

# DECISION LEANS "SEEING JAPAN" PARTY SAILED ON CITY'S SIDE

## Supreme Court Hands Down Opinion in Paving Case

### MAKES BROAD RULE

#### Finds the Territory Ceded Some of Its Authority

(From Saturday's Advertiser.)

The supreme court yesterday afternoon decided the Rapid Transit street pavement case in a decision, written by Chief Justice Robertson, and concurred in by Justices Perry and De Bolt, of which the general trend is in favor of the city and county authority as against that of the Territory, in the matter of pavements the company shall place on those portions of the streets, under its franchise, it is required to pave. The issue was raised by a friendly suit, under an agreed submission of facts, to determine how the company should proceed to pave the streets.

In the course of its decision, the court lays down a broad rule which the lawyers say will be of vast importance in deciding future cases that may involve conflicts between the municipal and territorial authorities. "The word 'Territory' as used in section 864, is equivalent to 'Government,' says the court, and includes street improvements made by the municipality."

The court holds under this view that the passage of the city and county act transferred to the city and county some of the powers retained by the Territory when the Rapid Transit company's franchise was granted, which was prior to the establishment of a city and county government.

#### Sustained Campbell.

Superintendent of Public Works Marston Campbell is definitely sustained in sending to the Rapid Transit company a notice to pave Fort street, in the bitulithic block, with the same sort of pavement as the city and county had put down. However, on this point, the decision gives the company leeway, in the following language:

"Notwithstanding what we have said in regard to the company's obligation to conform its pavements to those laid down by governmental authority, the provisions of the franchise act, as contended by counsel, must be given a reasonable construction and effect. If at any time the streets should be paved with such material or in such a manner as would clearly be inadequate or wasteful or extravagant, it might properly be held that to require the company to conform thereto would be an imposition on the company, and that it was not within the spirit and intent of the act that the company should be expected to comply under such circumstances. Counsel for the railway company contend that, in view of the fact that nearly one-half of the life of its franchise has passed, it is unreasonable to require the company to lay an expensive and so-called permanent pavement, such as bitulithic on a concrete foundation. It is not at all clear that the length of the life remaining in the franchise is to be considered in this connection. The statute requires the company to pave and repave, and to keep in repair the street surface occupied by its tracks so long as the franchise continues in force. If the character of the pavement required to be laid is not open to objection, we are inclined to think that the duty to lay it would be the same whether the remaining life of the franchise be long or short. Whether that is so or not, we are satisfied that it is not at all unreasonable to require the company to put down the pavement specified in the notice at a time when more than one-half of the life of its franchise remains intact. It is not claimed that the pavement in question is not an approved one. It is not claimed that the action of the municipality in laying such a pavement was in any way improper or inappropriate. We think the fact that at the expiration of the franchise the concrete base only with much difficulty affords no sufficient reason for relieving the company of the obligation to lay the pavement."

There were seven questions submitted to the court, and in all of them, as seen by the following list, the ruling of the supreme court is in favor of the municipal authorities.

Answered "Yes."  
"1. Does the action of the municipal authorities of the City and County of Honolulu in the premises create any obligation on the part of the Honolulu Rapid Transit & Land Company which can be enforced under Section 2 of said Act (Section 828 Revised Laws of Hawaii)?"

Answered "No."  
"2. Has the superintendent of public works directed, in the kind of paving he shall direct the Honolulu Rapid Transit & Land Company to make in the premises? May he direct that other kinds of pavement than used by the City and County of Honolulu on said street, be laid by the Honolulu Rapid Transit & Land Company?"

Answered "Yes."  
"3. In view of the foregoing facts and the law as set forth in Chapter 66 of the Revised Laws and more particularly in Sections 838 and 864 of said Chapter, is the Honolulu Rapid Transit & Land Company obliged to pave the entire space between the outside rails of its said tracks on King street, between the bridge over the Nuuanu Stream and Nuuanu street, so that such paving shall be flush with said street and correspond in material with the paving of the remaining portion of said street?"

Answered "Yes."  
"4. In view of said facts and law, is the Honolulu Rapid Transit & Land Company obliged to comply with said notice of said superintendent of public works?"

Answered "No."  
"5. Has the Honolulu Rapid Transit & Land Company, by manufacturing as set forth, the portion of King street referred to, complied with the obligation of its charter and the law to pave or macadamize as set forth in Section 2 of the Act of July 7, 1894 (Section 828 Revised Laws of Hawaii) so as to free it of any or all obligation to pave?"

# TOYO KISEN KAISHA MAY ROUTE ITS TRANSPACIFIC STEAMERS VIA BIG ISLAND

## Excursion of Fifty, Result of Which May Affect Hawaii's Future.

(From Saturday's Advertiser.)  
In order to see for themselves how much better is the condition of Japanese laborers in Hawaii than in Japan, a "seeing Japan" party of fifty people, principally veteran plantation laborers, sailed away for the Orient yesterday aboard the Shinyo Maru. The members of the party are not important men and women, in the generally accepted sense of the word, and they went away and will return as steerage passengers, but the results of their trip will probably be of very great benefit to Hawaii and have consequences that will be felt here throughout the future history of the Islands.

For many months now, the Japanese papers, the Hawaii Shimpu leading, have been carrying on a campaign to convince the members of the local Japanese colony that no advantage could come to any of them by returning to Japan, where living conditions are harder and wages less. In order that these facts might be demonstrated, the plan of having a number of Japanese laborers go to Japan and see with their own eyes was suggested and yesterday the first party sailed. In the party are about a dozen women and thirty-eight men.

The excursion will be a two-months' one, giving the party a full month in Japan, during which time the excursionists will be taken to several cities and to various parts of the country. The expenses of the whole trip for each excursionist amount to \$175. The present party is led by Mr. Kasaka, and will be followed by a second party, leaving here in September. On the wharf yesterday among the many hundred Japanese assembled to say aloha and banzai to their consul general, Mr. Uyeno, the members of this excursion party were prominent, each wearing a white hat.

The exodus of Japanese from Hawaii has been steady and of proportions rather alarming to those other Japanese who have established themselves in business here and who propose to make Hawaii their home.

As the immigration of Japanese is comparatively small, consisting for the most part now of "picture brides," the exodus is not only alarming the Japanese business men but is being felt among the plantation interests. When the excursionists return with the tale of the present hard times in the home land, the expected result will be a cessation of Japanese emigration from Hawaii.

### CHANGE IN PLANS DELAYS WORK AT PEARL HARBOR.

Another delay in the construction of the marine barracks and officers' quarters at Pearl Harbor naval station has been ordered, W. T. Spalding of the Spalding Construction Company, of Portland, having received notification to this effect. Mr. Spalding has been here for a few weeks preparing the way to commence work on their contract. The workmen were expected to be on the way from the mainland about this time, but they have doubtless been held back. Mr. Spalding does not now expect to commence work before July.

The delay is due to changes in construction deemed necessary by the marine corps authorities, and besides the site for the buildings may also be changed.

Although considerable labor is to come here from the mainland, the contractors expect to get the bulk of the workmen from the local supply.

### MORE SUGAR SECRETS.

NEW YORK, May 24.—In the sugar trust case today, B. F. Hottel of Fort Collins, Colorado, described how Haverly blocked the independent factory in 1902. He said he purchased sites adjoining it to run it out of business.

said portion of said street in the manner directed by the superintendent of public works or in the manner in which the remaining portion of said street has been paved by the City and County of Honolulu?

Answered "Yes."  
"6. In view of the foregoing facts and the law as set forth in Chapter 66 of the Revised Laws and more particularly in Sections 838 and 864 of said Chapter, is the Honolulu Rapid Transit & Land Company obliged to pave the entire space between the outside rails of its said tracks on King street, between the bridge over the Nuuanu Stream and Nuuanu street, so that such paving shall be flush with said street and correspond in material with the paving of the remaining portion of said street?"

Answered "Yes."  
"7. In view of said facts and law, is the Honolulu Rapid Transit & Land Company obliged to comply with said notice of said superintendent of public works?"

Answered "No."  
"8. Has the Honolulu Rapid Transit & Land Company, by manufacturing as set forth, the portion of King street referred to, complied with the obligation of its charter and the law to pave or macadamize as set forth in Section 2 of the Act of July 7, 1894 (Section 828 Revised Laws of Hawaii) so as to free it of any or all obligation to pave?"

### TO CURE A COLD IN ONE DAY

Take Laxative Bronch Quinine Tablets. All druggists refund the money if it fails to cure. E. W. Grove's signature is on each box. PARIS MEDICINE CO., St. Louis U. S. & C.

# TOYO KISEN KAISHA MAY ROUTE ITS TRANSPACIFIC STEAMERS VIA BIG ISLAND

A rumor went the rounds of the mercantile community yesterday, and finally reached a meeting of the directors of the merchants' association, that the Toyo Kisen Kaisha company intended to route its steamers between Japan and South America, via Hilo, in order to get the benefit of lower port rates, particularly as to water.

The rumor was given to the directors by T. M. Church who had heard it from a prominent Japanese, although no other reason for the move was given than the water question.

Mr. Church stated that in the event of this being done Honolulu would be a loser in many respects. The Hilo and Big Island Japanese merchants would probably have goods consigned to them direct at Hilo, thereby cutting out the local steamers from participating in trade which is remunerative.

Mr. Church stated, however, that he understood the waterfront water rates here were to be reduced about thirty per cent by June 1, in which case, the proposal of the Japanese company would be nullified.

The directors were agreed that the question was well-worth considering and a committee on finance and trade was appointed to probe the matter. It was understood that the local agents of the company are not aware that the company intends to make the change.

# KNOTTY PROBLEM UP TO LINDSAY SENATOR GRONNA'S BOOZE BILL UP

## SUPREME COURT ASKS ATTORNEY GENERAL'S OPINION ON MOOT JURY POINT. MEASURE IN SENATE WOULD PROHIBIT LIQUOR SELLING HERE, IF PASSED.

(From Saturday's Advertiser.)

A problem which has a direct bearing upon the legal procedure in every court in the Territory was presented to Attorney-General Lindsay by the supreme court yesterday for solution. Whether or not a judge has the right to comment upon the evidence in a case which is being tried in his court is the question. The statutes of the Territory say that the judge has no such right and many cases have been appealed upon this ground, but the supreme court is now inclined to doubt the constitutionality of the statute and Attorney-General Lindsay has been asked for a brief on the matter.

The problem arose out of the supreme court's work upon the appealed case of Bannister versus Lucas, in which it is claimed that Judge Cooper made comments upon the evidence. While a judge is permitted to review the evidence and give his opinion upon its worth in many States on the mainland, and in England, in this Territory, according to section 1798 of the statutes he must confine himself to a discussion of legal technique in his instruction to the jury and in his handling of the case in the course of the trial. The statute says that the jury must be the exclusive judge upon the intrinsic worth of the evidence. Now the supreme court is not sure that this regulation is constitutional. The federal judges here and elsewhere have the privilege of saying what they please of evidence.

"The constitution says that the parties to a case shall have the right to a trial by jury," said the attorney-general yesterday afternoon, "but it does not attempt to define jury and it may be claimed that the judge, according to all practice, is an essential factor in a jury trial and is entitled to the expression of his opinions. On the other hand a judge of forceful personality may constitute himself an attorney for one side or the other and exert an influence over the jury which is prejudicial to justice if he is allowed to comment upon the evidence submitted. The question has just been brought to my attention and I have reached no decision upon it."

# HEAT KILLS MANY IN THE SMOKY CITY

PITTSBURGH, Pennsylvania, May 24.—Six are dead of heat here.

### HEPBURN RESIGNS POST ON COMMITTEE FOR FOURTH.

H. M. Hepburn yesterday resigned as chairman of the joint general committee of the chamber of commerce and merchants' association for the Fourth of July celebration. Mr. Hepburn gave as his reason his inability to give the time necessary to carrying out the plans for the celebration which are to be elaborate.

At a meeting of the general committee yesterday afternoon Mr. Hepburn announced his decision and the resignation was received with regret, as Mr. Hepburn has conducted a whirlwind campaign, and in a week's time has appointed committees, held many meetings and has the entire celebration plan launched. His successor will have much of the rough work removed and his path made easy by the indefatigable work of Mr. Hepburn, who is on the committee as a representative of the merchants' association.

Marston Campbell, superintendent of public works, has accepted an invitation to head the general committee. Mr. Campbell is already in charge of the committee to display fireworks on the evening of the Fourth.

### REFINED ADVANCES TEN CENTS IN NEW YORK

NEW YORK, May 25.—Refined sugar advanced ten cents a hundred pounds on the exchange here yesterday. The market was steady.

# FIGHT NEW JERSEY GROWS HOT JOHNSON MAY BE NAMED CHAIRMAN



HIRAM JOHNSON, Governor of California and friend of Colonel Roosevelt, who is suggested by the Rough Rider's managers as the temporary chairman of the Republican National Convention, instead of Senator Root, put forward by the Taft men.

NEW YORK, May 25.—As the fight for delegates to the convention in Chicago draws nearer to the close it becomes hotter. New Jersey, home State of Woodrow Wilson, is the theater of operations more vigorous in their nature than were those in Massachusetts or Ohio. Both the President and Mr. Roosevelt declined to make any statement regarding the returns from the official count in Ohio, made public yesterday. These give Mr. Roosevelt 32 delegates out of the forty elected at the recent primary, and the practical certainty of the remaining eight delegates-at-large, which will be chosen at the coming State convention.

In his campaign, which started at Trenton Thursday, Mr. Taft is sweeping through the State. He has spoken at scores of meetings, impromptu and otherwise. Last night he said in a formal address to a large crowd at Jersey City: "I have a solemn warning to give. We live in days when too much stress is laid upon externals. I believe that that is the fault of the age. It would be unwise in the highest degree to select for the office of President of the Republic a man of striking and powerful personality, who is at the same time impatient of all legal restraint and professing the most un-sound views on the constitution under which we have lived and prospered."

## SUPPOSE THE KING WOULD GO ON STRIKE

LONDON, May 3.—At a demonstration organized by the Free Speech Defense Committee and held in the London Opera House tonight to protest against the prosecution of Tom Mann and other syndicalists, George Bernard Shaw delivered a speech, which was greeted by roars of laughter. Mr. Shaw said the premier had declared that he could not insert the minimum wage figures for miners in an act of parliament, but parliament has always been engaged in naming the figures of a minimum wage.

They had named the minimum wage of judges and they had named their own wage. They would presently be asked to vote the minimum wage of the King, which was called the civil list. Mr. Asquith would be compelled to rise and tell the house he could only declare in favor of the principle of the civil list. Then the King would not know whether he would get 5 or 5000 pounds. He went on:

"Consider the dilemma that will follow. Suppose the King goes on strike. Consider your position, if he did so. If I appeal to the soldiers not to shoot him I could be sent into penal servitude. If I asked the soldiers to shoot him I could be beheaded at Tower Hill."

In the recent prosecution, said the speaker, the words which are said to have been used were: "Don't shoot your worker, comrades, turn around and shoot other people."

He could not indorse the whole of that sentence, and the part he could not indorse was the first part. He thought the soldiers ought to do their duty. He continued:

"My own opinion is that the men deserve to be shot for the scandalous way in which they continue to neglect the interest of this country. The men who go down in the mine for five shillings and the boys who do down for two shillings a day really have nothing to complain of, if they are shot. And I think the soldier ought to rejoice to do his duty, and if he happens to shoot his mother instead in mistake he should not indulge in any sentimental regrets, but should say: 'Serve the old girl right. God save the King.'"

## REBELS IN NORTH DEMORALIZED BY AWFUL BEATINGS

EL PASO, Texas, May 25.—The rebels, in the north are completely demoralized by the awful beatings they have received at the hands of General Huerta at the battles around Beliano. The garrison at Chihuahua has mutined and refuses to advance against the federal cavalry which is scouting about in that neighborhood. In the south the situation is still grave. General Zapata, the bandit chief, yesterday forwarded a warning to President Madero that unless he resigns from the presidency and leaves the capital within a week, the bandits under Zapata will attack the city.

The carnage at the battle at Beliano must have been fearful. According to the dispatches forwarded to President Madero by General Huerta more than 800 rebels were killed and 200 prisoners taken, most of whom are more or less severely wounded. Huerta says that he lost ten killed and thirty-eight taken prisoners.

## ACCUSES CONGRESSMEN OF BEING PETTY GRAFTERS

WASHINGTON, May 24.—Representative John J. Fitzgerald of New York chairman of the house committee, today charged that representatives are guilty of "petty grafting." His sensational remarks were made during the progress of a debate on the proposal to curtail the use of telegraph franks, or free telegrams. The proposal, however, was lost.

## President Issues Solemn Warning to People.

### Roosevelt Is Scrapping With All His Old Vigor.

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Cheers for Teddy.  
Cheers greet Mr. Roosevelt wherever he goes. His car is never safe from intrusion whenever it stops and he is forced to make speeches at every opportunity. In one of the several addresses made yesterday he took up the result of the primaries in Pennsylvania, and gave what he called an explanation of the reasons which were behind his plurality. In conclusion he turned toward his audience and said:

"I tell you that there is not now left in the State of Pennsylvania enough tricky politicians to put into a coal-scuttle. And it is going to be the same in this State."

Much comment was excited here yesterday by the announcement of Mr. McHarg, who has been managing the Roosevelt campaign in Illinois, to the effect that the Roosevelt forces at the coming convention will contest the appointment of Senator Root of New York, as the temporary chairman of the national convention, as was suggested the other day. The McHarg statement was made in Chicago. The statement after declaring that Root was persona non grata to Mr. Roosevelt, announced that Governor Johnson of California, would make an excellent substitute.

Teddy Terrorizing.  
Representative McKinley issued a statement from Washington last night, outlining the progress of the fight between President Taft, whose campaign he is managing, and former President Roosevelt. He declared that the Roosevelt supporters "have stopped at nothing to terrorize the convention into nominating their candidate."

Senator La Follette is campaigning through New Jersey. He appears to have recovered much of his health and is putting up a hard fight. He will close his campaign at Patterson. Roosevelt will close his at Trenton.

## REMAINS OF KING REST IN ANCIENT CATHEDRAL TOMB

BOSKILDE, Denmark, May 24.—The body of the late King Frederik was buried in the Abbey today.

The body of King Frederik VIII has been lying in state in the chapel of the famous Christiansborg palace, where hundreds of wreaths already have arrived in the last few days. The funeral services took place in the cathedral which contains the tombs of most of the Danish kings.

The theaters in Copenhagen have been closed for three days and all buildings are being draped in mourning. A guard of honor has been on duty at the bier ever since the arrival of the body of the dead monarch.

MOB DEFENDS FLAGS.  
SAN DIEGO, California, May 24.—Because he called the American flag "dirty rag," an unknown man was beaten here by an angry crowd and driven out of the city. Attorney General Webb has arrived to make an investigation.

DARROW TRIAL ON.  
LOS ANGELES, May 24.—Thirteen jurors in the Darrow panel have been sworn in. District Attorney Fredericks has stated the government's case.

A MATTER OF COMMON INTEREST.  
How to cure a cold is a question in which many are interested just now. Chamberlain's Cough Remedy has won its great reputation and immense sale by its remarkable cures of colds. It can always be depended upon. For sale by Benson, Smith & Co., Ltd., agents for Hawaii.