

HAWAIIAN GAZETTE

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FRIDAY : : : : : JANUARY 11.

ROOSEVELT AND DE BOLT ANTICIPATED.

It may or may not be that Judge De Bolt obtained his inspiration for the bold words he held regarding the overruling of trial courts by the Supreme Court on mere technicalities, in his decision refusing a new trial to the second degree murderer Takamoto, from the recommendation of President Roosevelt on the same subject in his message to the present Congress.

The object of bringing forward the subject now is merely to show that the Supreme Court of the Territory of Hawaii anticipated even the recommendation of President Roosevelt on the subject and, further, that it has not adopted the course mentioned by Judge De Bolt.

"In connection with this matter I would like to call attention to the very unsatisfactory state of our criminal law, resulting in large part from the habit of setting aside the judgments of inferior courts on technicalities absolutely unconnected with the merits of the case, and where there is no attempt to show that there has been any failure of substantial justice.

"No judgment shall be set aside or new trial granted in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure unless, in the opinion of the court to which the application is made, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice."

Now it happens that the Supreme Court of Hawaii forestalled the President in these sentiments, in solemn exposition of the law of a case, by nearly a year and Judge De Bolt's utterances on the subject by precisely one year. This was in the opinion of the court, by Mr. Justice Hartwell, in Kapiolani Estate v. Thurston, as will clearly appear from the following abstract of a portion of that deliverance.

"But we do not think that on this ground alone a new trial ought to be granted. The tendency of American decisions is to enlarge the scope in civil cases of the doctrine of harmless error in admitting evidence. Wrongful exclusion of evidence is far more likely to harm than is wrongful admission.

"By the early English rule erroneous admission or exclusion of evidence did not authorize setting aside the verdict 'unless upon all the evidence it appeared to the judges that the truth had thereby not been reached.' 1 Wigmore, Evidence, Sec. 21. But about the year 1835 English courts began setting aside verdicts for admission of irrelevant testimony unless the same fact was otherwise proved.

"THIS COURT IN SEVERAL CASES HAS DECLINED TO ORDER A NEW TRIAL FOR ERRORS WHICH APPEARED TO IT TO BE HARMLESS. Thus in Merricourt v. Norwalk Fire Ins. Co., 13 Haw. 221, 'Although we do find that the trial judge was clearly in error in some of the rulings on the admission and exclusion of evidence complained of, still we do not consider these errors of sufficient gravity to justify us in setting aside the unanimous verdict of the jury and remanding the cause for a new trial.' So in Gay v. Farley, 16 Ib. 79, in respect of certain evidence of doubtful relevancy, 'the error was harmless, for not only was there ample other uncontradicted evidence to require the findings as to the fact and the amount of the shortage, but some of that evidence consisted of admissions, as to both the fact and the amount of the shortage, made by Wright before his resignation and in connection with his official duties, so that the admissions objected to were at most merely cumulative.' Upon an erroneous exclusion of evidence in Territory v. Wright, Ib. 144, 'We cannot, however, say that its exclusion was prejudicial to the defendant or was reversible error, the defendant having substantially admitted the receipt of the money.' In Wong Hoon Kan v. Lui Yan, Ib. 736, upon the same subject, 'If it was error to allow this question, the error was harmless, for the issuance of the warrant and the arrest of the plaintiff on defendant's complaint were fully shown otherwise.'

"As a general rule we think that new trials ought not to be granted for errors in rulings upon evidence when there is no reason to believe that they affected the verdict."

IAUKEA AND THE JOB CHASERS.

Those Democrats who supposed that Sheriff Iaukea had gone into office to find places on the payroll for ward politicians, mistook the man as well as the issues upon which he was elected. Col. Iaukea's whole record in office, extending back a good many years, is that of a conscientious public servant. Among all the Hawaiian officials of the monarchy he perhaps stood first in his devotion to ideals of good government.

When the Democrats named Iaukea for Sheriff they appealed to independent Republicans to support him on the ground that he would reform, not perpetuate, the abuses of police administration. Believing in him, the independent Republicans took the Democrats at their word, turned out for Iaukea and saved him from defeat. Were the spoils Democrats, the hungry jobchasers, so dull as to suppose that such a man, with such a backing, would turn the police station into a feed-trough where any Democrat, hungry for spoils, might come and get his fill?

But let us be understood in full. It is not to be supposed for a moment that Sheriff Iaukea will make no more changes in the personnel of the police. To get rid of old abuses one must evict those who perpetrated them and put

better men in power. But that sort of thing requires time. A new Sheriff of Oahu county can not instantly discharge one force of police and automatically provide another just as familiar with the work to be done. There is no group of trained men waiting outside on call to man any department of the County government. The new Sheriff has, indeed, got rid of the worst of the old police offenders and, as he sees, from week to week, chances to make desirable changes, he may be trusted to achieve them. All other things being equal, we should suppose he would confine his appointments to Democrats and independent Republicans, as being the men most interested in the success of his administration. But from the spoils system and from opening the doors to the hungry and thirsty rascals that beseech him to forget their records give them jobs, he naturally and inevitably recoils. To serve them is not what he was elected for and Iaukea is not the man to have taken an election under such circumstances.

UNDEFENDED HAWAII.

The Army and Navy Journal, a high authority, says that "the development of defenses for our insular possessions has been too long neglected and should be taken in hand without further delay." And speaking of Hawaii's situation in particular it says that "effective fortifications" here are "urgently needed."

For about nine years Hawaii has heard and made this plea without results so far as actual defenses are concerned. It is a singular fact that the United States, having acquired the islands, pays less attention to their safety than it did to that of American interests here when the islands were foreign. Under the monarchy, American residents could always see the broadsides of their country's ships in Honolulu harbor; now, a United States warship is a novelty. Then, the Washington government took great trouble to obtain the right to occupy Pearl Harbor for naval purposes, but since getting the place in fee simple it has not built a dock there nor mounted a gun. Indeed it has not yet provided that inland bay with a safe sea entrance for large ships.

Certainly merely preliminary work has, indeed, been done. Some land for a navy yard at Pearl Harbor has passed into Federal control; sites for guns about Honolulu have been bought and there are reservations for troops. But most of this work was accomplished a good while ago and there is no sign of anything more being contemplated. Interest in the matter at the War and Navy departments seems to have congealed. Some say that Secretary Taft wants the Philippines and Panama taken care of before anything is done for us and that the Navy Department is displeased because the owners of sugar land about Pearl Harbor want sugar prices rather than pasture prices for it. But that is a matter of gossip. The crucial fact remains that a hundred millions or so of American wealth lies here exposed before the eyes of a strong and covetous Pacific power; and that if these islands should pass under control of that power they would soon be made so formidable, especially as a safeguarded rendezvous of a great fleet, that the Pacific coast, to protect its own wealth, might eventually have to spend a hundred millions on forts and ships for its own defense.

Here is a phase of the matter which ought to have weight with Congress and would have such weight if there were any one, representing Hawaii at Washington, who would press for Hawaiian naval and military appropriations with intelligence and zeal. Such things are done, and done successfully, by other places. Many a dilatory board of engineers has been stirred into action by the President or by Congress upon whose sympathies some well-organized community has been at work. And this brings to mind the idea that, if the President could be as deeply interested in the question of our defenses as he is in creating those values which require defense, we might soon be provided with both forts and naval station. Is there no way to reach and impress him with arguments in point?

BUSINESS, NOT POLITICS.

Sam Johnson has done the right thing in getting out of politics. He is employed to make roads and attend to the city's garbage and do both duties as economically and well as he knows how. While in politics he was more or less under the thumbs of the men who worked for him. He could not safely offend a lazy man by compelling him to do a fair day's labor for a fair day's pay, because, in that case, the man might not vote Sam's ticket. Now, being out of politics, he can compel efficiency with the alternative of dismissal.

All this will be good for the community and good for Mr. Johnson. It will help both; and the Republican party will gain more from the record of wise administration of public works than it possibly could from the enforced alignment, on its side, of a lot of roadmen and garbage carriers at the primaries or the polls.

With the road department out of politics on the one hand and the police department on the other, and both intent on doing the best that is in them, Honolulu ought to have a sort of civic millennium. This situation every good man should do his best to perpetuate. What this place most needs and wants is not politicians and party machines, but honest workers and clean business methods in office. The tense discipline of parties that have presidents, governors and United States senators to help elect is not needed in this little Territorial community where our political interests are all local, where we all know each other and can pick out the best men for offices. We can work out average good government here without all the formalities of organizing and drilling and log-rolling that pertain to States where the change of a single vote may decide the fate of the nation. Bosses can be entirely cut out without harm to any legitimate interest we have. This paper knows of no more hopeful sign than that one of the two powerful Republican dictators has been shorn of his strength at the polls and that the other has voluntarily relinquished politics.

PANPACIFIC CONGRESS.

The object of the Panpacific Congress of Consuls, which, it is hoped, will be convened here, is the extension of American commerce. It is a part of the duty of all members of the United States Consular corps to aid as much as it may be in their power the interests in foreign countries of any or all of the home manufactures. Aside from the one commodity of sugar, Hawaii has, as yet, little to show in the line of manufactures and, while direct good may not come to her industrially from the proposed congress, indirect benefits are sure to follow. Hawaii is a comparatively new country on the map. She looks to tourists as much as to anything, excepting, always, sugar, as revenue producers. Residents of foreign countries, as well as those of the mainland, are in positions to speak well or ill of the place and as Hawaii is noted for its hospitality there can be no doubt of the good that will come from the entertainment of these visitors. The present plan is to have all of the Pacific port consuls meet and discuss in congress the needs of the localities at which they are stationed. Hawaii as a place of meeting has been suggested for the reason that it is fairly central, and that, if the habit of coming here is once fixed, it may get to be a gathering place for all sorts of influential bodies interested in Pacific ocean affairs—commercial, political, scientific and even literary.

This proposed meeting was suggested on the mainland and Hawaii was quick to act upon it. Congress, however, must be looked to for transportation for consuls, though in case it should not act, the payment of sufficient mileage could be ordered by the State department.

Hilo is doing well in the matter of a breakwater unless all signs fail. The fate of an appropriation under the River and Harbor bill has for years depended upon whether the member from the middle west could be convinced that there was a river or harbor where the introducer of a measure said there was and if so what was the good of having it there instead of somewhere else? From the report of the meeting of the Honolulu Chamber of Commerce, it appears that Hilo, with the aid of Secretary Wood, has nailed the influence of the member from Kansas, where the Kaw flows three hundred and sixty-five days in the year, without a breakwater or a dam, and of the member from the southern district of Colorado who gazes on the empty irrigation ditches and prays for rain. Having obtained pledges from the commercial bodies of those States, as well as of California and Oregon, the work of securing the help of other westerners should be comparatively easy.

It is to be hoped that the United States will send a suitable squadron here to greet and receive the visiting Japanese, and fitly pay the obligations of courtesy.—Star.

This is the intelligent view of the case and it is not unlikely that the Government has already chosen to be represented here by something better than a tug when the Japanese visitors come. An official request or one from public bodies here might make the thing certain. On the Coast, for years past, the North Pacific fleet has been almost at the beck and call of commercial bodies, which get it to attend even their local seaport celebrations and fetes. Honolulu has sometimes overlooked this opportunity to its cost, although, as a port on the regular cruising route of the squadron, it has the right to ask.

THE ERUPTION OF MOKUAWEOWEO.

The outbreak from the summit crater of Mauna Loa, together with the one reported from the Kau side of the island of Hawaii is so far a most impressive spectacle. Hawaii is glad to see it, not only for its grandeur, but because it signifies the release of gigantic forces which one does not like to have writhing underfoot.

Naturally, if this eruption goes on, much will be written about it in correspondence with the mainland press. If the fair name of these islands as a tourist resort is not to be stained by such disclosures, care must be taken by the writers to make the fact clear that Mokuaweoweo is on an island far from that on which Honolulu is situated and that the material interests of the group are benefited rather than harmed by the presence of one of nature's great safety-valves. Mainlanders are not sure that the Hawaiian chain isn't a cosy little family of islands like the Bermudas, where an active volcano might suffocate or otherwise destroy all the inhabitants. It should be impressed upon them that Mokuaweoweo is a physical feature of an island larger than the smallest New England state, and that, having failed to bring about disasters there, it is not likely to disturb communities that are widely separated from it by arms of the sea. Honolulu, for example, is about as far from the scene of the present disturbance as New York is from Washington; and thousands of years have passed since it was, itself, subject to volcanic phenomena.

In conclusion let the Advertiser strongly advise our own people to go and see the volcano. Few of them have ever viewed a burning mountain—as small a percentage, perhaps, as there is of Californians who have seen Yosemite or of New Yorkers who have visited Niagara. Yet of all nature's spectacles there is none which leaves so deep, abiding and splendid an impression on the mind as that which is presented by a volcanic cone in action.

A CHANCE FOR THE RICH.

Judge Dole's plea for a children's hospital in Honolulu ought to be realized through private philanthropy. There is, perhaps, no place in the world, of 150,000 to 200,000 inhabitants, which contains so many men whom it has enriched, as does this Territory. Fortunes are made every year in several lines of business, especially sugar. From the surplus money thus acquired, this capital city might easily be supplied with all the works of benevolence and mercy which its situation and the character of its population suggest or call for. This is a subject which our wealthy men might properly consider, in view of the not uncommon custom, the world over, for people who have prospered in a given locality to leave in it something to be remembered by, a building or statue or endowment which would keep their memories green.

Not a little, indeed, has been done along such lines of personal munificence, notably by Charles R. Bishop, S. M. Damon, the Castle estate, C. M. Cooke and P. C. Jones. Oahu College is, in large part, a memorial of private generosity. But the way is open for dozens more of rich men and estates to provide needed hospitals, to improve and adorn parks, to beautify public squares, to subsidize a place of musical and dramatic art, to build a public gymnasium, to endow churches and eleemosynary homes and encourage the arts and crafts. If all those whom Hawaii has done so much for would make recompense in kind, Honolulu would soon become a little Paris of the Pacific, a center and focus of a beautiful as well as a stable civilization.

Wireless telegraphy has been so long of use to commerce that it has almost ceased to be one of the scientific wonders of the century but there are so few of the laymen acquainted with it that the methods by which the marvelous system works are practically unknown. The paper read by F. J. Cross at the meeting of the Engineers' Society last night was most interesting and so full of explanation that it would be well to have him repeat it at a later date and in a more public place. The facts brought out by Mr. Cross are to the effect that Marconi has put into practice the theories of Morse and others. Not altogether theories for Morse put them into practice in a small way. Marconi developed the idea so as to bring the theory to a point where it is commercially valuable. But even Marconi has been surpassed in a way and though his name will go down in history very near to that of Edison, he is an improver rather than an inventor. The "Coherer" of Marconi is but an improvement over an adaptation by a French scientist, and it reached its limitations a short time after it had been placed on the market. To the people of these islands the wireless system has been of untold value for it was demonstrated years ago that a cable of the conventional type will not do well on account of the character of the shore formation. Wireless telegraphy, however, has not always worked satisfactorily here, but improvements are coming along so rapidly that it will not be long before telegraphing through space will be as dependable as by wire.

The Assouan dam, which was to preserve Egypt from lean years, seems to have provided it with more of them than nature did. When the Nile was allowed to have its own way, its inundations left the rich sediments of central Africa upon the sandy farms of the valley and crops were rich. Now the great dam, by impounding the floods, gives the sediment a chance to settle, and the carefully distributed surplus is so robbed of its solids that it only partially fertilizes the waste places. Crops are getting scant and poor and the fellahs have lost what little faith in progress the British had managed to instill.

Senator Bailey of Texas, should remember that a crow is never the whiter for washing itself. Since he became a bosom friend of the Standard Oil trust Bailey has grown to be a rich man. The Senator protests that the sums of money he got from the local head of the trust were loans, but this excuse has failed with too many detected bribe-takers in the past to succeed with Bailey now. Whether he prevails in his effort to be re-elected senator or not, he has been badly smirched, as much by his explanations, perhaps, as by his acts.

People who are arrested and let out on bail are beginning to sit up and take notice. Formerly the bail money was all the police wanted and much of it was farmed out by usurers at ten per cent, a month, the profits, of course, never finding their way into the public treasury. Now it is the offender, and not his cash, that is desired. The man who gives bail must come back to stand trial. The rule is one of the many wholesome signs of the new departure in police administration which the people demanded at the polls.

Mosquitoes are getting very troublesome, but it is the fault of the people who have to endure them. A few years ago when Mr. Larnach was on a mosquito detail, backed and supported by ample funds and co-operated with by householders, the insect with a bill was far less common than the man with one. Oiled ponds, care about containers and the collection of tin cans from vacant lots, made people forget that they had ever known mosquitoes. Now the insect pests have it all their own way again.

Editor Advertiser: I have noticed more foolishness than usual in the Bulletin's editorial columns of late—if that be possible. Who owns that delectable sheet, anyway? INQUIRER.

Balaam, probably.

When Hawaiian volcanoes start up, earthquakes and eruptions are pretty certain to occur in other parts of the world. There has long seemed to be a community of interest between Kilgus and Vesuvius, though in the present case of Mokuaweoweo, the response comes from such unexpected quarters as Norway, Baltimore and Pennsylvania. Plainly old Father Encecladus has all places as well as all seasons for his own.

The death of Archbishop Montgomery deprives the Catholic diocese of California of a prelate of much learning and of a liberal spirit.

A bulletin from Southern California on the kind of sleighing they are having there would liven up the coast weather report a bit.

Now watch the San Francisco papers gloat over the Maryland and Pennsylvania earthquakes.

COURT ITEMS.

A. S. Humphreys for plaintiff in Mills v. Walker has filed an affidavit in opposition to defendant's application to establish his bill of exceptions. It goes to show that the bill deals with matters that occurred in Honolulu District Court and not before the Circuit Judge from whom the appeal to the Supreme Court is taken.

Judge Lindsay dissolved the temporary injunction in Middleditch v. Kalaniano'le and Kapiolani Estate, Ltd., which restrained any disposal of the shares of Kalaniano'le in the corporation named, pending the determination of the suit. Kinney, McClanahan & Derby have filed replications to the answers of W. R. Castle and Kapiolani Estate, Ltd., in the foreclosure suit of Allen et al. v. Achi et al.