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MR. HATCH WRITES

About Some Editorial Opinions in This Paper.

THE CONSTITUTIONAL QUESTION

Presents Powerful Arguments to Show That the United States Constitution is in Force Here.

Editor of ADVERTISER.

Dear Sir: Permit me to express my dissent from the constitutional views so repeatedly presented in the Advertiser. I believe that they are both unsound from a legal standpoint and charged with possible injury of the gravest kind to this community.

My view is that the constitution of the United States belongs to us; that it became extended to these Islands by the act of annexation, and that no power exists which can deprive us of it. We can not secede; neither can we be cast off. We are part and parcel of the United States. I deny that the Constitution is subject to the control of Congress. It can not be made a matter of legislation. Your argument that it does not apply to these Islands until Congress so enacts would imply that Congress could extend it or not; or could extend it and then take it away; or could take it away from any other portion of the country. To my mind the better theory is that the Constitution applied by its own inherent force the moment the act of political union was completed. It applied as a necessary incident to the status given us as a part of the United States.

Annexation having been brought about in a constitutional method, by the exercise of both the treaty-making and legislative powers of the two countries, constitutes a contract of the very highest conceivable character. We in Hawaii should be the last to concede that one party to the contract by its sole act can destroy it; as, for instance, by making us a colony. Can Congress decree that we shall be taken to be a part of Guam? No! unless it repudiates the contract by which we were made a part of the United States. The statutes of the United States must be extended by act of Congress; the distinction between statutes and the Constitution in this connection is obvious.

There seems to exist in certain quarters much nervousness as to the consequences which would follow if it were admitted that the Constitution of the United States is now the law of the land; notably amongst other instances, with the apologists for contract labor. We ought to all rejoice that that institution is moribund. We could take more pride in ourselves if this blot could have been removed by act of our own before the enactment of a plan of government for us by Congress.

You quote Senator Morgan, but the quotation does not support your conclusion. We all know he considers us a part of the United States. We all know that his Americanism is not of the thin and watery variety and that his respect for the Constitution is punctilious. He will never be found holding that the Constitution does not extend to every nook and cranny of the United States. He considers the situation here anomalous; probably because he takes it that two constitutions, or one and part of another, apply and obtain at the same time. That of the United States is the only one of any vitality. How little of that of the Republic of Hawaii remains will be appreciated when it is remembered that not a single officer of the local government holds office under it. They all hold under President McKinley. His power to appoint is surely not derived from the constitution of the Republic of Hawaii. No more of that remains than can be construed to be municipal law under the terms of the joint resolution of annexation. Would it be held that after Congress shall extend the laws of the United States to Hawaii that the constitution of Hawaii still remains in force? Must a constitutional convention be convened to repeal it piece-meal? Having served its purpose in helping to tide over a transition period, that constitution has passed into history, together with the republic founded upon it. It was abrogated by necessary intentment by the very act of union.

F. M. HATCH.
Honolulu, July 21, 1899.

[What the views of our Supreme Court are regarding the extension of the Constitution to this territory, or what the views of the Advertiser are on the subject will not have the slightest influence in Congress. As Mr. Hatch correctly states, this little Republic made a contract of annexation with the United States, which secured to Hawaii whatever rights any territory has under the Constitution and laws. The contract is executed and is in full force. It is the intention of the administration to carry out this special contract by further legislation which will in no way whatever discriminate against Hawaii. The enemies of Hawaii will, no doubt, make some effort to secure laws discriminating against her, but it is well understood that the President, Senator Morgan and other friends of Hawaii do not anticipate any serious trouble in securing the necessary legislation.

But the contract of annexation is in force, and it is not for Congress, but for the Supreme Court to say whether or not the Constitution applied by its inherent force at the moment the contract of union was made. If the Constitution applies, the

Supreme Court will promptly declare any discriminating legislation to be unconstitutional and void. We have our rights fixed by the contract of union, and Congress cannot disturb them. If Mr. Hatch's views are correct and we believe that there are strong arguments in support of those views, he will see that the Supreme Court of the United States will easily check any discriminating legislation. It is now beyond the power of Congress to change, even if it desired to do so, the political agreement it made with Hawaii which is that it shall become an integral part of the American soil without any qualifications whatsoever. There is no such agreement existing between Porto Rico, the Philippines and the United States.

Aside from this view of the matter, it seems to us that our territorial Supreme Court, by its adjudication, avoided placing the government at Washington in a most embarrassing position.

If our territorial court had declared that the Newlands act, which provides that "the existing customs regulations of the Hawaiian Islands and other countries shall remain unchanged," was void because it was unconstitutional, and had also declared our municipal customs laws to be void, because unconstitutional, this Republic or imperium in imperio as Senator Morgan calls it, would be left without any laws regulating duties, and a large source of our revenue would have been cut off. Our Supreme Court could not equalize the duties, because a judgment to that effect would be simply amending an unconstitutional law.

The error of our territorial court, if any, is in passing upon a Federal question entirely beyond its jurisdiction. It has attempted to construe the constitutional relations of the Federal government to these Islands, and there is no power granting it jurisdiction to do so.

If it had said, "we will declare our municipal customs laws valid under the Newlands act, until a competent Federal court declares otherwise," it would have kept well within its jurisdiction and left the "wrestling" to a court legally competent to decide it. It has decided the case, in all probability as the U. S. Supreme Court has decided it, but has it not passed upon a question beyond its jurisdiction? The Editor.]

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- "The Rough Riders," by Theodore Roosevelt.
- "The Trail of the Gold Seekers," by Hamlin Garland.
- "The Downfall of the Dervishes," by E. N. Bennett.
- "Waldtraut," by M. Rudiger; translated by C. LeDuc, Crook, Ph.D.
- "The Minor Tactics of Chess," by F. K. Young and E. C. Howell.
- "The Major Tactics of Chess," by F. K. Young.
- "Outsiders," by Robert W. Chambers.
- "Dross," by Henry Seton Merriman.
- "With Kitchener to Khartum," by G. W. Stevens.
- "Prisoners of Hope," by Mary Johnston.
- "The Open Question," by Elizabeth Robins.

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