

# PART OF COUNTY ACT IS MADE NULL AND VOID

## The Supreme Court Expunges the Proposed Board of Public Institutions.

The Board of Public Institutions created by the County Act is no more. Yesterday afternoon the Supreme Court rendered a unanimous decision making the County Act, so far as it relates to the Board of Public Institutions, null and void.

Superintendent Henry E. Cooper, it happens, has officially lived just long enough to enjoy one evening's triumph over the Legislature's attempt to deprive the Superintendent of Public Works of the greater part of the functions that the Organic Act prescribed he should exercise. The case now decided arose from the resistance of Mr. Cooper to the authority of the Board of Public Institutions.

Judge Gear decided that the Board of Public Institutions was an illegal body in that its members were not appointed as such by the Governor, the Organic Act placing the appointment of all boards of a public character among the duties the Governor should perform. He touched upon other points raised, but found it unnecessary to decide the one attacking the validity of the entire statute—namely, that the bill had not passed the three readings in each house of the Legislature which the Organic Act requires.

The Supreme Court finds the County Act to be illegal, so far as it relates in title and text to the Board of Public Institutions, because, contrary to the Organic Act, it embraces more than one subject. It not only provides for "the organization and government of counties and districts," but for "the management and control of public works and public institutions therein"—that is, in the counties and districts.

While mentioning the several lines of attack on the Board of Public Institutions which Mr. Cooper's counsel took in resisting the writ of mandamus, the Supreme Court contents itself with deciding the main issue raised in the petition for the writ. As the Circuit Judge had done, it leaves the validity of the County Act as a whole an open question. There is nobody or nothing in the world more steadfast than courts of justice in observing the principle of not crossing a bridge before it is reached.

This was a test case, so far as it went, for which the outcome has been eagerly awaited by the people of the Territory, who have just participated in the first elections under the County Act. Therefore the decision of the Supreme Court in full is here presented to the readers of the Gazette:

### COUNTY ACT CASE DECISION IN FULL

In the Supreme Court of the Territory of Hawaii, October term, 1903.

In the matter of the application of Sanford B. Dole, Governor, George R. Carter, Secretary, A. N. Keпоikai, Treasurer, J. H. Fisher, Auditor, A. T. Atkinson, Superintendent of Public Instruction, and Lorrin Andrews, Attorney General, as the Board of Public Institutions of the Territory, for a Writ of Mandamus against Henry E. Cooper, as Superintendent of Public Works of the Territory.

Appeal from Circuit Judge, First Circuit.

Submitted November 6, 1903.  
Decided November 17, 1903.

FREAR, C. J., GALBRAITH AND PERRY, JJ.

An act entitled "An Act providing for the organization and government of counties and districts, and the management and control of public works and institutions therein," is invalid as to so much thereof as purports to create a Territorial Board of Public Institutions and to transfer to it matters theretofore belonging to the Territorial Superintendent of Public Works, and with which the counties were to have nothing to do,—in view of Sec. 45 of the Organic Act, which provides "that each law shall embrace but one subject, which shall be expressed in its title."

OPINION OF THE COURT BY FREAR, C. J.

This is an appeal from an order denying a writ of mandamus to compel the respondent to deliver to the petitioners the control of all matters relative to harbors, wharves, pilots and towage, and of all property used in connection therewith, and the control and management of the executive and judiciary buildings at Honolulu, as required in terms by Sections 484 and 485 of Act 31 of the Laws of 1903, commonly known as the County Act.

Chapter 64 (Secs. 380-391) of that Act purports to create a Board of Public Institutions consisting of the Governor, Secretary, Treasurer, Auditor, Supt. of Public Instruction and the Attorney General of the Territory and to prescribe its powers and duties. It purports to transfer to it many powers and duties which have hitherto belonged to the Superintendent of Public Works. The defense is that this chapter is null and void because it conflicts with the Organic Act and more particularly with (1) Sec. 80 which provides that the Governor shall appoint with the advice and consent of the Senate, certain officers and boards and "any other boards of a public character that may be created by law," in that it creates a board of a public character not appointed by the Governor at all as to two of its members (the Governor and Secretary, who are appointed by the President) nor appointed by him as members of the board as to any of the members, although all except the Governor and Secretary are appointed by him to their other respective offices: (2) Sec. 45, which provides "that each law shall embrace but one subject, which shall be expressed in its title"; (3) Sec. 75 which provides that there shall be a Superintendent of Public Works with powers and duties over certain specified matters, though subject to modification by the Legislature, in that it takes from such Superintendent a substantial part of such

powers and duties; and (4) Sec. 45, which provides among other things, that, except under certain circumstances, a bill, in order to become a law, shall pass three readings in each house and that the final passage shall be by yeas and noes entered on the journal. In that, as contended, the House journal shows merely that the report of the conference committee was adopted by the House in the manner mentioned and does not show that the bill passed third reading in that body. In sustaining the order appealed from we base our opinion upon the second of these grounds, and express no opinion upon the others.

It is true that the provision of the Organic Act "that each law shall embrace but one subject, which shall be expressed in its title," should be liberally construed, and that an act of the Legislature should not be held void on the ground that it conflicts with this provision, except in a clear case. It is sufficient if the various parts of an act have a natural connection, are fairly well embraced in one subject, though somewhat general, and expressed in the title. See in re Walker, 9 Haw. 171; Carter County v. Sinton, 120 U. S. 517.

But is this the case with the Act in question? Its title is "An Act Providing for the Organization and Government of Counties and Districts, and the Management and Control of Public Works and Public Institutions therein." We presume this title is unobjectionable from the mere fact that it is in two clauses, each of which in form sets forth a separate subject. The mere form is of little consequence. Much room must be left for the exercise of legislative discretion in the wording of the title. It is unobjectionable that to the first clause of the title in question there is added the second in so far as county works and institutions are provided for in the Act, and doubtless these might be provided for incidentally under the first clause if the second were omitted. How far provisions relating to Territorial as distinguished from County matters could properly be included in the title is a question which they could not very well be separated or as declaratory provisions in order to make clear the precise line of separation, we need not say. In this instance the Legislature did not attempt to do anything of that kind. It attempted to create a distinctively Territorial board of public institutions and to transfer to it from distinctively Territorial officers matters in respect of which the counties were clearly to have nothing to do and in respect of some of which they in the very nature of the case would have nothing to do. It acted as if the title were "An Act providing (1) for the organization and government of counties and districts and (2) the management and control of Territorial works and institutions." This was clearly inconsistent with the provision of the Organic Act above quoted. Accordingly we must hold that such portions of the County Act as were designed to create a Territorial board of public institutions and to transfer to it duties and powers theretofore belonging to the Superintendent of Public Works is invalid, namely, Chapter 64 of Act 31 of the Laws of 1903, and Sections 484 and 485 and any other portions of said Act necessarily dependent thereon.

The order or decree appealed from is affirmed.

Attorney General L. Andrews for petitioners.  
Kinney, McClanahan & Cooper and S. H. Derby for respondent.

# DEATH OF MRS. HIRAM BINGHAM AFTER AN ILLNESS OF TEN YEARS



THE LATE MRS. BINGHAM AND HER HUSBAND, THE REV. HIRAM BINGHAM.

After an illness that had lasted for ten years, one contracted through the hardships of early missionary work among the natives of Micronesia, Mrs. Minerva Clarissa Bingham, wife of the Rev. Hiram Bingham, died at the family home in Alexander street last evening.

Mrs. Bingham had been a sufferer for ten years from paralysis agitans. Every care has been taken of her during that time but she had been gradually failing in health until last May she fell a victim to the dengue fever. Since then she has been confined to her bed.

Mrs. Bingham was well known as a woman of high character and lofty ideals. Throughout the small islands that dot the seas of Micronesia she is known to the natives as a friend and helper. Had she lived until next October she would have been seventy years old. She was born at Northampton, Mass., on October 19, 1834, and received her education there. It was in Massachusetts that she met the then young Hiram Bingham, son of one of the earliest Hawaiian missionaries, who was in the East receiving an education preparatory to leading a life of religious activity in the South Pacific.

Her marriage to Mr. Bingham was solemnized on Nov. 18, 1856, only nine days after he had been ordained a minister. The young couple immediately made preparations for their trip to Hawaii and a couple of weeks after the marriage were on board the brig "Morning Star," the first missionary vessel of that name, starting on a long homeward voyage around Cape Horn to Hawaii and the islands of Micronesia. They reached Honolulu on April 24th of the following year and within a few months were at Ponape, where an assembly of missionaries decided that the young couple should take up their labors at Apiang. They commenced their work at the latter point on Nov. 18, 1857, and the hardships they had to endure there for many years, living on the food of the South Seas and in quarters very unlike a comfortable New England home, undermined the health of Mrs. Bingham and also of the Rev. Mr. Bingham.

Nearly half a century ago missionary life in Micronesia was a very strenuous undertaking. Sometime ago Mr. Bingham gave a brief account of some of the hardships incident to labors of himself and wife in Micronesia from the time that they settled at Apiang. One year's work, contending with climate, bad food and other evils, was enough to break down Mr. Bingham's health, and he returned to Boston, where he superintended the building of the second "Morning Star."

When that vessel was built, he went in command of her on another voyage to Micronesia until his health broke down again and he came to Honolulu. Here he remained for some time, returning to the Gilberts in 1868. The Gilbert Islands when Mr. Bingham first went there was a very undesirable place. The inhabitants were warlike and jealous among the chiefs excited constant wars. Some chiefs under the influence of the missionaries began to enact laws against theft, murder and other crimes and were trying to establish somewhat permanent law and order. This state of affairs displeased rival chiefs and a great war threatened.

The king of Apiang, upon which island the missionary station was, joined forces with the king of another island and in withdrawing his men left the missionaries to the mercies of the attacking forces which swarmed over the island when the king and his men had left. These people were utter savages and during the several months of

their stay the lives of the missionaries were never safe. The savages swarmed about their houses and allowed themselves all kinds of liberties. Mr. Bingham, his wife, Mahoe, a native assistant, and his wife, were the only missionaries there and could do nothing.

One incident among the many which Mr. Bingham told may serve to show how fearful the uncertainty of their lives was to the little band of missionaries. One morning Mr. Bingham discovered a big, burly savage crawling through a clapboard which served as a window. As the fellow was evidently intent on stealing, Mr. Bingham scared him by letting down the clapboard with a bang by means of a string with which it was generally opened and shut. The noise so scared the savage that he took to his heels. His comrades, who stood near by, ridiculed him on seeing this, and this made the fellow very angry, and the natives are very sensitive to ridicule. He consequently went up to Mr. Bingham and pushed him with his shoulder. Mr. Bingham stood his ground for some time, the savage standing next to him and shoving him every now and then. Mrs. Bingham finally appeared and called the husband in to breakfast and Mr. Bingham gladly took the excuse for getting away. This did not end the incident. After breakfast, when Mr. Bingham went into the meeting-house where there was a large number of the savages assembled, the would-be thief rose from among them and followed behind him up to the room, where Mr. Bingham sat down in a chair. The native immediately squatted down on the floor in front of him and, producing two pistols, began pointing them at him, first one and then the other. Mr. Bingham thought that his last hour had come, but he remained calm, closed his eyes and prayed. The native did not fire, however, but kept on sitting there, lifting up the pistols and aiming every now and then. The rest of the natives filed out of the room gradually, leaving Mr. Bingham, the savage and the native assistant alone. For two hours they remained, thus, Mr. Bingham expecting every moment to be his last, but finally the savage got tired and left the room without doing any harm.

Many other incidents are told of their life there. One of their children died and was buried at Apiang where they had built a cottage. Called away sometime afterward, Mr. and Mrs. Bingham left their home to the mercies of the natives. On their return they found the house torn down and turned into proas or canoes and the bones of their little one scattered about the yard. Another son, Hiram Bingham Jr., survived the vicissitudes of early missionary life and is now an instructor of history at Harvard.

Mrs. Bingham left work in the Gilbert Islands that will endure for all time. She became thoroughly acquainted with the Gilbert tongue and translated a number of works into that language. She gave the Gilbertese a "Reading Book," "Old Testament Bible Stories," "Primary Geography," "Primary Arithmetic," and assisted Mr. Bingham in translating the whole of the New Testament into the same language.

Mrs. Bingham has been a well known member of Central Union church and also of the Women's Board of Missions of Central Union church and in recent years very many sympathetic messages have been sent to her by the Board regretting that her health did not permit her to attend the meetings.

In addition to her husband, her sister-in-law, Mrs. Lydia B. Coan, was present at the time she passed away last evening.

The funeral will be held from the Bingham home at three o'clock this afternoon and the interment will be in the old family lot of the Bingham in Kawaihaohao Cemetery. The Rev. W. M. Kincaid will officiate.

H. H. Williams has charge of the funeral arrangements.

# GENERAL MACARTHUR EN ROUTE TO HONOLULU

SAN FRANCISCO, Nov. 18.—General MacArthur, Col. Prowest, Mrs. S. B. Terry and Collector Stackable have sailed for Honolulu on the Korea.

# WILL DOFF THE TOGA AND DON THE ERMINE

## Retiring Governor Dole to Take the Oath as Judge This Morning—Acting Governor Carter Hopes for Smooth Transition.

Sanford Ballard Dole, who has been the head of the government of Hawaii under three distinct forms since January 17, 1893, will, at 10 o'clock this morning, divest himself of the toga of statecraft and assume, for a second time in his career, the judicial ermine.

"I shall be sworn in, in the Federal courtroom, by Chief Justice Frear at ten o'clock in the morning," Mr. Dole replied to a question as to the program for his judicial installation, "and then open court and proceed to business."

"Yes, I shall probably make a few remarks to the bar—nothing formal. Then I shall appoint a committee to draft memorial resolutions in respect to the late Judge Estee."

Mr. Dole was asked if there was anything put forward about the Federal statute directing, on its face that in case of a vacancy in a district judgeship all proceedings then pending shall be continued to the next stated term of the court affected.

He answered that he had looked the matter up. "Everything goes over to the next term," he added, "but that does not prevent parties from presenting their cases. It will put it in the hands of parties themselves whether they will go to trial forthwith or not."

District Attorney Breckons, to whom the same inquiry was previously made, replied in his dry manner:

"There are some people who think they can run the United States Court without regard to the Judge and the District Attorney."

### THE OATH.

Following is the form of oath that Judge Dole will take:

"I, Sanford B. Dole, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as United States Judge in and for the District of Hawaii, according to the best of my abilities and understanding, agreeably to the Constitution and Laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

### JUDGE DOLE'S COMMISSION.

The commission of Judge Dole turned up in a pasteboard tube amongst his mail yesterday morning. It is in the form that follows:

"THEODORE ROOSEVELT,

President of the United States of America.

"To all who shall see these Presents, Greeting:  
"Know ye that reposing special trust and confidence in the Wisdom, Uprightness and Learning of Sanford B. Dole, of Hawaii, I do appoint him to be United States District Judge of the Territory of Hawaii and do authorize and empower him to execute and fulfill the duties of that office according to the Constitution and Laws of the said United States, and to have and to hold the said office, with all the powers, privileges and emoluments to the same of right appertaining unto him, the said Sanford B. Dole, until the end of the next session of the Senate of the United States and no longer, subject to the provisions of Law.

"In witness whereof I have caused these letters to be made Patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand at the City of Washington, the 31st day of October, in the year of our Lord one thousand nine hundred and three, and of the Independence of the United States of America the 128th.

"THEODORE ROOSEVELT.

"By the President,

"P. C. KNOX,

"Attorney General."

### NO FAREWELL ADDRESS.

Governor Dole stated, in answer to an inquiry, that he would deliver no farewell address as Governor, either upon assuming the Judgeship or upon Governor Carter's inauguration.

"I think it is not necessary," was his laconic reason for disappointing the tingling ear.

### OSTENTATION ESCHEWED.

Secretary Carter, who will be Acting Governor ex officio at the moment Governor Dole's resignation takes effect today, said, with reference to that stepping stone stage, when asked yesterday about probable changes this morning.

"Things will go along just the same. I will be in practically the same position as now. As Acting Governor I would only do what was absolutely necessary."

An allusion to what he had said the previous day about resignations elicited from Mr. Carter a remark to the effect that he had reason to expect that Treasurer Keпоikai would present his resignation this morning.

# HAWAII AS SEEN FROM GREATER N. Y.

Mauna Loa, emulating Mont Pelee and Vesuvius, is waving aloft its flags of flame as if to remind us that we have in Hawaii an ideal all-the-year-round American health and pleasure resort. The climate is at all times delightful; hurricanes are as infrequent as snow squalls; the scenery is alternately picturesque and sublime; the flowers and fruits are perennial; the mountains offer game birds and beasts to the sportsmen, and all the discomforts of ordinary travel are prevented by the adoption of the most modern conveniences. This paradise of the Pacific is our own, and we should visit it, enjoy it and develop it. Many tourists who go to look at Hawaii remain for years, but there is room for half a million homes, and the Government offers easy terms. The natives are not like our negroes; their ancestors were hardy enough to row over from Polynesia and intelligent enough to build their ocean canoes and steer by the stars. Now five lines of palatial steamers keep Hawaii in touch with the rest of the world. The Oceanic Company is an American line, and any of its vessels can be transformed into an armed cruiser in thirty-six hours, so that aloft or ashore the visitor to happy Hawaii may be under the Flag.—New York Town Talk.

# THE SUN'S SEASONS

LAPORTE, Ind., Nov. 9.—In a statement made today Alexander Young, a local astronomer, who has in the last year made several important discoveries concerning the condition and functions of the sun and has asserted the existence of life on that planet, announced his conclusions concerning the solar seasons.

Young has found that the sun is blessed with a climate of perennial summer, divided between seven months of vernal, or springlike, summer and five of deciduous, or autumnal, summer, marked by changes in the vast masses of forest foliage observed by him through the instrumentality of the solar scope which he has invented. At this time red and reddish-brown hues prevail, to be replaced in January by the living green of summer.