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HONOLULU, HAWAII TERRITORY, SATURDAY, MARCH 15, 1902.

PRICE FIVE CENTS.

DAVIS TRIES IT AGAIN

Claims W. G. Smith is Legally in Quod.

ASSAILS THE CHIEF JUSTICE

Culminating Incident in a Series of Peculiar Acts—Gear and Humphreys Busy.

GEORGE DAVIS made another attempt to send Walter G. Smith to prison yesterday and to cite High Sheriff Brown for contempt in releasing him upon the order of Chief Justice Frear. Davis claimed, and he was sustained by Gear and Humphreys, that the writ of habeas corpus was invalid, in that Mr. Smith had not been brought into the presence of the Chief Justice before the writ was issued. The Circuit Court very generously agreed to take no further action in the matter until Chief Justice Frear was given an opportunity to remedy the mistake that they held he had made.

Davis landed in the courtroom shortly after 2 o'clock yesterday afternoon, and notwithstanding the fact that the McCarthy trial was in progress, and a witness was under examination, was allowed to interrupt the proceedings to tell his troubles.

"I want a citation issued for the Hon. A. M. Brown, High Sheriff, to show cause why he shouldn't be punished for contempt in not obeying the mittimus of this court in the case of Walter G. Smith," said Davis.

Deputy Attorney Douthitt objected to any remarks upon that case before the jury, as he didn't want a mistrial, and Mr. Davis was ordered by the court to restrain himself until the jury could be sent from the room.

"I propose to show," continued Davis, "that Walter G. Smith is not in custody upon the mittimus, as was directed."

"There is a receipt here from the High Sheriff showing that he was in custody," said Judge Gear.

"He is not in custody, and was released without authority," continued Davis.

At this stage of the proceedings Gear sent for Humphreys, and the two judges occupied the bench together. Davis then asked to go upon the stand to prove his assertion, and he was accordingly sworn.

"I was appointed by the court," he testified, "to appear as amicus curia. A few minutes ago I saw the High Sheriff and asked him if Walter G. Smith was in custody under the mittimus, and he said 'no.' I asked him then if he had brought Mr. Smith before the Supreme Court, and he said 'no,' but that he had released him upon a writ of habeas corpus, a copy of which he delivered to me. And here it is," concluded Davis, as he handed the document to the court and left the stand.

"I contend that the body of Walter G. Smith was not delivered before the Supreme Court before the mittimus was issued, and the only way the High Sheriff could release him was to have the body of Walter G. Smith appear before the Chief Justice with the return before him. The mittimus issued by this court is in full force, the writ of habeas corpus not being valid. This is not a matter that I care for personally, but the High Sheriff should be compelled to obey the mittimus. The authorities are all one way, and the writ is of no effect. The only way is to make the High Sheriff show cause."

At this stage of the proceedings Judge Gear announced a recess of five minutes to "consider" the matter. When they returned Robinson was brought along, and the three judges occupied the bench together, when Gear delivered "his" opinion.

Judge Gear said in substance: "It appearing to the court that the mittimus heretofore issued by the court, in the matter of the contempt of Walter G. Smith, was placed in the hands of the bailiff, and the respondent was placed by him in the custody of the High Sheriff. It appears now that Walter G. Smith is not in custody, but was released under the order of Chief Justice Frear, admitting him to bail in the sum of \$500. It appearing further to this court the order issued was beyond the power of the Chief Justice, and it is not entitled to the respect of this court. I think that if the error is called to the attention of the Chief Justice, that the order will be revoked, and the Sheriff ordered to take him into custody. I think it is due to the Chief Justice to call the error to his attention before action is taken."

"But I have called the matter to the

attention of the Chief Justice," protested Davis, "and he promised to look into it. I have no doubt but what he will revoke the writ and supersede the order admitting the respondent to bail."

Here Judge Humphreys leaned over and whispered anxiously into Gear's ear.

"Judge Humphreys calls my attention to the fact that the order made by the Chief Justice is null and void, and absurd on the face of it, admitting the defendant to bail. I have no doubt if his attention is called to it, he will revoke the order, and the return not being until the 21st of April, undoubtedly the defendant will serve his sentence before the time is up. I think it due to call the attention of the Supreme Court to the error. It is perhaps only a mistake or inadvertence. Even the Chief Justice is liable to mistakes, as all courts are. He is not divine. The defendant should not have been released upon that order, for the order is of no effect."

"I will let the matter drop until morning, and see if the mittimus has not been obeyed, and the defendant placed in custody. If he is not, I shall certainly ask that the High Sheriff be ordered to show cause," said Davis, in conclusion.

The question of the validity of the order made by Chief Justice Frear was presented to him during the afternoon, but no decision was reached. Mr. Lewis and Mr. Davis both appeared in the judge's chambers, and Chief Justice Frear promised to pass upon the matter this morning. Just before Judge Gear left the bench last evening, Davis burst into the courtroom and said, "Well, he promised to consider it and pass upon it in the morning."

"I can't see what there is to consider. It's plain enough," replied Gear.

It is reported on the streets that strenuous efforts were made to have Mr. Smith indicted by the grand jury for something in connection with the celebrated cartoon, but that the jury would not consent. Earlier rumors, pretty well authenticated, say that the grand jury was also pressed to indict him for the Gearville expose, but on investigation found that all the charges were true. Gearville has since been shut down.

The independent said the other evening that Mr. Smith was taken to the police station in the patrol wagon. This was untrue, although it had been said at the courthouse that Judge Humphreys was solicitous to have this done. The judge's bailiff, however, when judgment was passed, ostentatiously placed Mr. Smith's chair as nearly as possible to the prisoners' dock, which was occupied at the time by McCarthy, the negro alleged burglar, and others under indictment for crime. The fact was quite generally commented upon, especially in the contrasts it afforded with the arraignment of the editor of Judge Humphreys' late organ, on a charge of shooting a man.

NO ITEMS FOR THESE ISLANDS

Wilcox Will Have No Appropriations to His Credit This Term.

(Special to the Advertiser.)

WASHINGTON, D. C., Feb. 28.—The river and harbor appropriation bill will not be reported to the House till next Monday, but I learn on unquestioned authority that it will carry no items for Hawaii. Provision is to be made for Pearl Harbor with additional appropriation, but I understand that it will be cared for in another way.

The House Committee decided to leave off the provision for surveys of the harbors at Hilo, Kailua, Hokena, on the island of Hawaii, and Lahaina and Kahului on the island of Maui, Honolulu harbor on the island of Oahu, and Waimea on the island of Kauai. The House refused to include those in its bill last year, but they were put on by the Senate. It is probable that they will be put on by the Senate this year. There has been no hearing before the Committee touching Hawaiian harbor interests and with no one to push the matter there is little chance of action.

The other appropriation bills at this writing have included hardly anything of interest to the Territory save the usual routine appropriations. There is nothing before the Naval Committee regarding the Naval Station, but it is understood that a report may be made from the Navy Department later on that point.

ERNEST G. WALKER.

JAPANESE IN NEED OF SAMPLES

WASHINGTON, March 7.—Samuel S. Lyon, United States consul at Kobe, transmits to the State Department information regarding the National Industrial Exposition to be held under the auspices of the Imperial Japanese government at Osaka from March 1st to July 31, 1903.

A novel feature is the establishment of a special building for samples of articles produced or manufactured in foreign countries. It is not concealed that the primary object of this invitation is to afford Japanese manufacturers an opportunity to study the latest products of Western invention with a view to the improvement of Japanese industries. The Imperial government proposes to exempt exhibits for the samples building from the operation of the customs tariff, provided the articles be re-exported within two months from the date upon which the exposition shall close. It will also negotiate for special freight facilities for all such exhibits.

THE PRESIDENT WANTS TO MEET GOVERNOR DOLE

WASHINGTON, D. C., March 5, 1902.

The Pacific Commercial Advertiser, Honolulu, Hawaiian Islands, Per S. S. Peru from San Francisco, Cal.

Carter arrived Monday night. He paid his respects to the President on Tuesday. He was invited to the White House musicale that evening. Dined at the White House on Wednesday evening and discussed Hawaiian affairs. Nothing definite. There is a considerable boom in inside circles for Judge Estee as Secretary of the Interior when a vacancy occurs.

ERNEST G. WALKER.

WASHINGTON, D. C., March 6, 1902.

The Pacific Commercial Advertiser, Honolulu, Hawaiian Islands, Per Earliest Steamer from San Francisco, Cal.

Carter at the President's request today telegraphed to Dole to come to Washington immediately. Carter meets him here. May meanwhile return to 'Frisco. Tuesday evening's interview was occupied chiefly in answering the President's questions. Dole's friends regard the result as favorable. Carter refuses to say whether he recommended the removal. The President must tell that when ready. "Am glad Dole is coming," said Carter.

ERNEST G. WALKER.

The news of most local interest arriving by yesterday's steamer was the following Associated Press dispatch:

WASHINGTON, March 6.—As the result of two conferences with George R. Carter of Hawaii, the President today wired to San Francisco, to catch the steamer Coptic for Honolulu, a dispatch to Governor Sanford B. Dole, requesting him to come to Washington at his earliest convenience to discuss Hawaiian matters. Governor Dole some time ago expected to come here of his own motion, but later appeared to have changed his mind. The situation in Hawaii is so complicated that the President wants the best light obtainable on the subject. From the latest indications the President will take no radical steps in dealing with island politics, and talk of a clean sweep of executive and judicial officials there is unwarranted. Carter will remain in this country

until after Governor Dole's arrival at Washington.

The message received by Governor Dole is as follows:

Washington, Mar. 6th.
Hon. S. B. Dole, Honolulu:
President wishes you to come to Washington, and has asked me to remain until you arrive.
GEORGE R. CARTER.

Governor Dole was indisposed yesterday and kept to his house. He did not receive his mail until late in the day. He had received intimations as to the contents of the message and had given some consideration to the matter. He said after reading the message that he would go on to Washington either in the first boat or the one following it. He could not make any determination as to that until he had considered the matter fully, which will be done today.

INTERESTING LOCAL GOSSIP FROM THE FEDERAL CAPITAL

Talk About Hawaiian Governorship—Complete Change of Sentiment Concerning Judge Humphreys.

(Special to the Advertiser.)

WASHINGTON, D. C., March 3.—Although State Senator George R. Carter, of Honolulu, has not up to this date put in an appearance, the gossip about the governorship rages vigorously. Some things have undoubtedly been doing in the interim, but whether they will bear any fruit remains to be seen after the consultation with President Roosevelt. Some who have been anxiously awaiting Mr. Carter's coming have inclined to the opinion that he might have come here quietly and gone away, after an interview with the President. That opinion, so far as I am able to ascertain, after very careful investigation, is unfounded.

There is a strong belief in some quarters that, if President Roosevelt is determined to make a change in the governorship, Mr. Carter may loom up as a probability. This is strengthened by the information that Mr. H. P. Baldwin will not accept it, and that efforts have already been made to impress this fact upon the President. The telegraph service to New England,

whither Mr. Carter is supposed to have gone after leaving New York, continues to be crippled, and those who have been trying to learn of his whereabouts by wire, have not succeeded.

Mr. Edgar Cayless, of Honolulu, who was at the Capitol today, suggested a new gubernatorial candidate. "I am in no wise a candidate for appointment to succeed Judge Humphreys," said he by way of preface, "nor would I accept the judgeship under any circumstances. I hold principle ever higher than politics."

"If the wishes of the predominant element of Hawaii were respected, R. W. Wilcox would be appointed as Governor, but that is improbable in the extreme. Colonel Parker was certainly slated for the governorship, but vivisection has seemingly found his political anatomy. If he would accept it, and I am sure he will not, H. P. Baldwin will receive the appointment as Governor. Mr. Baldwin's refusal will leave the situation divided between Hon. George R. Carter and some good strong, clean man, whose appointment would tend most towards harmony."

"Sam Damon, as such a man, is the most available candidate at hand, and it is not improbable that he may be asked to accept it."

With Delegate Wilcox still confined to the home of ex-Queen Liliuokalani, there is little active work here in be-

half of the Home Rule propaganda. Mr. Cayless called to see him this afternoon and found him convalescing slowly.

There is no little expectancy from this end of the line over the long looked-for resignation of Judge Humphreys. It is remarkable the change in sentiment that has occurred since the Judge was here last summer. By courteous receptions to the newspaper men the judge succeeded in getting some rare matter in his own behalf injected into the columns of the New York dailies and other leading journals of the country. "I assisted him in doing that," said E. S. Little, who represented the defunct Republican here. "Duane E. Fox, the judge's attorney, helped along some, but, after all, I did the business."

"The judge is a pretty cheap proposition," continued Mr. Little, as he rode home the other evening on the fall end of a fourth street car. "He convinced the people here for a time, but they are getting on to him now. I believe he is bound to go after a little time. He is an element of discord in the Islands, and not fitted for the bench. I am satisfied that the President would be glad to be rid of him."

The correspondents of the New York papers that printed articles lauding Humphreys and his dispensation, along last summer, sing a like song. Robert L. O'Brien, one of the correspondents of the New York Evening Post, who wrote some complimentary things about Judge Humphreys, stated that he had learned things since then that caused him to regret what he had written at first. Mr. O'Brien said that Mr. Fox was the middle-man who brought him in contact with Judge Humphreys first. Major Dickinson, of the New York Tribune, who also wrote some complimentary things about the judge and his career in Hawaii, also said that Mr. Fox was the middle-man in his case.

At any rate, the clippings were carefully gleaned by Mr. Little and forwarded back to Hawaii for reproduction in Judge Humphreys' newspaper. Instances might be multiplied, but the surprising feature of the talks is the unanimity with which all declare their change of heart as to the merits of the controversy, although all agree that Judge Humphreys in his personal relations was most agreeable to them. The Hawaiian ditch bill still remains in committee. It was expected that a report would be made last Friday, but the committee took it up Saturday and entered into quite a discussion. There is a very strong determination, apparently, to make the bill very simple, its Hawaiian ditch bill very simple, to any one company. The measure may hang fire for some time yet. The opposition to it has been effective, to an extent, and will probably be able to dictate substantially the terms under which it becomes a law, if it does become law.

ERNEST G. WALKER.

M'BRYDE DEAL CANNOT BE MADE

An Official Report Against the Proposed Exchange of Land.

DEPARTMENT OF THE INTERIOR.
Office of the Assistant Attorney-General.
Washington, February 18, 1902.

The Secretary of the Interior, said: The Commissioner of Public Lands for the Territory of Hawaii, in a written communication, dated February 7, 1902, states that the McBryde Sugar Company, a Hawaiian corporation, has made application to exchange about 2,900 acres of Hawaiian relative to corporations and joint stock companies. At that time the power of Congress was supreme over the Territory of Hawaii and over the laws established therein. It could amend, modify, or repeal any law of said Territory, or directly legislate for it. In the exercise of its power to legislate for the Territory, Congress could revoke and repeal the laws under which any corporation was chartered, or limit the amount of real estate which any corporation operating within said Territory could thereafter acquire (Mormon Church v. United States, 136 U. S., 1, 45). That portion of the proviso of section 55 of the act to provide a government for the Territory of Hawaii (31 Stat., 141, 150), applicable to the present inquiry, is as follows:

Provided, That no corporation, domestic or foreign, shall acquire and hold real estate in Hawaii in excess of one thousand acres.

It is plainly evident, from the wording of the above, that Congress intended to limit the amount of real estate which any corporation operating in the said Territory could acquire and hold, to 1,000 acres. The power of Congress to enact such provision is unquestionable. I am of the opinion, and so advise you, that the exchange of lands requested by the McBryde Sugar Company is prohibited by the proviso in section 55 of the aforesaid act.

Very respectfully,
WILLIS VANDEVANTER,
Assistant Attorney General.

Approved February 18, 1902.
E. A. HITCHCOCK,
Secretary.

The Cunard Steamship Company will build two steamers over 700 feet long and having 4,500 horse-power. The speed will be twenty-five knots.

Santos Dumont says he will make no more flights in France, but will operate in England and America hereafter.

Luclen Young has been nominated to be a commander in the navy.

APPEAL TO BOND HOLDERS

Kona Directors in Letter Make Request.

ASK THAT THIS CROP BE MILLED

First National Bank as Trustee Receives the Statement of Conditions and Needs.

KONA affairs are now to a great extent in the hands of the bankers who, as trustees for the bondholders, have been requested to step into the breach and provide the money for the taking off of the crop. This move was decided upon at a meeting of the board of directors which was held yesterday morning.

There had been many conferences during the week in which the affairs of the plantation were placed before several capitalists of the city, but the result has been that in each case there was a disinclination to take up the matter and push it. The meeting yesterday morning was a full one, and the board at that time decided to make an appeal to the bondholders to protect the property and the security at the same time, by taking off the present crop.

The letter could not be secured, as neither the secretary of the board nor the officials of the First National Bank would give out the correspondence. Cashier Cooper of the bank said that a letter had been received and the result was that a meeting of the board of directors would have to be held for the purpose of taking up the matter at length. It is understood that the letter is a recital of the moves made in the past few weeks, and that a statement of the affairs of the corporation is made.

The letter closes with an argument setting forth the advantages which are to be gained by the bondholders taking up the work of the present season, thereby enabling the corporation to make the present crop pay and thus putting the plantation on its feet. This state of affairs would necessitate the immediate action of the bondholders, and it is understood that there will be a meeting for the purpose of discussing the project, held at once.

Should this not be done the consensus is that there will have to be liquidation of the affairs of the plantation, which would take some time and which would inject into the matter some very interesting problems, as there does not appear to be in the field at this time any purchaser for the estate.

Estee is Not a Candidate.

Judge Estee, when asked last evening concerning the report of his candidacy for the Secretaryship of the Interior, disclaimed all knowledge of it, saying that he had never heard the subject mentioned. He said he was not a candidate for any political office, and no friend of his had at any time indicated and intention to press his name. Finally he said a cabinet minister never had been drawn from a Territory.

CONVICT WOODS STILL AT LARGE

Woods, the escaped negro convict, is still at large. Yesterday morning his prison clothes were found near the Makiki graveyard.

About noon word was received at the police station that Woods had been seen in Kalihi, on the Kalulani tract. Officers were sent to the district, but up to 2 o'clock this morning nothing had been seen of the fugitive.

High Sheriff Brown yesterday offered a reward of \$100 for the convict's capture.

There were no developments in the harbor mystery yesterday.

Last night about six o'clock, Captain Parker was riding up Liliha street on a Rapid Transit car. Conductor S. M. Griggs asked the officer for his fare, and Parker displayed his badge. Griggs said that he would have to pay, and when Parker refused, is alleged to have nearly choked him and kicked him off the car. A charge of assault and battery on Captain Parker has been preferred against Griggs.