

Daily Bulletin
Pledged to neither Sect nor Party,
But established for the benefit of all.
FRIDAY, MAR. 21, 1890.

MANDAMUS DENIED.

The Controversy between Cabinet and Auditor-General.

INTEGRITY OF THE AUDITOR'S ACT PRESERVED.

Full Text of Judge McCully's Decision.

In the Supreme Court of the Hawaiian Islands. — Before Mr. Justice McCully. — In Chambers. In the matter of the application of His Excellency L. A. Thurston, Minister of the Interior, versus Geo. J. Ross, the Auditor-General, for a writ of mandamus.

The Auditor-General refused to approve sundry bills for expenses connected with the employment of prisoners upon a public work, viz: the Volcano Road, for which the Legislature had appropriated a specific sum, these bills not having been drawn against said sum, which had been already expended, but against the fund for the "Support of Prisoners."

Held, that it was a matter within the judgment and discretion of the Auditor to determine in any case whether a bill was drawn upon a fund which was applicable to it.

Held, that the Court would only ascertain the action of the Auditor to determine if he had abused his discretion, or if his judgment was founded on an illegal basis.

The writ was denied.

The case was heard on the petition and answer without the introduction of testimony. They are here set forth in full.

"The petition shows unto this Court:

"That the complainant herein, L. A. Thurston, is the Minister of the Interior for the Hawaiian Kingdom.

"That George J. Ross is the duly appointed and commissioned Auditor General of the Kingdom and as such is charged with the auditing and approving the accounts and disbursements of the Hawaiian Government.

"That Section 215 of the Civil Code reads as follows: 'All prisoners sentenced to imprisonment at hard labor shall be constantly employed for the public benefit on the public works, or otherwise, as the Marshal, with the approval of the Minister of the Interior, may think best,' and Section 8 of an Act entitled, 'An Act to amend the existing laws relating to the road tax,' dated August 23rd, 1862, reads as follows:

"The Minister of the Interior is hereby empowered in his discretion, to detail for labor on any public road, upon application to that purpose from any Road Supervisor, as many prisoners as he may deem necessary for such work; said prisoners to be under the care of their usual overseers and subject to the Road Supervisor only as far as regards the mode of their employment."

"That there are now about 300 prisoners sentenced to imprisonment at hard labor, confined in the various jails of the kingdom.

"That in accordance with the mandate of said first above mentioned statute and in pursuance with the discretion vested in him by the said above recited act of 1862, the said Minister has during the twenty-three months of the biennial period now last past, caused all of such prisoners to be employed upon the public works and more particularly upon public roads.

"That during such period the cost of the food, clothes, guards and lunas necessary for the support, maintenance and guarding of all prisoners, including said prisoners in Hilo and Puna, has been charged to the appropriation entitled 'support of prisoners.'

"That of said prisoners about fifty have, during said period, and now are confined in certain jails situate in the districts of Hilo and Puna in the Island of Hawaii, and in accordance with the law above mentioned and under the discretion vested in the said Minister, he has caused said prisoners to be employed upon the public roads located in the said districts of Hilo and Puna, including the public road extending from Hilo to the Volcano of Kilauca.

"That the records of the Interior Department show that since the commencement of the keeping of such records it has always been the custom to charge all of such expenses to such appropriations.

"That the defendant hereto has during the present biennial period and up to the present time, never refused to audit any bills incurred for the support or guarding of said prisoners or any other prisoners, until the presentation to him of certain bills for food furnished to said prisoners and the bills for salaries of guards of said prisoners, at Hilo and Puna, incurred during the

month of January, 1890, a copy of which bills is hereto annexed and marked 'Exhibit A' and made a part hereof. That said bills were legitimately and lawfully incurred by the Department of Government authorized to incur them in accordance with the long established precedent and custom of the said department, and that the material services therein described and claimed for have been furnished to the said Interior Department and the amounts therein severally claimed, are lawfully due to the several persons therein claiming the same.

"That there is no other appropriation available from which said bills can be paid, other than the said appropriation for the support of prisoners.

"That by reason of the said refusal of defendant to audit said bills the complainant is unable to lawfully pay the same, thereby causing unnecessary and uncalled for injury and loss to the persons who furnished such material and rendered such services, and preventing the complainant from properly carrying out the duties of his office of Minister of the Interior.

"That on or about the 24th day of February, 1890, the said bills were in due and regular course of business presented to the defendant hereto, and he was requested to audit the same, but defendant refused and still refuses to audit the same, claiming that such bills should be charged to the specific appropriation for public work upon which the prisoners concerning whom such bills have been incurred are at the time being engaged.

"That there is a sufficient balance of the said appropriation for Support of Prisoners to pay the said bills if the same are properly audited.

"That if said bills are not audited it will entail irreparable loss to the Hawaiian Government and to the public welfare by reason of the fact that the said Minister and the other proper authorities charged therewith will be unable to obtain guards and food for the care and maintenance of said prisoners unless they can be paid for.

"That the auditing and approving of said accounts is a duty attached to the office of the said George J. Ross as Auditor-General and may be legally required of him.

"Wherefore your petitioner prays that a Writ of Mandamus may be issued and directed to the said George J. Ross, Auditor-General, commanding and enjoining him to audit and approve the bills and accounts according to schedule 'A' hereto attached, or to show cause if any he has for not doing so before this Honorable Court at a day and place to be fixed.

"And your petitioner will ever pray, etc."

ANSWER.

"Said defendant George J. Ross by protestation not waiving any right of exception to the insufficiencies of said petition nor to the right of said petitioner to maintain the same, for return and answer to such portions as he is advised it is necessary to answer, says:

"That he admits that he is Auditor-General of the Kingdom. And he says that the auditing or refusal to audit any bill presented to him involves the exercise of his official judgment and discretion, and is not subject to judicial control by mandamus.

"And for further answer this defendant says that he admits that the Minister of the Interior during the twenty-three months last past has caused all of the prisoners sentenced to imprisonment at hard labor, in all about three hundred in number, to be employed upon public works and public roads.

"That he admits that the cost of food, clothes, guards and lunas necessary for the support, maintenance and guarding of all prisoners has been charged to the appropriation entitled 'Support of Prisoners,' but denies that the pay of lunas is properly so charged.

"That he admits that about fifty prisoners are now confined to certain jails in the districts of Hilo and Puna, and have been employed upon public roads, including the public road extending from Hilo to the Volcano of Kilauca; and says that they have been employed in constructing the road last named.

"That he is ignorant as to the custom of the Interior Department in regard to charging such expenses to said appropriation.

"That he admits that he has not heretofore refused to audit bills for the support of prisoners until the presentation of the bills referred to in said petition.

"He denies that said bills were legitimately and lawfully incurred by the Department of Government authorized to incur them in accordance with the long established precedent and custom of said department; and he says that when prisoners have been employed upon public works, the custom has been to make a charge against the appropriation authorizing such work for the labor of such prisoners, and to turn the same into the Treasury as a Government realization which the complainant in this case has not done.

"That he admits that the materials and services claimed for have been furnished.

"That he denies that his refusal to audit said bills prevents the complainant from properly carrying out the duties of his office as Minister of the Interior.

"That he admits that on or about

the 24th of February last said bills were presented to him and he refused to audit the same. And he says that during the time covered by said bills, said prisoners were employed upon a public work, to wit: the construction of a road from Hilo to the Volcano of Kilauca for which a special appropriation was made by the Legislature; and he says that while so employed said bills should not be charged to the appropriation for the support of prisoners. And he further says that the appropriation last named at the time said bills were presented to him was exhausted.

"And he denies all other allegations in said petition contained.

"Wherefore he prays said proceedings may be dismissed."

BY THE COURT.

"It is first to be considered whether the auditing or refusal to audit any bill presented to him involves the exercise of his official judgment and discretion." Is it subject to judicial control by mandamus?

"The terms audit and refusal to audit are here used in a sense generally employed and understood, but it seems to me a discrimination may be made with advantage in accuracy. It is not intended by the words refusal to audit, a refusal to examine, literally to hear, the account presented, but a refusal to approve the account.

"The petition in this case alleges in fact not a refusal to audit, but a refusal to approve certain accounts and the Court is asked to command the respondent to approve them. To approve them for what and as what? The respondent defends his action by stating that the prison labor, concerning which the expenses in these bills were incurred, was performed upon a work for which a specific appropriation had been made, viz: the Volcano Road, and in effect, that the bills were drawn upon an appropriation to which they were not chargeable, viz: that for the support of prisoners.

"Has the Auditor-General authority to consider and determine whether accounts are drawn properly on their appropriation items, and to refuse approval if he considers that they are not? We must find the answer in the language and scope of the statute which institutes the office of Auditor-General, [C. L. p. 608]. His duties relate to the receipt of moneys and to the disbursement of them. It is only with the latter that this case is concerned. By Section 6 the Minister of Finance is required from time to time to calculate the amount of moneys likely to become due and payable during a period not exceeding one month ensuing, setting it forth in a schedule under the same divisions and heads that shall have been employed in the appropriation thereof, which schedule is to be transmitted to the Auditor-General. By Section 7 before countersigning any such instrument the Auditor-General shall ascertain if the sums therein mentioned are then (1) legally available for and (2) applicable to the service mentioned in the instrument, and so finding small countersign and return the instrument to the Minister, provided that in case he shall find that the sums mentioned, or any of them, are not then legally available or applicable to the service mentioned he shall return the instrument to the Minister for correction, attaching thereto a statement of what he has found to be not legally available or applicable. By Section 9, every account shall be considered duly authorized that is in accordance with any existing law or regulation, or has been directly sanctioned by one or other of the responsible Ministers of the Crown and covered by any appropriation Act in force at the time.

"The only construction in my view to be placed upon the statute is that the Auditor has the function of determining if the account is drawn against the proper appropriation, and whether there is a sufficient unexpended balance thereof. For a broad illustration taken from two adjacent items in the appropriation bill, an account for 'repairs and furniture of the Insane Asylum' would not be 'applicable' to the appropriation for the 'Honolulu Fire Department,' and such an account being presented for audit would presumably not be countersigned. And, presumably the Court if applied to, would interfere by injunction to prevent countersigning. Is the act of the Auditor in allowing or disallowing an account, in respect to its being 'applicable to the service mentioned' ministerial or one of judgment, opinion, discretion? I think there can be no doubt of its being of the latter description? In the case before us the Minister of the Interior, who is not to be presumed to be designedly making a draft which is not in accordance with the law, and seeking too to enforce it in Court, differs in opinion from the Auditor-General. It is a matter then of judgment. In the case of Castle v. Kapena, 5 Haw. at p. 37 the Court says: 'The Courts will not undertake to guide the judgment and discretion of public officers, which would be to assume the supervision of all branches of Government, but will only intervene to compel the performance of purely ministerial duties.' This doctrine will not be controverted. High on Extraordinary Legal Remedies, in Section 42 says, that 'it is a fundamental rule underlying the entire jurisdiction by mandamus, and especially applicable in determining the limits to the ex-

(Continued on page 3.)

LEWIS J. LEVEY, REAL ESTATE AND GENERAL AUCTIONEER.

AUCTION SALE

Crown Land Leases

By order of the Commissioners of Crown Lands, the leases of the following lands for a

TERM OF TWENTY YEARS

Will be sold at Public Auction, at the Auction Rooms of L. J. Levey, Honolulu,

On MONDAY, March 24, 1890,

AT 11 O'CLOCK NOON.

- 1. The Fishpond known as P-o-naha, situate at Waikaloa, District of Ewa, Oahu, together with a strip of land 120 feet wide bordering along said Fishpond; subject to right of way granted Oahu Railway & Land Co. Area 29 acres. Upset price \$150 per annum.
2. All of the upland adjoining the above Fishpond and running up to the Government Road to Waialae, containing 43 acres. Upset \$100 per annum.
3. The land known as Makawai, situate at Koolapoko, Oahu, excepting the rice lands and a small portion of the Kula. Good grazing land and well watered. Area 1222 acres more or less. Upset \$250 per annum.
4. The Ahupuaa of Honokawai, in Kaunapali, Maui, except the Taro lands and 5 lots of Kula land by survey 29 42-100. Principally grazing land, and comprises an area of 2220 acres more or less. Upset \$200 per annum.
5. The Ahupuaa of Wahiakuli or Mala, situate in Lahaina, Maui. Grazing land. Area 2,807 acres. Upset \$200 per annum.

JUST RECEIVED

Per Barkentine S. N. Castle a fresh supply of

Hay & Grain

FOR SALE BY J. F. COLBURN & Co., 1505 Queen Street. 11x

Cutlery & Stable Supplies!

The Pacific Hardware Co. Have just received a fine line of

G. Wostenholm's I.X.L. Cutlery; Also, Chamo's Skins,

HORSE BRUSHES & STABLE

Supplies Generally. 11x

JOHN ASHDOWN

Of San Francisco. Practical Piano, Fips & Reed Organ Tuner & Repairer.

Having worked in some of the largest piano and organ factories in the United States of America, I am fully able and prepared to do all kinds of repair work in the most satisfactory manner.

My office can be hit at H. F. Williams's Jewelry Store, Fort Street, at the Advertiser office, or through Mutual Telephone No. 347. 706 1m

Dr. GEO. P. ANDREWS.

Residence & Office: Corner King and Alapai streets. 502 1w*

BILLS for BALL.

ALL bills against the ball committee of Co. A, Honolulu Rifles, will be received by the Chairman, E. B. THOMAS, P. O. Box No. 117. 505 1w

ELECTION of OFFICERS.

At the annual meeting of the People's Ice & Refrigerating Co. held TUESDAY, March 19th, the following officers, who constitute also the Board of Directors, were elected: W. O. Smith, President; John Austin, Vice-President; G. P. Castle, Secretary; C. R. Bishop, Treasurer; T. W. Hobron, Auditor. G. P. CASTLE, Secretary P. I. & R. Co. 50 10t

Real Estate For Sale.

TWO Houses and Lots on Robello Lane, Palama. Convenient to steam and tram cars. Very healthy locality. Lot on King street, near Hamauku's Lane. For particulars apply to JOHN F. BOWLER, Or Chas. T. Gulick. 490 3m

THE MUTUAL LIFE INSURANCE CO., OF NEW YORK

Is issuing a new form of insurance which provides, in the event of death, for a return of all premiums paid in addition to the amount of the policy, or, should the insured survive a given number of years, the Company will return all the premiums paid with interest; or, instead of accepting the policy and profits in cash the legal holder may, WITHOUT MEDICAL EXAMINATION and WITHOUT FURTHER PAYMENT OF PREMIUMS, take in lieu thereof the amount of policy and profits in FULLY PAID UP insurance, participating annually in dividends.

Remember, this contract is issued by the oldest Life Insurance Company in the United States, and the Largest Financial Institution in the World, its assets exceeding One Hundred and Twenty-Six Millions of Dollars. For full particulars call on or address

S. B. ROSE, General Agent for the Hawaiian Islands.

LOVE'S BAKERY and COFFEE SALOON, NUUANU STREET.

ALWAYS ON HAND AND TO ORDER

Fresh Cakes, Pies, Buns, Rusks, Doughnuts, Picnic Rolls,

Milk Bread, Graham Bread, Rye Bread, French Bread, Family Bread, Twist Bread, Soda Crackers, Butter Crackers, Boston Crackers, Water Crackers, Graham Crackers, Shortly Crackers.

Medium and Saloon Bread, Jumbles, Ginger Snaps, Coffee Cakes, Etc., Etc.

And will be DELIVERED FREE OF CHARGE to any part of the city. BILL OF FARE: Coffee, Tea, Chocolate & Milk, Soused Pig's Feet, Cold Ham, Spiced Tongue, Spiced Beef, Salads, Etc.

FINE HAVANA, MANILLA AND AMERICAN CIGARS!

A LARGE ASSORTMENT OF Pipe & Cigarette Tobacco, Pipes, Cigar & Cigarette Holders, Cold Drinks, Etc. Open from 3:30 A. M. until 9:30 P. M. Saturday night, open all night. Bell Telephone 282. Mutual Telephone 241. Post Office Box 178. 487 1m

TAHITI LEMONADE WORKS COMPANY.

D. T. BAILEY, Manager.

MANUFACTURERS OF TAHITI: LEMONADE, LEMON, : CREAM :and: PLAIN : SODA,

Sole Proprietors of BAILEY'S SARSAPARILLA & IRON WATER, Ginger Ale, Hop Ale, Grenadine, Raspberryade, Sarsaparilla, Mineral Waters, Etc.

TELEPHONE 297.

All communications and orders should be addressed to

BENSON, SMITH & CO., Agents.

389 1m

Gate City Stone Filter!



These Filters are easily cleaned, and NEVER become CRACKED or CRAZED by change of temperature of the water.

The Filtering Medium is a NATURAL STONE, mined from the earth. It is unlike any other stone.

It Does Not Absorb and Become Foul!

IMPURITIES never PENETRATE it, but lie on the surface, and internally the stone remains as pure and white after years of use as when taken from the mine.

The Gate City Stone Filter is a perfect success. It is the only real filter I have ever seen. I would not be without one for any consideration. It converts our lake water into the best drinking water in the world.

HENRY M. LYMAN, M. D., 323 West Adams St., Chicago.

For Sale by HAWAIIAN HARDWARE Co., Opposite Spreckels & Co.'s Bank, Fort street, Honolulu. 49 1t

500 GALLON IRON

Water Tanks!

JUST RECEIVED!

FOR SALE BY THE

UNION FEED CO.

478 1m

EGAN & GUNN

HAVE JUST RECEIVED Ex AUSTRALIA

A Choice Line of Dry & Fancy Goods,

INCLUDING Kid Gloves from 5 to 20 Buttons, Hosiery, Satines, Scotch Ginghams, latest patterns; Woolen Dress Goods,

ALSO, A CHOICE LOT OF Boys', Youths' & Children's Clothing, Trunks, Bags & Valises.

REMNANT SALE REMNANT

Our Great Annual Remnant Sale, which is so eagerly looked for by our customers

COMMENCES THIS SATURDAY

And will surpass any that has ever taken place at this or any other house.

REMNANTS IN ALL DEPARTMENTS!

We must sell our Remnants and you will be glad to buy them at low prices at which they are offered. Be sure to be on hand Saturday.

N. B.—All Goods Marked with Plain Figures and Sold for Cash Only

Chas. J. FISHEL'S, The Leading Millinery House, Corner Fort & Hotel sts.

"TEMPLE OF FASHION"

CORNER HOTEL & FORT STREETS.

Great Reduction Sale!

AFTER TAKING STOCK I HAVE REDUCED MANY LINES OF GOODS.

IMMENSE BARGAINS ARE OFFERED OF THE FOLLOWING GOODS

Till February 15th, Only.

124 pair of Undressed Kid Gloves!

6 and 8 Buttons in perfect order at \$1 a pair—Great Bargains. All my DRESS GINGHAMS about 140 pieces to select from are offered at Cost Price. A small line of

Scotch Ginghams at a Great Reduction!

READ THIS—A large assortment of—READ THIS WHITE DRESS GOODS, Such as Piques, Embroidered Swisses, India Linen, Plain Swiss, Nainsook and many other lines of White Goods. I will sell at such a price that everybody will buy them.

Remember, February 15th will close this Sale. S. EHRlich, Corner Hotel & Fort Streets. Feb 1-90