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THE DECISION

(Continued from Page 7)

the meaning of the will, without being bound by the translation used in the Hawaiian courts. After that he went into the investigation of the accuracy of the translation of the will, upon which the Hawaiian courts made their decision.

Cut Gordian Knots

"You will observe that to get away from the Hawaiian decisions, which bound him like two Gordian knots, he had to cut them. The first knot was the first case, in which the will was construed to mean that Irene II took the fee simple. The Federal Judge decided that he had the power to make an independent translation upon which to base his decision. After making a new translation, or giving the Hawaiian words a meaning other than that adopted in the Territorial courts, he decided that the will intended to give the daughter only a life estate.

"The second knot, the second decision, is cut with the determination that such decision also rests upon the false premises, a mistaken construction of the will.

"I have answered you, so at length, to show to you that the whole basis of the federal courts differing with the local court is the virtual finding of new fact, though the original translation, adopted by the attorneys before him on an agreed statement of facts, was identical with the old translation. Judge Dole, however, refused to be bound by the agreed translation and went into the matter anew.

"This aspect also explains the attitude of the court of appeals. They would be very slow to interfere with Judge Dole's decision so far as it relates to findings of fact. This translation was a finding of fact.

"Imagine the bewilderment of the learned gentlemen in their magnificent chambers in the postoffice building in San Francisco, trying to decide from the briefs what is the true translation of the few Hawaiian words which make all the trouble.

The Difficult Part.
"The difficult part of the will is found in the clause in which John II appoints two executors, one of them A. F. Judd, late chief justice, to be guardians of his daughter, and then giving them complete control of the property, in the following words: 'THEY TWO ALONE SHALL HAVE THE SOLE CARE OF IT THE INCOME UNTIL SHE COMES OF AGE OR HAS CHILDREN OF HER OWN; THEY SHALL BE EXECUTORS DURING THE LIFETIME OF MY DAUGHTER AND HER CHILDREN IN ACCORDANCE WITH MY WISHES, ETC., ETC., AND FURTHER IF MY DAUGHTER SHALL DIE LEAVING NO CHILDREN, THEN THE PROPERTY SHALL DESCEND TO HER CHILDREN, ETC., PROVIDING FOR OTHER DEVICES IF SHE

shall die without having had children. 'It is curious that the title to property worth about three-quarters of a million dollars should be in dispute because of the translation of a little phrase in Hawaiian. The trouble with the phrase is that translators are not unanimous as to the idea it conveys, and consequently the translation thereof. The trouble-making phrase is 'me laua wale no ka malama a hiki i kona wa e kanaka makua ai, a hanau paha kana mau keiki,' etc. This phrase has been translated by N. B. Emerson, O. H. Gulick, W. R. Castle, Joseph M. Poepoe, S. Keliinui, William H. Rice, Francis Gay, Emma M. Nakuina, Henry Smith and C. L. Hopkins, who all agree that the translation adopted by the court of the territory is a correct translation.

Parker Stands Alone.
"Mr. Hopkins says that there may be two distinct translations and gives one which the federal judge adopts as his translation. 'They alone shall have the care until she becomes a woman grown, or in case she has children they shall be the executors during the lifetime of my daughter and to her children after her.' Henry Smith is of the opinion that the word 'a' used in this connection cannot be used as equivalent to the word 'and'. He says that a translation like that of H. H. Parker, who is the only person who adopted a contrary translation when translating the phrase alone, is incorrect.

"Henry H. Parker says that the phrase may mean 'in the event of her giving birth to children the same two shall be the administrators during the lifetime of my daughter and to her children following.'

"I have given you the details of the translation because all the chief attacks is right there.

"All other points are subordinate to this one issue of fact. There are many brought up by the learned and acute counsel, A. G. M. Robertson, who had the initial attack, and who shifted the burden upon present counsel, when the case had been partly argued.

Will Courts Repudiate Translation?
"I am of the opinion that it will be a very different matter to get the Territorial courts to repudiate the translation which is so widely supported by experts for one which a few may support, in a strained attempt to reconcile all clauses of the will. Even Mr. Parker's translation is to be read with his testimony on the witness stand, wherein he translated the English phrase in the event that by the Hawaiian word 'ina,' when he was asked to translate back into Hawaiian his English words were given as an equivalent of the words of the will. The will had not the word 'ina,' which clearly expresses the contingency idea. Even according to Mr. Parker, when he wishes to express the idea of contingency, he uses the word 'ina.' But, to get out of an obscurity and to sustain the

translation by him he points to the word 'paha' as giving the idea of contingency instead of 'ina.' That word is not used by him when trying to express himself under the same circumstances. The long and short of the matter is that every translator who is differing from the original translation, adopted in the courts in 1897, is only guessing at the possible, indefinite meanings that might come into a Hawaiian sentence.

Title Not Decided.
"Then, again, the Federal court decision should not create any alarm because it settles nothing with regard to the title to real property in the Territory of Hawaii. Only the Territorial courts have jurisdiction over title to real property except in a few cases expressly defined, such as controversies of citizens of different States. The counsel for Irene II would be foolish to carry the case up to the Supreme Court of the United States, if they could. As the matter stands, there is a decision by one judge that, in a matter not affecting real estate, a certain sum shall be distributed according to a new interpretation of the will. The Court of Appeals would not interfere with the translation adopted by Judge Dole.

"The local Supreme Court will be faced with its own decisions, and also the consideration that the former decision has become a rule of property, under which much property has changed hands. It will not lightly change matters, especially a matter of fact like a translation.
"Now, if the local courts follow the present translation, and do not leave the ninety and nine good translators, who agree with the past translations, to follow after the one wayward translator, who has left the fold, the interests of the daughter Irene will be in a very good position, if any appeal be taken.

"The Supreme Court of the United States would be apt to treat this case as it did the Archerley case—virtually sustain the local court in its decisions with regard to local conditions which it cannot handle.

"Here we have a translation of the Hawaiian phrase, which I think the Supreme Court will be slow to attempt on its own account. This accounts for the support of Judge Dole's opinion. I think, whichever way the local courts decide on local special knowledge, the appellate courts try to follow.

No Immediate Alarm.
"I do not think there is any great need to feel alarmed as yet, but the decision must necessarily be a source of uneasiness to the owners of property, until the matter is settled finally.
"I note that Mr. Warrington, Captain Miller and others registered some years ago to their lots in the Anapuni Tract, which will make them feel secure and happy in their present position.

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