

TERRITORY FILES ITS FINAL BRIEF IN TRANSIT CASE

Attorney-General Says Last Word in Matter of Electric Railway Capitalization

WILL SUE COMPANY IF COURT SUSTAINS

Government Claims Corporation Owes People More Than Quarter-Million Dollars

The final brief of the territory in the case of the Territory of Hawaii, by Ingram M. Stainback, attorney general, against the Honolulu Rapid Transit and Land company, was filed late yesterday afternoon in the supreme court.

The brief is signed by Attorney General I. M. Stainback, and deputies Wm. H. Heen and William T. Garden, all three of whom have been collaborating on it for many days and nights.

The question at issue is the right of the Rapid Transit Company to increase its capital stock to \$1,600,000 and to pay dividends upon stock of that value.

The brief contains lengthy tables showing Rapid Transit receipts, bonds issued, capitalization and surplus, and in comment on the tables it says: "This shows that by the end of 1902 the total amount of money that had gone into the road is \$259,550 (cash from stock to date) plus \$136,214 (receipts from bonds to date) plus \$66,895 (the entire net income for 1901 and 1902) a total of \$462,759.

"As to the object of Section 37, the Territory contends that the same is a mere limitation and not a grant of privilege whereby the company may give to its stockholders, stock without consideration. It is not unreasonable to hold that the twenty-five per cent limitation was intended to cover promotion expenses.

Section 37 was added limiting the capital stock to the amount of the cost of the property plus twenty-five per cent, thereof, in view of the fact that the Transways Company had constructed its road mainly with the proceeds of the bonds, amounting to \$151,000, and had issued \$325,000 of stock gratis, and because \$4 was thought Twenty-five Per Cent. Would Be a Fair Allowance For Promotion.

"However, in our opinion, one of the most important objects, if not the most important, sought to be covered by the twenty-five per cent limitation was to restrict the capitalization of 'unearned increment.' It is a matter of common history throughout all cities that the owners of real estate have grown enormously wealthy through the increased value of such real estate by the mere growth of population or by the improvements made on neighboring property.

"Suppose the Honolulu Rapid Transit & Land Company had started business with cash received from the sale of its stock to the amount of \$500,000, and had thereupon invested the \$500,000 in property for the road, then, under the respondent's construction of Section 37, it would be justified in issuing twenty-five per cent, additional stock. Stock would then stand \$750,000. Under that contention it would be able to issue bonds for and up

to \$250,000, being only limited to this amount by the provision of law to the effect that debts of a corporation shall not exceed its capital stock. The proceeds of these bonds, to wit, \$250,000 may then be invested in the road, whereupon, the respondent says, the stock of the corporation may be increased to \$450,000 plus twenty-five per cent or \$662,500 and that it can pay dividends up to eight per cent on this amount. Additional bonds may now be issued to the amount of \$312,500, which, being spent upon the road, bring the cost of the road, according to respondent, up to \$762,500 and under the same twenty-five per cent rule the stock may now be increased to \$953,125 whereupon the road may now issue an additional \$390,625 worth of bonds, and having done so and spent the money on the road, the road has now cost \$1,153,125 and stock may now be increased up to \$1,441,406. This process could be continued indefinitely without any further payments by stockholders.

When this transaction is reviewed, the situation results in this: Stockholders have contributed only \$200,000. Bonds have been issued to the amount of \$953,125. Total cost \$1,153,125 against which there stands \$1,441,406 of stock and \$953,125 bonds on which stock, according to the respondent's contention, dividends not to exceed eight per cent per annum may be paid. In other words, on every \$1.00 contributed, each stockholder is receiving eight per cent dividends on over \$7.00 or over 700 per cent.

"That is respondent claims that stockholders who only put in \$200,000 can get eight per cent, per annum, on \$1,441,406 and at the end of the charter period get cash to that amount by means of its sinking fund and have all property of the road besides, and that the stockholder can get five, six, seven or eight per cent or as much more as the corporation cares to pay for interest and get back their principal at the end of the bond period.

"In other words respondents claim that for every dollar put into the road from the sale of bonds they will receive one dollar bonds and one dollar and twenty-five cents stock, pay interest on the bonds, pay eight per cent on the stock, redeem them both at par at the end of the franchise period and have all the property that was bought with this dollar in the bargain.

"This transaction can be continued indefinitely up to the two million dollar limit set forth in the charter of incorporation. When that limit is reached, the respondent, of course, contends that a further increase in the authorized capital may be obtained under the general law dealing with the increase of the capital stock of a corporation."

Discussing the matter of investing surplus, the brief says that the respondents claim that they have the right to expend any or all of the gross earnings in extensions regardless of whether or not the extensions are properly or necessarily connected with the maintenance and operation of the system. If this contention is correct, says the territory's brief, "all that is necessary to prevent the territory from sharing the income over eight per cent will be to spend this money on the road, capitalize that amount plus twenty-five per cent, pay dividends on such stock until the expiration of the franchise and then receive the par value of such stock out of the sinking fund."

"According to the contention of the respondent the section that says 'the excess of income shall be divided equally between the Government of the Republic of Hawaii and the stockholders of said corporation' means nothing."

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"Counting the \$209,000 bonds or rather \$198,550 (the amount actually realized by the company from the sale of these bonds) as being a payment from sale of stock would make the total amount of cash from sale of stock plus total net earnings only \$264,209.46. It is apparent that there was a surplus in 1902 that should have been divided with the Territory. What principle of corporation law justified the increase of capital stock to \$1,000,000?"

"The Rapid Transit's method of declaring stock dividends is first to declare the stock dividends (on liabilities not assets) and then let the assets accumulate at the expense of the Territory to the amount of the stock dividend.

"This method would at the time be illegal under any principle of corporation law. If there were no provision in the franchise for sharing income with the Territory the illegality might be said to be cured by accumulating assets to cover liabilities. But in the case of the respondent's franchise, part of the money so accumulated is the Territory's share of the excess income; one element of illegality of this method is that the respondent retired some of these bonds, against which the stock dividends were issued, with excess income which should have gone to the Territory; and in addition further reduced excess income by paying dividends on this watered stock.

Respondent says it can capitalize excess earnings but that is not what it has done. What respondent has really done is to capitalize bonded debt.

The argument of this feature of the case closes with the statement that the territory intends to collect, "by proper proceedings," the share of the excess income which it is claimed should have been paid to the territory: "Instead of increasing its capital stock in the manner which a strict construction of its franchise requires, respondent actually increased its said capital stock by appropriating the amount due to the territory to cover the watered stock issued against the property paid for by bonds."

Honolulu Wholesale Produce Market Quotations

ISSUED BY THE TERRITORIAL MARKETING DIVISION June 8, 1916.

Table with columns: BUTTER AND EGGS, POULTRY. Items include Island butter, Eggs, Ducks, Hens, Turkeys, etc.

Table with columns: VEGETABLES A, ND PRODUCE. Items include Beans, Peanuts, Potatoes, Onions, etc.

Table with columns: FRUIT, LIVESTOCK. Items include Alligator pears, Pineapples, Watermelons, etc.

Table with columns: DRESSED MEATS, HIDES (Wet-salted). Items include Beef, Veal, Pork, Sheep, etc.

Table with columns: FEED. Items include Corn, Wheat, Oats, etc.

The Territorial Marketing Division is under supervision of the U. S. Experiment Station, and is at the service of all citizens of the Territory.

WEEKLY MARKET LETTER

Since the opening of the retail department by the Division, Island butter is in greater demand, the butter made by the Boys' Industrial School in their new creamery particularly. It is churned twice a week and put on the market the same day in sanitary water-proof cartons.

There is no change in egg prices. Large shipments of California eggs were brought in on the last boat as well as several crates of poultry. Young poultry is in good demand, particularly the heavy breeds.

String beans, tomatoes and cucumbers are plentiful as usual at this season. Cabbage and sweet corn are unusually high. A small shipment of red cabbage from Hawaii brought a very good price.

The quality of the alligator pears in the market is much better and prices more reasonable. Island grapes are plentiful and cheap, partially due to rather large shipments from Hilo. Very few limes have been received and the price has advanced.

An eighteen year experiment at the Ohio experiment station to test the relative merits of fresh and barnyard manure, with and without phosphates, showed a decided gain in crops from the use of fresh manure.

By selection the St. Vincent department of agriculture has produced a strain of sea-island cotton with five-celled bolls instead of four, thereby increasing the amount of both seeds and lint produced by the plant.

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The afforestation of stream heads and drainage basins is therefore of more economic importance than tree planting on mountain ranges.

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TREASURER IS BUSY SIGNING HIS NAME TO MANY LICENSES

New Permits To Do Business In Honolulu Will Be Issued First of July

LOCAL MERCHANTS ALREADY MAKING MANY INQUIRIES

More Than Two Thousand Mercantile Licenses To Be Sent Out This Year

The city treasurer has been busy signing his name to the new licenses to be issued after the end of the present month, for the coming fiscal year.

The principal licenses issued are the mercantile, of which about 2000 are issued each year. Then come the tobacco licenses, and the drivers and the vehicle licenses.

The list of licenses to be collected, not including the liquor licenses, which are handled entirely by the license commissioners, are, for the sale of alcohol, \$50; auction, \$100 in Honolulu, \$15 in other districts; awa, \$300 in Honolulu, \$25 in other districts; banking \$750 in Honolulu, \$250 in other districts.

It costs \$15 for a barber shop license, and \$25 for each table in a billiard parlor and alley in a bowling establishment. Billboard and outdoor advertising costs \$250; while a fishing boat must pay \$5. Brokers, both merchandise and stock and share, pay \$100 a year, while the custom house broker is assessed half as much for the privilege of doing business.

Collection agencies pay \$25 and the owner of a dray or wagon must pay \$2.50 for permission to ply his trade on the streets besides \$1 for his driver. It costs \$50 a year to sell poisonous drugs, and to dye and clean clothes, \$25 is the fee.

Hotels and boarding houses are taxed \$50, and steam and hand laundries pay respectively \$50 and \$25. Livery stables in Honolulu pay \$50, and in the outside districts \$25. Lodging and tenement houses are taxed \$2, and the manufacturers of food products, \$20. The license for the sale of merchandise is graduated so as not to make it too much of a burden on the small man.

One who sells not to exceed \$25,000 in a year, pays \$25, he whose business amounts to \$50,000 pays \$50 and the merchants who are lucky enough to aggregate \$100,000 or over in his sales for a year pay \$100. Sworn statements of the amount of business done are filed when application is made for licenses.

Purveyors of milk must pay \$2.50 and peddlers \$1. Notaries public in Honolulu pay a fee of \$10, while those in the outside districts have to contribute \$5. Vehicles for hire pay \$1 for each passenger accommodation, and the peddler's license is \$25. To peddle \$25 is demanded, and for the privilege of pushing a cart from which to sell, \$25 is exacted.

Hunting permits cost \$5 and public show licenses are \$200 if paid in advance for a year, or \$1 a performance. Journeymen plumbers pay \$1 while the master is assessed \$10, and must put up a \$500 bond. Restaurants in Honolulu pay \$40, and in the country \$20. Taxicabs and stage sellers each contribute \$10 to the city treasury a year and trust companies \$250 for handling other peoples' property.

The new licenses will be issued beginning with July 1, and will run for a year.

FOUR PROVINCES RENEW ALLEGIANCE TO GOVERNMENT

(Associated Press by Federal Wireless.) PEKING, June 9.—The provinces of Sze-Chuen, Hunan, Che-Kiang and Shensi have renewed their action in declaring themselves independent of the central government and now affirm loyalty to the Peking government.

ARMY AVIATOR IS KILLED

(Associated Press by Federal Wireless.) PRINCE GEORGE, Florida, June 9.—Lieut. Richard C. Shuffey, well known aviator, was killed while making a trial flight today.

CHINESE BOY BADLY BURNED

Lee Chang, a Chinese boy, was severely burned about the face and body yesterday afternoon, in Punahele, when a supply of gasoline which was bought for an automobile he was driving caught fire. He was rushed to the county hospital. His wounds were found to be so serious that he was transferred to the Queen's Hospital.

BOWEL COMPLAINT IN CHILDREN

During the summer months mothers should watch for an unnatural looseness of the child's bowels. When given prompt attention at that time serious trouble may be avoided. Chamberlain's Colic, Cholera and Diarrhoea Remedy can always be depended upon for sale by all dealers. Benson, Smith & Co., Ltd., agents for Hawaii.

FORBES WILL WORK FOR MODEL VILLAGE

Pledges His Aid For Plan Long Considered By Promotion Committee

"Superintendent of Public Works Forbes is going to give the promotion committee all the assistance in his power toward the developing of a real Hawaiian village within the city limits of Honolulu," said A. F. Taylor, secretary of the committee, yesterday, following an informal conference with Mr. Forbes on the committee's plans for the added tourist attraction.

The committee has had under consideration for some time plans for constructing such a village, and has proposed Makole Island, near Kapiolani Park, as the ideal site for the plan, but at yesterday's conference, Mr. Forbes suggested the Ala Moana road, as a far better location. He declared that he has had in view plans for the improvement of that strip, such as the construction of a model driveway, built of coral dredgings from the sea, the lining of the road with double rows of palm trees, removing of the growing dump piles, and the general renovation of the whole section, which he asserted, is one of the greatest possible beauty spots of the city.

In his talk with Taylor the superintendent of public works said that the proposed village could be situated on the beach, the grass houses surrounded with flowering trees and shrubs, and the whole made picturesque and "southern islandy" by the planting of a large grove of coconut palms. The dredgings for the road, he added, could be taken from the present narrow harbor channel, widening that entrance, and a shelter pier could be constructed giving access to the model village by water, and serving as a landing stage for the outrigger canoes and boats of the village fishermen.

It is believed that the selected villagers can support themselves from the proceeds of their fishing, and the gathering of shells and seaweed. They would have, it was pointed out, additional source of income during the tourist season, in the sale of leis and native curiosities which they could make themselves.

Mr. Forbes is also deeply interested in leiaus, or native temples, and their restoration, and he suggested that a model leiau might be constructed in the proposed village, as it present it is extremely difficult for a tourist to get any idea of these old Hawaiian places of worship.

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FIRE EXTINGUISHER SAVES PEERLESS AUTO

Rescue Comes Just When Gasoline Tank Begins Melting

A big 1915 Peerless automobile belonging to Mrs. Laney of Schofield Barracks, caught fire in Kaulaonahua park last Monday and was saved from destruction just in time by the arrival of a Ford car with a Pyrene fire extinguisher. The rescue came just when the gasoline tank had started to melt.

The car, which was insured with the Van Hamm-Young Company for \$3500, probably would have been a complete loss in a short time, but for the opportunity of the extinguisher.

The saving of this car bears out in a practical way the recent public demonstration given in an experimental way to show the value of the Pyrene fire extinguisher.

This is so well recognized that the insurance companies grant lower rates to cars that carry the extinguisher.

ALLEGED LAND GRAB BEING INVESTIGATED

At the next session of the board of harbor commissioners the matter of alleged grabbing of land on the shore lines at Pearl Harbor will be discussed. The board paid a visit to the harbor yesterday to make personal inspection of the points at which it is claimed that property owners have been encroaching on public land of tide-waters.

IT NEVER CAME BACK

Only a person who has had a real kidney backache can know how wonderful it is to get relief from the lameness in the morning, the dull, all-day throbbing and the sharp stabbing pains when stooping or lifting.

How much more wonderful to be able to say later: "It never came back." Doan's Backache Kidney Pills have not only relieved many, many thousands of cases of kidney aches, but the good has usually been lasting. People testify after three, five, eight, ten and fifteen years that they never had an attack of kidney trouble again.

Doan's are equally good for other troubles that come from weak kidneys. Headache, irregularities, nervousness, rheumatic pains, gout, lameness, dizzy spells, gravel and dropsy.

DAMON RESIGNS AS TRUSTEE OF BISHOP ESTATE

Supreme Court Justices Nominates William Williamson To Succeed Him On Board

JUDGE ASHFORD HALTS PROCEEDINGS IN COURT

Claims It Is High Time Some Hawaiian Should Be Chosen To Office

"The Bishop Trust was created in 1854 and in the thirty-two years that have elapsed, almost a third of a century, not one Hawaiian has been made a member of the board of trustees," said Judge Ashford yesterday during a hearing of the application for the confirmation of the nomination of William Williamson.

"It is high time that one of Hawaiian blood, race and breed should be admitted to the board of trustees, for the late Honorable Bernice Pauahi Bishop was a Hawaiian of the Hawaiians."

"What I know of Mr. Williamson is all to his credit. I know nothing against him. If, under the will, I have but the confirmation of the appointment of nominating committee by the justices of the supreme court, I will unquestionably confirm him as trustee. However, whatever power may be reposed in me as a judge of equity is something for me to look into, I will consider this matter to two o'clock next Tuesday afternoon. At that time we will hear it up again. You may come around to my way of thinking, or I may decide that you are right," he told Attorney Clarence H. Olson and Trustee A. F. Judd, who appeared for the board of trustees in the matter of the confirmation of Representative Williamson.

B. M. Damon Resigns All this came about through the resignation of Samuel M. Damon, one of the two surviving members of the first board of trustees, who resigned because of declining health and inability to give the business of the great estate his personal time and supervision together with the other members of the board. Mr. Damon's resignation was accepted.

Clause fourteen of the will of the late Princess Bernice Pauahi Bishop provided that the confirmed trustees of her trust estate shall be filled by nomination of the justices of the supreme court of Hawaii, such nomination to be subject, however, to confirmation by the presiding judge of the first circuit court sitting in equity.

Following the acceptance of the resignation of Mr. Damon, Chief Justice Robertson and Associate Justices Watson and Quarles nominated Mr. Williamson to succeed him as a member of the board of trustees.

The matter came up yesterday before Judge Ashford in the shape of a petition for the confirmation of the nomination made by the supreme court. They Tell About Williamson

Senator Judd and Clerk Thompson of the supreme court were called to the stand. Mr. Judd said that Mr. Williamson graduated from Williams' College in 1865; taught two years at Punahou and of recent years has been engaged in Honolulu in the stock and bond brokerage business, and that he is a man of undoubted business ability and integrity, acceptable to the remainder of the board and a Protestant in religion, the will requiring that only Protestants may become trustees of the estate.

Mr. Thompson testified to the fact that the original document signed by the chief justice and associate justices of the supreme court, nominating Mr. Williamson to succeed Mr. Damon, had been filed with him. This was introduced in court.

In addition to Mr. Damon, W. O. Smith, Albert F. Judd, E. Faxon Bishop and Alfred W. Carter have been the trustees of the valuable estate for some years past. The first trustee was Charles R. Bishop, deceased, who resigned when he removed to San Francisco following his wife's death; Samuel M. Damon, who resigned yesterday; Charles M. Hays, deceased; Charles M. Cooke, deceased, and W. O. Smith. Mr. Smith is now the only trustee of the original board. A. F. Judd, E. Faxon Bishop and A. W. Carter were appointed later to fill vacancies in the board.

Kuhio of Colburn Suggested In connection with this story it is interesting to note that the late Princess Bernice Pauahi Bishop, who endowed and created the Kamehameha School for Boys and Girls in Kalihi, named no Hawaiian in her will, which created the big trust, as a member of the original board of trustees.

In discussion yesterday it was mentioned that there are certain interests that would like to have either Delegate Jonah Kuhio Kalaniana'ole or John F. Colburn II nominated as a trustee of the Bishop Estate.

Judge Ashford in passing the matter on until Tuesday for a decision, made it plain, however, that he held nothing against Representative Williamson, but that it occurred to him that it was high time that a Hawaiian should be made a trustee of the great trust. In continuing the matter it was intimated that the remaining trustees may, in the meanwhile, agree with him in moving the justice of such a move and decide to prevail upon the supreme court to nominate a Hawaiian. If this cannot be done Mr. Williamson will, without question, be confirmed by Judge Ashford.

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