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MANKICHI DECISION

Text Shows Marked Difference of Opinion.

Majority Upholds the Contentions of Dole.

Minority Criticises Attempt of Court to Legislate and Depicts Possible Evils.

Complete reports of the decision of the United States Supreme Court in case of Osaki Mankichi, received on yesterday's steamer indicate that the majority followed out closely the arguments advanced by Attorney General Dole in the courts here, and which were sneered at as ridiculous by some of the local judges.

The decision is heralded as the most important since the rulings in the Porto Rican and Philippine cases. The dissenting opinions are interesting as voicing the sentiment against further extension of America's domain.

The court stood exactly as then, with the exception that one of the five Justices, White, who agreed with the majority in its judgment, differed with it as to the means by which the result was reached, and Justices Holmes and Day took the positions held by their predecessors, Justices Gray and Shiras. The majority was composed of Justices Brown, White, McKenna, Holmes and Day; those dissenting were Chief Justice Fuller and Justices Harlan, Brewer and Peckham.

Justice Brown, who delivered the opinion of the court, held that Mankichi had been properly convicted. He said, in effect, that where the language of the law was evidently against the intention of Congress, it should not be construed literally; otherwise it would result in freeing all the criminals convicted under it, and this contingency could not have been foreseen when the Newlands resolution was adopted. He added:

If the words of the Newlands resolution, adopting the municipal legislation of Hawaii not contrary to the Constitution of the United States, be literally applied, the petitioner is entitled to his discharge, since that instrument expressly requires that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury," and that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed."

But there is another question underlying this and all other rules for the interpretation of statutes, and that is, What was the intention of the legislative body? Without going back to the

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famous case of the drawing of blood in the streets of Bologna, the books are full of authorities to the effect that the intention of the law-making power will prevail even against the letter of the statute, or, as tersely expressed by Mr. Justice Swaine: "A thing may be within the letter of a statute and not within its meaning, and within its meaning, though not within its letter. The intention of the lawmaker is the law."

Justice Brown cited many other opinions, among them that of Chief Justice Fuller, that "nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion." Continuing, Justice Brown said:

There are many reasons which include us to hold that the act was not intended to interfere with the existing practice when such interference would result in imperiling the peace and good order of the Islands.

From the terms of this resolution it is evident that it was intended to be merely temporary and provisional; that no change in the government was contemplated, and that until further legislation, the Republic of Hawaii continued in existence. Even its name was not changed until 1900, when the "Territory of Hawaii" was organized.

In conclusion Justice Brown said: "Inasmuch as we are of the opinion that the status of the islands and the powers of the provisional government were measured by the Newlands resolution, and the case has been argued upon that theory, we have not deemed it necessary to consider what should have been its position had the important words, 'not contrary to the Constitution of the United States,' been omitted, or to reconsider the questions which arose in the insular tariff cases regarding the power of Congress to annex territory without at the same time extending the Constitution over it.

Chief Justice Fuller and Justice Harlan delivered the dissenting opinions. With marked emphasis the Chief Justice declared that by the concession by Hawaii of complete sovereignty to the United States, recited in the resolution of annexation, the Hawaiian Islands passed under the provisions of the Federal Constitution. It was almost criminal to tamper with the plain words of this resolution, "not in conflict with the Constitution of the United States." The judiciary was not at liberty to make an exception, however great the exigencies of the case would seem to require it.

The majority opinion he maintained was a usurpation by the court of the law-making power, which was vested in Congress alone. It was plain to him that immediately upon annexation the Constitution of the United States became the supreme law of Hawaii.

Justice Harlan, who delivered his opinion in a manner even more forcible and dramatic than that of the Chief Justice, maintained that the view of the majority was that "Congress, at its discretion, could have kept in force the municipal legislation of the Hawaiian Islands relating to criminal matters, although such legislation may have been in direct conflict with the provisions of the Constitution of the United States." He added:

I dissent altogether from any such idea. It assumes the possession by Congress of power quite as omnipotent as that possessed by the English Parliament. It assumes that Congress, which came into existence only by virtue of the Constitution, may withhold the fundamental guarantees of life and liberty from peoples who have come under our complete jurisdiction, and over whose country we have acquired the authority to exercise sovereign dominion. In my judgment, neither the life nor the liberty nor the property of any person within a territory or country over which the United States is sovereign can be taken, under the sanction of any civil tribunal, by any form of procedure inconsistent with the Constitution of the United States.

If the accused had committed the crime with which he is here charged, in the Territory of Arizona; if he had been convicted of murder in any court in that Territory, except under a presentment or indictment of a grand jury, and by the unanimous verdict of a petit jury; and if he had been then sentenced to be hanged and was hanged, the Judge of that court would have been guilty of judicial murder. Of that the decisions of this court leave no room to doubt.

In my opinion the Constitution of the United States became the supreme law of Hawaii immediately upon the approval of the joint resolution of 1898, and without any action upon the part of Congress. From the moment that resolution became a law, every human being in Hawaii, charged with the commission of crime there, could rightly insist that neither his life nor his liberty could be taken as punishment for crime by any process or as the result of any mode of procedure that was inconsistent with the Constitution of the United States.

Can it be that the Constitution is the supreme law in the States of the Union, and in the organized Territories of the United States between the Atlantic and Pacific oceans, and yet was not the supreme law in territories and among peoples situated like the Territory and

people of Hawaii, and over which the United States acquired all rights of sovereignty of whatsoever kind? A negative answer to this question and a recognition of the principle that such an answer involves, would mean that the benefit of the provisions designed for the protection of life and liberty may be claimed by some of the people subject to the authority and jurisdiction of the United States, but cannot be claimed by others equally subject to its authority and jurisdiction. It would mean that the will of Congress, not the Constitution, was the supreme law of the land for certain peoples and territories under our jurisdiction.

It would mean that if this people do not retrace their steps, if the principles now announced should become firmly established, the time may not be far distant when under the exactions of trade, and commerce, and to gratify an ambition to become the greatest political power in all the earth, the United States will acquire territories in every direction which are inhabited by human beings over which territories, to be called "dependencies," we will exercise absolute dominion and whose inhabitants will be regarded as "subjects," to be controlled as Congress may see fit, not as the Constitution requires, nor as the people governed may wish.

CADET APPOINTED.

Notice was received yesterday that a cadet had been appointed to represent Hawaii. There has been considerable rivalry to secure the appointment but at last comes the welcome news that the new territory is to share in the defense of the nation. Coming from a reliable source the advice may be thoroughly relied upon. Last evening many well wishers called upon the happy appointee and offered hearty congratulations. When the cadet sails for the mainland the Aloha of our land will go with The Douglas Patent Closet, going forth to represent our section of the great nation.

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