

# The Hawaiian Star

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GEORGE F. HENSHALL .....MANAGER

TUESDAY.....MARCH 2, 1909

## SOME NEW LAW IS GIVEN.

It is conceded that the mysteries of the law and especially its niceties in language are beyond the comprehension of mortals not specially trained to split hairs,—or perhaps it should be said, to divide imaginary hairs,—and as the yellow books accumulate in the libraries of the elect this popular incompetence becomes the more marked. Hence anything said in comment upon a legal pronouncement of a court should be said with caution and with an admission, which is hereby made, of humble inferiority. This is by way of preamble to suggesting that there is a chance for a prize contest of some sort or other in attempting to reconcile the following two pronouncements of our Supreme Court, each signed by a majority of the same judges, in the two cases which have been taken up to settle the powers of the county treasurer:

"We are aware of 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 according, as in his opinion, the action of the board was legal or illegal. 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."

"Upon the whole we are of opinion that Section 138 authorizes the treasurer to refuse payment of a warrant based upon a claim which in his opinion is unlawful, otherwise the provision meant to restrain illegal use of municipal funds would be inoperative."

It is quite possible that a lawyer might be able to reconcile the two statements,—that the treasurer is not constituted an authority to pay or refuse to pay according to his own opinion of whether the board's acts are legal or not, and that he is authorized to refuse to pay a warrant based upon a claim which in his opinion is illegal,—but he who undertakes it should have a large fee. In both cases, decided by the same judges, it was admitted that the warrant went to the treasurer duly certified by the auditor as allowed by the board of supervisors. In the one case it was held that he had no business to consider himself an authority to scrutinize the acts of the board and that the ONLY WAY in which payment of a warrant could be prevented after it had been issued by the auditor was by means of an injunction; in the other it now appears that it is the duty of the treasurer to refuse to pay warrants, on his own view of the matter, if he thinks them unlawful. Is it any wonder that legislators and supervisors differ over laws?

The new view of the matter entitles the county treasurer to the sympathies of the community. He has to pay a vast number of warrants every month and under the last decision he fondly imagined that he was safe in relying upon the auditor's certification that they were all right, whereas it now appears that he must know for himself. In fact he is the boss of the whole works, mayor and all, and there doesn't seem to be any need for an auditor at all. Outside of the law, which has many funny things, did anyone ever hear of an auditor whose certificate didn't amount to any protection for a treasurer?

## A RELIEF TO TAFT.

The resignation of Collector Crum, of Charleston, South Carolina, was a political necessity. It relieves Taft of a most embarrassing situation. For years Roosevelt has simply defied the Senate, keeping Crum in office despite the Senate's failure to confirm him, and basing his action apparently on the ground that the failure to confirm was due to the fact that he was a negro and that southern senators were able to swing enough votes to defeat him. The present Senate was about to expire without confirming him. That would have left Taft, at the very start of his administration, facing the problem of following Roosevelt's policy and reappointing, or taking the other view and naming another collector. To reappoint meant a renewal of the war with the southern senators, while not to reappoint meant that the negro citizens would be heard from. Such an emergency, at the start of the administration of Taft, who is especially anxious to break up the "solid south," was most unfortunate. Crum himself has solved it by resigning, an act which appears in a very graceful light.

## THE WAY TO STATEHOOD.

The establishment of a new state of the Union is an interesting and impressive process. New Mexico is about to become a full-fledged state, Congress having passed an act which provides for her admission after a procedure which it is hoped will some day be applied to Hawaii. The enabling act provides for a special election to call a constitutional convention and at the same time restricts the convention absolutely in certain matters. For example, the first provision is that by "irrevocable ordinance" the convention shall enact:

"First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship; and that polygamous or plural marriages and the sale, barter, or giving of intoxicating liquors to Indians are forever prohibited."

Aside from lengthy provisions with regard to federal lands, protection of Indian landholders and the holding of special elections, the only other general provisions which the United States demands in advance that the new state constitution shall adhere to are the following:

"Fourth. That provision shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the schools shall always be conducted in English; Provided, That nothing in this act shall preclude the teaching of other languages in said public schools."

"Fifth. That said State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude, and that ability to read, write and speak the English language sufficiently well to conduct the duties of the office without the aid of an interpreter shall be a necessary qualification for all state officers."

Finally there is in this latest act to add a State to the American

Union a provision that the President shall approve the constitution New Mexico adopts, "if the constitution and government of said proposed State are republican in form and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence." There is something in all this to point the way to statehood for Hawaii.

The law to put a tax on bachelors is one which a majority of married voting population looks upon with calm indifference.

Much of the loan fund is going into the creation of public improvements which will serve the next generation. It is entirely proper that the future should be taxed for it.

The mushroom Japanese press which is springing up in various parts of the Territory needs watching. The vulgarity and obscenity of some of these publications is beyond belief.

The suggestion that the Taft inauguration exercises be observed here with undraping of portraits of President Taft and suitable patriotic exercise is a very good one. The legislature might well devote a bit of its morning time to such an observance in honor of the man chosen by the people as the nation's head.

The Advertiser's political editor and legal editor do not agree. The former gets in a whack at the Board of Supervisors by announcing that they intend to defy the decision of the Supreme Court "that the Mayor had the power, under the municipal act, to appoint heads of departments." But the court man says "the decision does not declare specifically where the appointing power does lie."

## THE HOUSE

(Continued from Page One.)

people used by the Walluku Water Works or not?

### LAHAINA'S NEEDS.

Hihio put in a resolution for \$35,000 for a new court house and jail at Lahaina, Maui.

### SCHOOL AGENT ADVICE.

Makekau introduced a joint resolution that the opinion of school agents relating to the salaries of teachers should be obtained by the Department of Public Instruction before they make salaries of such teachers.

### FLAW IN THE BILL.

House Bill 35, Nakaleka's calling for \$1.50 per day for public works laborers, was recommitted to the miscellaneous committee, being faulty, specifying a wage without amending the present law, Sheldon discovering the hole in the printed bill.

### BILLS REFERRED.

H. B. 80, by Rice, for the appointment by the governor of public education commissioners, Education.

H. B. 81, by Douthitt, in re voting at meetings, Finance.

H. B. 82, by Douthitt, powers of deputy sheriffs, Miscellaneous.

H. B. 85, Kamanouli, relating to militia enrollment. To military committee.

Senate Bill 15, providing for biennial reports of counties to the Legislature was referred to the miscellaneous committee on second reading.

At 10:10 the House recessed till 2 p. m.

## THE SENATE

(Continued from Page One.)

at any one time exceed 7 per cent of assessment in the case of the Territory or three per cent in that of a subdivision. It removes the objection the Supreme Court found to the issue of bonds by the County of Maui.

In the second place it removes an uncertainty now existing as to whether the legislature may authorize the refunding of bonds falling due at a lower rate of interest. There will fall due the coming period two and a half millions of bonds bearing 4 and 4 1/2 per cent, and if they can be refunded at a less rate the Territory will save a large amount of interest.

In the third place the amendment makes the payable limit of bonds thirty years instead of fifteen. Conditions are changing, the governor said, and it may be advisable to make some bonds payable in 20 or 30 years, and redeemable in from one to 30 years. This would be an advantage in the money market.

President Smith related his experience in assisting to float loan for sanitary expenses some years ago, when much difficulty was met from the short life of 15 years for the bonds. London and Manchester floated bonds for 80 years at about 2 per cent. This amendment sufficiently safeguarded the Territory from running headlong into debt by its provision that no bond indebtedness can be incurred without the approval of the President of the United States.

### THE LAND LAWS.

Section 5 amends section 73 relating to disposal of public lands.

The governor mentioned the new feature of drawing lots for land. After some talk over which of two bills was under discussion, which the Governor settled by suggestion the committee take up the amended bill now before a sub committee in Washington, he proceeded with his explanations.

Since he had taken office he had given much thought to the land question. He appointed a land commission that had performed its work well, whose report he presumed the members had received in print. His own views had been freely given to the press. This amendment was largely the result of the suggestions of the commission. The great object was to secure the disposal of the lands to bona fide settlers and

prevent their falling into the hands of speculators. He described the easy terms along with the low prices. A good deal had been said about the extension of the principle of the American land laws to Hawaii, but he thought they would find that the first two sections were practically adaptations of the principles of the American land laws. This was especially true regarding reclaimed land. One point was that they were not required to put the lands up at auction, a plan that enabled moneyed men to run in and get them. Then there was the plan of drawing lots where more than one person applied for the same land. Thus the homesteader would get his land at its appraised value. This had worked well on the mainland. If an applicant dropped out they did not have to wait thirty days before selling a lot to another. Another provision made it easy for one who failed to fulfill the conditions, through sickness of himself or family or other unavoidable causes, to save his homestead.

The amendment authorized another kind of sale to suit the cases of people who had lived on leased public land all their lives or a long time. He mentioned the Portuguese on Punchbowl, the lease of whose home plots would expire in four years, also some people on the other islands. All such were given the first change to buy the lands at the appraised value.

Fairchild asked if the appraisers should not all be disinterested persons. President Smith said if the government appointed one and the applicant another partisan, then the third appraiser appointed by those two would decide. Wouldn't it be better to have three persons having no interest at all?

Governor Frear told of a case where that plan had been followed by the selection of the three appraisers first by the government the parties agreeing to choose two of them and these two the third as a matter of form.

Fairchild inquired about aliens who could neither read nor write, hence could not qualify for citizenship, mentioning Portuguese on Kaula who had to be content with leaseholds when they were eager to own their own homes.

The Governor presumed aliens could not acquire ownership of public lands. It was a principle of American law that aliens should not acquire public lands.

### LAND EXCHANGES.

Governor Frear next spoke of the enlargement of the power of the Legislature in the provision about the exchange of public lands. It put restrictions on the power of the executive to make exchanges. He had been against large exchanges. He had only made one large exchange, and in that the government obtained a much larger area than it gave. This amendment permitted the legislature to constitute a board and it required two-thirds of the board to authorize an exchange.

The amendment removed an uncertainty in providing that the legislature might provide for the care of forest reserves.

The governor defended the provision making a decision of the land commissioner with the approval of the governor final. It was the practice in the States. An appeal to a judge could only get a decision of technicalities of law, which might be unjust in point of fact. It was a matter purely for executive judgment.

Governor Frear went into the provision making the price to settlers 50 per cent of appraised value for cultivated land and 25 per cent thereof for uncultivated, and commented on various other amendments.

President Smith thought the ten years required to obtain title rather land, and the Governor said this was put in more for protection of bona fide settlers than anything else. If a man wanted to make his home on the land he would not care.

### OTHER CHANGES.

Other provisions referred to by the Governor were his power to remove an officer between sessions of the Senate and the repeal of the section making the Territory have a high sheriff. He defended the former on the strength of

emergencies that arose under Governor Dole. If governor liked to be stubborn, he intimated in effect, he could reappoint an officer disapproved by the Senate when that body had adjourned. While he hoped he would never have to use an undated resignation or remove an officer, yet the occasion might arise when it would be necessary to remove a corrupt officer and this provision would avoid the necessity of a special session of the Senate.

With regard to the office of high sheriff, the amendment did not abolish it, but merely left it a matter for the legislature to decide whether or not the office need be retained.

The amendments further contain the list of salaries to be paid territorial officers by the United States, a provision that not exceeding \$25,000 a year may be appropriated for sanitary purposes in Hawaii and a clause to legalize all naturalizations by circuit courts here prior to June 29, 1906.

At the conclusion of the reading President Smith moved a vote of appreciation to the Governor for his cour-

tesy in appearing before the committee of the whole.

"I thank you," the governor replied and left the chamber.

The committee rose and reported progress.

### NEW BILL.

Coelho introduced a bill to confirm the title of certain holders of unpatented lands.

At 12 noon the Senate took recess till 2 p. m.

As the Alameda was entering port Friday many people noticed something odd about her but could not exactly make out what it was. The change is in her smokestack, which was lowered something over eight feet while the vessel was at San Francisco this last time. When the Alameda was a coal burner this extra length of the smokestack was necessary, but now that she burns oil it became not only unnecessary but an incumbrance.

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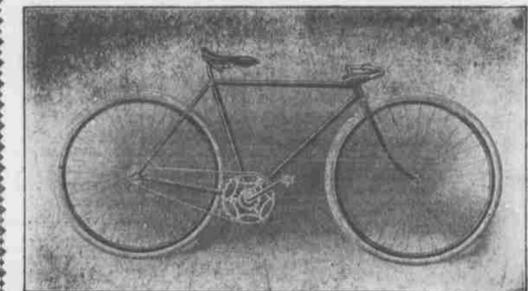
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