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# EVENING BULLETIN

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HONOLULU, TERRITORY OF HAWAII, FRIDAY, APRIL 6, 1906

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## Splendid New Honolulu-Hilo Liner Ordered

### Expressed Opinion Does Not Disqualify Chief Justice Frear

DE BOLT REVERSED AND GEAR LOSES

The Territorial Supreme Court, Justice Hartwell writing the main opinion and Chief Justice Frear writing a concurring opinion, this forenoon decided the Higashi habeas corpus case, Geo. D. Gear representing Higashi, reversing the judgment of Circuit Judge J. T. De Bolt, who granted the writ, and remanding to the petitioner to custody. M. P. Prosser, Deputy Attorney General, appeared for the Territory in these proceedings.



CHIEF JUSTICE WALTER F. FREAR

As the main opinion of the Court, in part. The appellee, who was a petitioner for a writ of habeas corpus, claims that the chief justice is disqualified because he expressed to a member of the Judiciary Committee of the Legislature his approval of the bill which became Act 59, Laws of 1905, it being material to decide whether the act, in providing that no person upon conviction of a misdemeanor shall be imprisoned in Oahu prison or subjected to any infamous punishment, amends Sec. 2175, R. L., authorizing imprisonment at hard labor not exceeding one year. It is claimed that approval of the bill is like the former relation of attorney and client, which, as held in the Noyce will case, is not a disqualification, but the petitioner was allowed to argue that the decision was wrong. It is urged that the court having for many years construed the article in the Constitution which enumerates causes of disqualification as not exclusive of the case of a judge who had been of counsel, Congress intended that this construction should be placed upon the same provision in the Organic Act. It is further contended that the common law, which does not disqualify a judge except for pecuniary interest, is not law in Hawaii because contrary to Hawaiian judicial precedents, and that an absence of bias is essential to judicial impartiality its presence disqualifies a judge from performing judicial functions; that the enumerated causes of disqualification by pecuniary interest, relationship and former judgment are founded on bias, but do not include all instances, and that the law ought to be so construed as to secure the object intended.

A justice of this Court is not disqualified from sitting in a case which requires consideration of an act of which he expressed approval to a member of the Judiciary Committee of the Legislature when the bill was before it. Act 59 of the Laws of 1905, which provides that infamous punishment shall not be imposed on persons convicted of misdemeanors, repeals that portion of Sec. 2175, R. L., authorizing hard labor in the sentence of imprisonment but does not repeal that portion which authorizes imprisonment. A sentence to imprisonment for a misdemeanor does not become infamous punishment requiring an indictment under the fifth amendment by reason of the convicted person being confined in Honolulu jail. Under the sixth amendment a misdemeanor for which imprisonment may

be imposed for as long a term as one year requires a trial by jury although it does not require an indictment as for an infamous offense; but the right to a trial by jury in the first instance is waived under Sec. 1661, R. L. by a defendant not demanding a jury which was allowed to argue that the decision was wrong. It is urged that the court having for many years construed the article in the Constitution which enumerates causes of disqualification as not exclusive of the case of a judge who had been of counsel, Congress intended that this construction should be placed upon the same provision in the Organic Act. It is further contended that the common law, which does not disqualify a judge except for pecuniary interest, is not law in Hawaii because contrary to Hawaiian judicial precedents, and that an absence of bias is essential to judicial impartiality its presence disqualifies a judge from performing judicial functions; that the enumerated causes of disqualification by pecuniary interest, relationship and former judgment are founded on bias, but do not include all instances, and that the law ought to be so construed as to secure the object intended.

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### Harrison Vindication By Letter

At the hearing of the Johnson case this afternoon Attorney Harrison succeeded in placing in evidence a copy of the letter, which he had written to Frank Copeland, and which the prosecution had intimated tended to injure Copeland to procure proposed testimony. The letter read as follows: "The trial of the Johnson case is taking longer than was expected, and the witnesses for the defense may not be required until next week. "It has appeared by some of the evidence that a Chinaman knew something about where the boy Simon's body was before it was found; and, on account of that, I would like to find if anyone saw Johnson on the morning the boy was killed between 9 o'clock, when he was being swung, Simon Wharton behind Wharton's house, and 12 noon, when he came back to Wharton's place. Consequently, if you can find any person who can and will prove that he was elsewhere than where the boy was killed, and let me have his name so that I can get his evidence in at the trial, although I am getting no pay for this case, I will give you five dollars out of my own pocket. "E. M. HARRISON."

Harrison asked Copeland, who was on the stand, if he thought this could be considered as offering him a reward to get witnesses to commit perjury. Copeland answered that he did not. Dr. Wood of Waiialua was the next witness called. Johnson had called at his office on September 27, when he wanted to be treated for a cold. His condition was that of a man in general weak condition. He was suffering from a cold. The doctor warned him to be careful lest he should die from pneumonia. Johnson appeared rational. He answered questions as the ordinary plantation laborer did. It was the doctor's opinion that Johnson was under the influence of liquor. Dr. Wood saw Johnson again on the night of the day of the murder. He did not notice anything peculiar about him then. On one of the occasions, however, when Johnson had come to his office, Dr. Wood had noticed that one of his pupils was dilated and that he spoke with a peculiar drawl.

**EAGLES PLAN BIG PENINSULA PICNIC**  
The Eagles of Honolulu Aerie 119 are preparing to celebrate their fifty anniversary by a moonlight excursion and dance at the Peninsula, Pearl City, on Monday evening, April 9. The train will leave the depot at 7:30 p. m. and on return from the picnic the committee has arranged to have special Rapid Transit cars to take all picnickers to their homes. Those who have enjoyed picnics given by the Eagles can testify to the excellence of their entertainment. Kaul's orchestra will furnish music.

### Union Iron Works Is Given Contract For Inter-Island Boat TO HAVE SPEED OF 14 KNOTS

Vice President George Fredericks of the Union Iron Works of San Francisco, who came here specially to consult with the Inter-Island Steam Navigation Company in regard to its proposed new boat to take the Honolulu-Hilo run, returns to the Coast in the Mongolia with plans and specifications for the finest inter-island boat ever designed for these waters. A meeting of the directors of the I. I. S. N. Co. was held at the company's headquarters on Queen street this forenoon, at which Mr. Fredericks was present and the plans for the new boat were thoroughly gone over, the matters of expense and equipment, speed and capacity all being carefully discussed. President J. A. Kennedy of the I. I. S. N. Co. stated to a Bulletin reporter this afternoon that everything would be settled in an hour or so. The order for the boat has been placed with the Union Iron Works, through Mr. Fredericks and he will take with him tomorrow to San Francisco the blue-prints and details for a vessel that will be the grandest of the local fleet. The new boat is to be about 225 feet in length, much larger than the Kinan, the present Honolulu-Hilo liner. She will have a speed of 14 knots, whereas the old Kinan can make little better than eleven at a pinch. She will be constructed of steel and will use oil for fuel. She is expected to be ready for business here about January 1st of next year. She will cost between \$250,000 and \$300,000. Her passenger accommodations are to be perfect in every respect and special attention will be paid to the attractiveness of the social hall and dining saloon. Tourists to the volcano will find that this boat will meet every requirement, and add pleasure to the trip in many ways. They will be able to have more time to visit the great attraction on Hawaii, on round trips, the speed of the new boat saving time for passengers to enjoy themselves a score.

J. A. Kennedy and C. L. Wight have spent much time and pains in planning the details and the product of these plans promises to do credit to the fleet and delight all who travel by sea to the greatest volcanic wonder in the world. All the staterooms will be deck rooms. At present the officers of the company are reticent in regard to making details public, awaiting the formal consummation of the deal this afternoon.

### Contrary Views On Schedule

Acting Governor Atkinson has not as yet reached any decision with regard to the matter of a change in the Rapid Transit car schedule giving a through 15-minute service from the Punui to the Waiialua terminal by way of Liliha and Beretania streets and the Waiialua road. "Two prominent attorneys and a prominent trust company man called me yesterday in regard to the matter," said Atkinson this morning, referring to the call of S. M. Ballou, A. F. Judd and J. R. Galt. "They protested against having the Liliha cars running every fifteen instead of every ten minutes as they do now. I put the matter to them and asked them for their advice, and they departed to prepare it. "Then this morning another resident of Liliha came to me and told me that a 15-minute through service would be far preferable to the present ten-minute service, which connected with no cars, and caused passengers, who wanted to go through to Beretania street and Waiialua to wait at the junctions anywhere from five to twenty minutes. "Looking at the question broadly, it looks to me as if the 15-minute through service, which is what the Rapid Transit Company has asked for, would be the best. It would also be a great advantage to tourists and strangers, who cannot help but be terribly bewildered by the ten, fifteen, twenty and thirty-minute services on the various lines. On the other hand, I cannot help but feel that the lull on the part of the Liliha street people is justified, and that it would not be fair to reduce their service. Of course a ten-minute service all around would be the ideal

### Queen Liliuokalani Building An Annex

Queen Liliuokalani is constructing a new pier at her Waikiki beach residence and will, it is said, put up an elegant sea-side annex. E. Faxon Bishop and Charlie Aebi were seen walking up Fort street together, arm in arm, yesterday afternoon. The sight drew folks to the doors and there were exclamations galore such as: "The Lion and the Lamb!" "What's up now?" "You're a raised man!" "Get on to the combination."

Dr. and Mrs. McTutcheon are here on pleasure trip, having arrived today in the S. S. Olympia. They came from Tacoma where the doctor is surgeon to the Fannie Paddock Hospital. J. A. McCandless is entertaining the visitors in his magnificent automobile.

Winfield R. Smith, a prominent attorney of Seattle, Washington, visiting here with his family for pleasure, having arrived in the Korea, returns to the Coast in the Mongolia. O. A. Stevens denies that there is any truth in the story that he is going to the Philippines to get Japanese labor for Hawaii. "Bill" Mutch is 56 today.

### Indict Sugar Barons

New York, March 29.—The Federal Grand Jury again took up the sugar rebating investigation today. While proof has been laid before the body of extensive rebating in favor of the American Sugar Company by all trunk lines out of New York, it is understood the inquiry has narrowed down at this stage to making out a complete case against the New York Central railroad in particular, together with the sugar trust. Those interested in the investigation predict the indictment of the two corporations named early next week. The officials of both concerns who were behind the pooling and alleged rebating arrangements may also be indicted, although no positive information could be obtained on this point. Two witnesses came before the Grand Jury today. They were Assistant Cashier J. A. Carr of the Market and Public National Bank and E. Woodruff, superintendent at Boston for the Brooklyn Cooperative Company, on the ramifications of the sugar trust. Other witnesses were H. T. Leeming, general traffic manager of the Thomas A. Edison Company of Orange, N. J., and formerly traffic manager for the trust, and J. F. Bendernagel, general superintendent of the American Sugar Company's refineries in Brooklyn. "Have you met him socially?" "Dear me, no. Only in a business way. I married his daughter."—Life.

### VESUVIUS LAVA THREATENS TOWNS

(Associated Press Special Cable) NAPLES, Italy, April 6.—The eruption of Vesuvius has become increasingly violent. On the Pompeii side of the mountain the main stream of lava has divided. This threatens the destruction of the Ottajano commune with 20,000 inhabitants; also Torre del Greco, with 20,000 more population.

### Waiting To Arbitrate

(Associated Press Special Cable) NEW YORK, N. Y., April 6.—Pending the consideration of the anthracite coal operators' offer that the mine workers of Pennsylvania arbitrate, no move will be made toward a strike.

### RUSSIAN LOAN INCREASING.

(Associated Press Special Cable) LONDON, England, April 6.—It is reported that a Russian loan of \$400,000,000 will be placed abroad.

### PRISONERS REFUSE TO EAT.

(Associated Press Special Cable) MOSCOW, Russia, April 6.—The political prisoners confined in Moscow refuse to eat. They demand trial or release.

### VON BUELOW RECOVERING.

(Associated Press Special Cable) BERLIN, Germany, April 6.—Count von Buelow, who fainted during yesterday's session of the Reichstag, is improving.

### SAN FRANCISCO, Cal., April 5.— SUGAR: 38 analysis Beets, 8s 6d. Parity, 3.77 cents. Previous quotation, 8s 5 1/2d.

### Johnson Saw Spectre Watch In River At Waiialua

NEGRO WITNESS' PECULIAR STORY

The defense in the Johnson case this morning proved disappointing as far as the eliciting of important testimony was concerned, the witnesses, with one single exception, being utterly unable to furnish T. M. Harrison with the information which he had believed they possessed. The proceedings were, however, enlivened by occasional spats between Attorney General Peters and Harrison, which were generally solved by Solomonie rulings from the Court. Manuel Fernandez, the yardman of Manager W. W. Goodale of Waiialua plantation, was the first witness. He said that he had seen Johnson lying in the road in a stupor about one and a half years ago. He could not say whether he was under the influence of liquor or not at the time. On several occasions the witness had seen the defendant walking along the road with a smile, while the children were hanging onto his coat tails. Manuel Coelho said he had known the defendant fourteen to fifteen years ago, but lately he had only seen him once walking on the road. "Did you observe anything unusual about him?" asked Harrison. "No," answered the witness. "Well, did you see if he was under the influence of liquor or not?" Peters objected to the question as leading. Harrison said that he had a right to direct the witness' mind to a specific matter as he had exhausted other means by asking if there was anything unusual. "I hope that drunkenness is something unusual," said Peters. "If you had been here on the night of December 29 you would have thought so," said the Court, referring to the famous chambers "orgie." The witness testified that he had not

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