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# JUDGE LITTLE FINDS SHERIFF ANDREWS GUILTY OF CONTEMPT

Following is the full text of the decision of Judge Gilbert F. Little, Fourth Circuit, finding Sheriff Andrews guilty of contempt of court:

In the Circuit Court of the Fourth Circuit, Territory of Hawaii.—At Chambers.—Decision.

In the Matter of the Citation of L. A. Andrews, Sheriff of Hawaii, to show cause, if any he have, why he should not be held in contempt of Court for disobeying an order of this Court.

### Finding of Fact.

The record in this proceeding discloses the following state of facts: That at the January term of this court, to wit, January 9th, 1902, in a certain cause therein tried wherein the Territory of Hawaii was plaintiff and Zuzumaki Kozuki, a Japanese, was defendant, the defendant, Sheriff Andrews, was duly convicted by a jury, and sentenced to pay a fine of \$250 and the costs of prosecution, amounting to \$22.20, "into the hands of the clerk of this court, and that he stand committed until fine and costs are paid."

That subsequently at said January term of said court, to wit: on January 14th, 1902, in a certain criminal cause tried in this court, wherein the Territory of Hawaii was plaintiff and Chan Kee, a Chinaman, was the defendant, tried on a charge of embezzlement and duly convicted by a verdict of a jury and by this Court sentenced to pay a fine of \$500 and costs of prosecution amounting to \$23.50 "into the hands of the clerk of this court and that he stand committed until the fine and costs are paid."

And subsequently, to wit: on the 29th day of January, 1902, it having been made to appear to the satisfaction of the Judge of this court at chambers by the clerk thereof that the Sheriff of Hawaii had received the fines in the above entitled cases and had neglected and refused to comply with the sentence and order of this Court in this, to wit: by refusing to pay the said fines and costs for said defendant to the clerk of this court, as ordered, whereupon the Court issued the following order:

In the Circuit Court of the Fourth Circuit, Territory of Hawaii. At Chambers, January 29, 1902. A. D. It is hereby ordered by this Court that the fines, costs and forfeitures, of all persons, convicted of crime in this court shall be paid to the clerk of this court, who shall give a receipt therefor; which receipt shall balance the Sheriff's books in lieu of the fines, costs and forfeitures aforesaid; and that no persons shall be relieved from custody of the Sheriff until the money has been properly paid into the hands of the clerk of this court.

It is further ordered that the Sheriff of Hawaii shall report to the clerk of this court in writing the manner of the execution of the sentence of any person sentenced by this court and the clerk shall enter satisfaction of the judgment therein accordingly.

This order applies to all fines, costs and forfeitures of bail at or during and from and after the January term, A. D. 1902, of this court.

Done at chambers this 29th day of January, A. D. 1902.

And on the Sheriff's continued and persistent refusal to obey the order of the Court a citation was issued out of said court on the 6th day of February, 1902, for the said Sheriff to appear in due form as required by law before the Judge of this court and to show cause if any he have why he should not be held in contempt of this Court for refusing to obey its order, etc.

Subsequently on February 25th, 1902, the defendant Sheriff, appeared in court in person and admitted that he was the Sheriff of Hawaii at, before, during, and since the January term of this court, 1902, and as such Sheriff he had received the fines of Chan Kee, a Chinese, defendant, and Zuzumaki Kozuki, a Japanese, defendant, above referred to, that he had the money in his possession at the time the order to pay it into the hands of the clerk was issued and that he deliberately remitted it to the Treasurer of the Territory of Hawaii after a copy of the order of January 29th had been served upon him as Sheriff giving as his reason for sending it to the Treasurer after having received the following order, "because I had direct instructions in writing from High Sheriff to do so, with which order he sent me a copy of instructions to him from the Attorney General."

The Sheriff further testified as appears of record, "That the order was issued the 29th of January; that he received the money in question for fines and costs in the two cases herein above referred to on January 10th and 20th, respectively. The citation was issued February 6th in due form as required by law; and according to the Sheriff's own statement and over his signature as indicated by defendant's exhibits A and B, he remitted the money the following day, notwithstanding the fact that he had been returned into court by the bailiff, Officer E. de Silva of this court, and was then and there given instructions by the Court not to remit the money in his hands until the question should be finally decided by this Court.

The defendant Sheriff further justified his violation of the order of the Court by offering in evidence defendant's exhibit C, being a letter dated February 11th, 1902, and directed to A. M. Brown, High Sheriff of the Territory of Hawaii, by the Attorney General of the Territory.

### Conclusions of Law.

The defendant in this case claims immunity from punishment under this citation by virtue of the provisions of section 29 of Act 39 of the Session Laws of 1898, which was passed and approved and went into effect prior to August 12, 1898, and even prior to July 7, 1898, the date of the passage of the Act of Annexation.

The Attorney General and High Sheriff and the defendant Sheriff of Hawaii, the latter who is, under the law, the immediate executive officer of this Court and subject to its orders, seem to be deluded by the irresistible impulse to assume not only judicial powers but as well to attempt to dominate the hearts, minds, consciences and actions of the Judges and courts of this Territory, as was the practice in these islands in former years; this cannot now be accomplished. It would be well enough for them to remember that our American system of Government is a distributive one from the foundation upwards and the powers of sovereignty are distributed to different and independent governmental departments. The three great departments are independent in the true sense of the term and not simply co-ordinate. In our system the judges are actually invested with the elements of sovereignty given to them by the Constitution and laws of the United States; and the principle that one department cannot exercise sovereign functions attributed to another is given effect in many and distinctive forms.

Section 81 of the Organic Act provides among other things as follows: "That the judicial power of the Territory shall be vested in one Supreme Court, Circuit Courts, etc."

Section 6 of the Organic Act provides that laws of Hawaii not inconsistent with the Constitution and laws of the United States, etc., shall continue in force.

Article 2, section 2, Constitution of the United States, provides as follows: "The judicial power shall extend to all cases in law and equity, etc., and the judges are bound by its provisions."

At the time of the enactment of section 29 of the Session Laws of 1898, the Attorney General was a Cabinet Minister and exercised a different function than that given to the Attorney General under the Organic Act and under American laws. Under the Organic Act and under the inalienable and implied powers of courts the Attorney General is only the head of a subordinate bureau of the Government and can in no sense exercise authority over or dominate the proceedings of a court of record or refuse to obey or evade or ignore judicial orders of a court of record properly made.

Section 29 in no sense invests the Sheriff or the High Sheriff or the Attorney General, or Auditor of the Territory with the right to collect the fines and forfeitures assessed by this court or by any other court of record in this Territory. He is not a "public accountant" for the court. He is the executive officer and receives that money only in pursuance of an order of the court, and has no volition in all things, and must not attempt to receive it and turn it over to the clerk of this court, who is the "public accountant" for the purpose of the Act for this court and the only proper custodian of all monies received from any source belonging to this court, whether received in pursuance of its order or sentence.

Section 1183 of our Civil Laws, at section 472, provides among other things "The several clerks of the Judiciary Department shall have the custody of all records, books, papers, money and other things pertaining to the court."

Where the law invests the court with jurisdiction over a class of cases or any case the authority over a case belonging to that class is at once effectually acquired and must be exercised in all things, and the collection of the fines and costs are as much a part of the court's duty as is the trial. There is no election on the part of the court. The law conferring jurisdiction to exercise authority over matters having once been established is imperative and must be obeyed and judicial officers whose duty it is to decide questions of public law cannot rightfully escape that duty. And the Attorney General, who is the head of a subordinate bureau of the executive department, can in no sense interfere with or dominate the action of any court of record in this Territory. The High Sheriff is simply an executive officer of the courts of record of the Territory and has no volition whatever in matters of this kind except to obey the orders of the court properly made and ask no questions of the Sheriff of Hawaii is the immediate executive officer of this court and is amenable to the court for any dereliction of duty or refusal to obey a judicial order or to execute a sentence properly made by this court. The action of the Sheriff is restricted to the language of the sentence or other order of the court issuing it, and he has no authority in each particular case of the Sheriff is simply an officer especially authorized to enforce the process of the court of which he is an officer and when such process is delivered to him it is his duty to execute its commands promptly and vigorously and make due return of his proceedings to the clerk thereof. The Sheriff being an officer of the court, the Court has control of him as such. King of Spain vs. Oliver, 7 Washington U. S. C. C.

It is not necessary that the statute should specifically in detail designate the authority or power of the Court. The creation of a court brings into existence the powers and duties essential to the discharge of judicial authority without any specification of such powers and duties. Ex parte Terry, U. S. 253; Anderson vs. Dunn, 6 Wheat. 204; U. S. vs. Hudson, 7 Cranch, 32; In re Naegel, 15 U. S. 1.

What constitutes judicial power and what attributes are extended to judicial departments are matters of which knowledge is taken without any statutory specifications. They are known because they existed before written constitutions were adopted or statutes enacted and they are sanctioned and confirmed by the organic and statutory law. Constitutions are to be interpreted as the work of men writing when organized society exist and with reference to existing conditions. Cooley's Constitutional Limitation, 5, Ed. 73; Van Walters vs. Board of Children's Guardians, 132 Ind. 567, 32 N. E. R. 56.

And in construing statutes relative to courts it is presumed that the Legislature does not intend an absurdity or that absurd consequences shall flow from its enactments, such a result therefore will be avoided if the terms of the act admit of it by a reasonable construction of the statute. Oats vs. National Bank, 100 U. S. 239; State vs. Clark, N. J. Law. 96; Henry vs. Spillson, 17 Vr. 479; Gilkey vs. Cooke, 60 Wis. 133.

The "public accountant" referred to in section 29 as applied to this court is the clerk thereof and no one else, and the Sheriff in receiving the money due the clerk acts only in pursuance of the order of court which vests in him authority for that case and none other, and he receives the money only as a representative of the court, and not of the Attorney General's Department or of any other department of the Government. And it must be presumed that the Legislature never intended its enactment to work public inconvenience or private hardship to the public or to litigants, and if a statute is doubtful or ambiguous or open to more than one construction, that construction should be adopted which will avoid such results. Richards vs. Sackett, 4 Mass. 434; Somerset vs. Dayton, 12 Mass. 383; Smith vs. People, 47 N. Y. 320; U. S. vs. Fisher, 24 Cranch 358.

The fact that the jurisdiction of a court is defined by statute does not exclude the rules of the common law unless the exclusion appears by express words or necessary implication. The Legislature, may, of course, define the jurisdiction of a court. It has the power to create, by designating the class of cases or the subjects over which its authority shall extend, but in doing this the whole field of jurisdiction is not covered; for certain principles and organic unwritten law enter into the statute as silent factors. These factors, forceful as they are, cannot always control the general subjects and classes, but they do control as to incidents of such subjects and classes. Thus a court has authority without any express statute to make judicial orders and to frame the remedy so as to give appropriate relief. Fundamental principles cannot be violated with respect to the authority of courts, although such principles are not given direct and explicit expression in the Constitution or Territorial laws; and we must not forget that broad as the legislative power is under a general grant of authority it cannot violate principles that form part of the foundation and solidity of the judicial structure, that of enforcing respect and execution of its rules, orders and mandates. If it were not for these principles the words of Constitutions would be dead and powerless. It is therefore true that all principles that undergird and uphold courts are not in express words, but have their life and abiding place in the spirit of the Constitution so that in determining the authority of courts we must often go behind the words of the Constitution and statutes to the principles which they sanction and confirm.

The effect of such a construction put upon section 29, by the Attorney General and the High Sheriff, would be to transfer the powers and duties of a public officer from one individual to another without authority of law and to invest the Legislature with judicial powers—a power which the Legislature cannot assume, and to transfer the execution of judicial orders to the executive branch of the government, and to have the records of our courts in a hopeless confusion and to deprive the court of the control over its own records, while its judgments remain unsatisfied. That such a conclusion is not only untenable but manifestly forced and unnatural must be admitted: first, since the Sheriff is an officer of this court and the Court controls its officers and records; second, for the reason that the rule is that every court controls its own processes and the execution thereof. The violation of this rule is obvious since if it were otherwise confusion and conflict (as in this case) would necessarily result. The Indiana & Co. vs. Williams, 22 Ind. 198; Teft vs. Sternberg, 50th Fed. 2; Grey vs. Garnsey, 32, 180; Malory vs. Danber, 83 N. Y. 239.

In view of the law and the premises this Court must conclude that the Legislature never intended the language used in section 29 to deprive the clerk of this court of the proper functions of his office; but that it did intend, and should be construed, to mean that he or the Sheriff for him should collect all funds under judgments, sentences, or orders as well as fines and forfeitures when directed so to do by the Court and turn them over at once to the clerk, and that the clerk of this court, and not the Sheriff, is the "public accountant" for the court, as contemplated by the statute.

That the Act was intended to disturb, disquiet and obstruct justice and judicial government and proceedings such as the conduct of the defendant would produce if permitted with impunity.

That while the High Sheriff may appoint a Sheriff for this court, the Sheriff, when so appointed, must obey the Court's orders to the exclusion of every other authority while so acting.

That neither the High Sheriff or the Attorney General, nor the Auditor General, have any control over the Sheriff of Hawaii while acting for the court or for the clerk of this court.

That section 79 of the Organic Act gives no power to the High Sheriff to interfere with or otherwise obstruct the proceeding of court in the transaction of public business or to defeat the course of any proceeding or incident thereto into other or different channels than that directed by the Court.

That the defendant having shown no justification for his disobedience of the orders of this Court, and the Court be-

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# THE BULLETIN

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ing fully advised, finds the defendant, Lorrin A. Andrews, Sheriff of Hawaii, guilty of contempt in failing and refusing to comply with the order of this Court, made and entered January 29th, 1902.

Sentence deferred until Thursday morning. GILBERT F. LITTLE, Judge.

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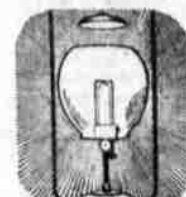
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