.

CLEAN-UP SALE. The annual clean-up sale at Sachs' is bringing out unprecedented bargains in wash materials. Note the values offered.

Best cup of coffee in the city at New England Bakery.

K. YAMAMOTO. Wholesale Merchant on Hotel street has received the largest consignment of Japanese goods which he is disposing of at very reasonable prices. Mr. K. Yamamoto is always the first man to import the first crop of goods from Japan, and we can promise the best of treatment from this popular merchant.

HOME-MADE CANDY. Fine home-made candies are made fresh every day at the Alexander Young Cafe. Special auto delivery.

DON'T TAKE THE RISK. When you have a bad cough or cold do not let it drag along until it becomes chronic or develops into an attack of pneumonia, but give it the attention it deserves and get rid of it. Take Chamberlain's Cough Remedy and you are sure of prompt relief. For sale by all dealers. Benson, Smith & Co., Agents for Hawaii.

Mrs. Ninanina, a Japanese woman in Hilo, had her clothes set on fire by a falling lamp the other night and died from her burns next morning.

## THE BIG TIE CONTRACT IS ABANDONED

HAWAIIAN MAHOGANY LUMBER COMPANY WILL NOT BE ABLE TO FILL THE SANTA FE CONTRACT TO SUPPLY FIVE MILLION RAILROAD TIES—PRICE AT WHICH THEY WERE CONTRACTED FOR WAS TOO LOW.

The advertisement running in the papers in the last few days, giving notice that the Hawaiian Development Company, would at the expiration of thirty days, foreclose its mortgage held against the Hawaiian Mahogany Lumber Company, means, according to persons in position to know, that the latter concern will go completely out of business and that its contract with the Santa Fe railroad system to supply 5,000,000 ties will go aglimmering.

J. B. Castle, principal director and one of the heaviest stockholders of the Hawaiian Development Company, where near the price of the ordinary tie, saying that the subject was a painful one to him. Mr. Castle is interested, also in the Mahogany Lumber Company. A. N. Campbell, treasurer of the Warehouse Trust Company, agents of the Hawaiian Mahogany Lumber Company, was a trifle more willing to talk, however. He referred to the advertisement in the papers and said that it meant the end of the Mahogany concern and the end of the Santa Fe contract, unless somebody not now in sight turned up to take over the contract and carry it out.

The appearance of the situation now is that the Hawaiian Development Company will buy the leases and other holdings of the Hawaiian Mahogany Lumber Company in order to

## SENATE PASSES SCHOOL BILL

TENTH DAY. Morning Session.

Knudsen presented a majority report of the Judiciary Committee, signed by himself and Chillingworth, in favor of the bill to abolish the June term of the second circuit court at Lahaina. Makekaku did not concur. Coelho moved that the bill be indefinitely postponed. Its purpose was to gratify a few lawyers in Honolulu who found Lahaina too hot. They were voting money for a Hawaiian exhibit at Seattle and a Congressional visit to the islands. Yet here it was proposed to pass a deathblow to the prosperity of the ancient capital of Hawaii. Lahaina paid a large amount of taxes. The term of court meant about \$1500 to Lahaina.

McCarthy was in favor of the motion. He voted against a bill of the same kind in 1890. It was a measure that came before every legislature and it was now mossgrown. He thought now if the people of Lahaina thought a term of court necessary they should have it.

President Smith suggested that one of the former bills on the subject might be advisable, which provided for a term at Lahaina to try cases not requiring a jury.

Chillingworth moved that further consideration of the bill be deferred until Thursday. Coelho withdrew his motion and the motion to defer carried.

ORDER OF THE DAY. House bill relating to the acquisition of sea fisheries for the public under the Organic Act, on second reading, was deferred till Saturday.

Senate bill providing for reorganization of the Board of Commissioners of

protect its own investment as far as possible. I know of no other bidder or no other concern that would or could be expected to tackle it. This would naturally mean the end of the Santa Fe tie contract.

Behind all of this is the story that the Hawaiian Mahogany Company was largely the author of its own undoing, in that it to use a slang but fitting expression "bit off more than it could chew." The ohia railroad tie, which was its principal output, was, in some respects, the equal of or superior to ties generally used on the mainland. But the local tie could not be turned out at a profit if sold anywhere near the price of the ordinary tie, and in order to meet the demand for the ohia tie, the local tie was so cut in the Santa Fe contract as to make the deal of losing proposition, thus reducing the concern's showing of profit to the small sales of ties to Hawaiian railway concerns.

There are many who will regret the passing of the Mahogany Lumber. The public had formed a kind of aloha for it, as it bore promise of developing a new and important industry. Besides, a number of investors were represented on its list of stockholders. The burden of the situation, however, will fall upon the shoulders of the Hawaiian Development Company, the concern that furnished the wherewithal for the venture.

## AID FOR SHIPPING

HOUSE OF REPRESENTATIVES PASSES A CONCURRENT RESOLUTION ASKING CONGRESS TO ENCOURAGE AMERICAN SHIPPING BY PROVIDING A SUBSIDY OR RELIEVE HAWAII BY SUSPENSION OF COASTWISE RESTRICTIVE REGULATIONS.

E. A. Douthitt presented the following concurrent resolution in the House this morning, it being adopted:

CONCURRENT RESOLUTION. Whereas, The competition of subsidized foreign steamships, manned by cheap labor, has forced various American steamers into retirement and threatens to cause further suspensions of service between Hawaii and the mainland; and

Whereas, The American coastwise regulations, while preventing foreign vessels from carrying passengers between Hawaii and the Mainland, have not protected American shipping sufficiently to provide needed transportation facilities; and

Whereas, The volume of travel is greatly lessened and much unjust hardship, delay and expense are caused by the present lack of transportation facilities; and

Whereas, These conditions unless remedied by legislation, threaten to become worse, finally resulting in disastrous isolation of this Territory; therefore be it

Resolved, by the legislature of the Territory of Hawaii, that pending the operation of an effective ship subsidy

## ANTI-RACE SUICIDE PASSES THE HOUSE

Another busy day and lots of excitement.

Though it passed, 25 to 5, Kaula opposed letting fathers, with six or more children and getting but \$600 income, be exempt from taxes. Clergymen, he said, should be exempt because they prayed for the increase of children.

He also opposed the bill seeking to enforce the payment of sewer rates, believing it would hurt the poor and make the city insanitary.

There came a petition from Kalaupapa, asking for many things, among others that goods at the store be sold at reasonable prices.

Moanani put in a bill for all fines and costs to go to counties.

Douthitt had a concurrent resolution adopted favoring suspension of coastwise shipping laws and supporting ship subsidy.

Rice entered bills seeking to make counties establish district court houses,

county and district jails, almshouses, hospitals, detention, punishment and reformation places, making counties maintain those existing till new are built, and giving the appointment of jailors to the High Sheriff.

The speaker announced that 88 bills had entered the House in the first nine days of the session, specifying the committees to whom bills had been referred, together with other disposition of bills to date.

B. B. 75, current expenses, biennial, will be taken up in Committee of the Whole. Numerous bill on second read-

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