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## HAWAITA



## GAZET

VOL. IV---NO. 18.3

HONOLULU, WEDNESDAY, MAY 20, 1868.

BUSINESS NOTICES.

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SUGAR & MOLASSES. Supreme Court-In Admiralty.

Joe Silva vs. George W. Jenks - Before Hon. Justice Davis in Chambers, March 1868. This was a libel in personan, brought to recover wages claimed to be due for services rendered as mariner and cooper on board of the American whaling bark Arthur Pickering, of Boston, Mass., whereof res-

pondent is Master. In the month of May er June, a. p. 1866, the said bark was at the Island of Bravo, Cape de Verdes, and the libellant, a Portuguese, was shipped or hired to serve on board at first as cook as well as scaman, under no Shipping Articles; but three days after leaving the Island, on the high seas, the muster caused the libeliant to sign a certain paper or agreement, the master explaining to him that it was something necessary to be shown in case the said bark should meet with a vessel of war, which said writing is as follows

"ISLAND OF BRAVO, June 3, 1866. This is to certify that I agree to perform the remaining part of the voyage in the bark Arthur Pickering for 1-150 lay. I also agree to ship on the above terms before a U. S. Consul, when required to by the Captain.

JOSEPH SILVA.

Witness: WARREN MAXFELD." After Silva had been on board about five After Sitys and been on board about twe months, the master ordered him to act as cooper, which duty the libel alleges the libellant performed faithfully until the arrival in this port, March 10th, a. b. 1588.

The vessel took about 500 barrels of sperm oil during the voyage, 30 barrels of which were taken prior to the vessel's toaching at Api, one of the Malaysian Archipelago, and were taken prior to the vessel's touching at Api, one of the Malaysian Archipelago, and prior also to the time of libellant's being required to do duty as cooper. The libel alleges that the libellant has sought a settlement with said master, but has failed to obtain any whatsoever. The answer admits the principal facts as to mode of shipment and quantity of oil taken, but denies that libeliant was in any sense a skillful cooper or anything more than cooper's mate or assistant to the master, who was actually the cooper of the ship; and the counsel for respondent also maintained that the libeliant was not cutilled to bring the action, never having been discharged from the ship; that it was not necessary that the seaman's contract should be in writing, by the general maritime law and prior to the U.S. Act, 1750, which Act only related to the shipment in an American port, and that the Acts subsequently passed do not apply to cases of shipment abroad, where there is no American Consul. That the general maritime law is not superseed by the statutes of 1790, 1803, 1840. That the general maritime law is not superseed by the statutes of 1790, 1803, 1840. That the general maritime law is not superseed by the statutes of 1790, 1803, 1840. That the seaman was liable to a forfeiture of wages by desertion without being on the articles, and it was claimed that libellant's case did not fall within the purview of the statute cited. The testimony offered as to the facts in the case by both partics was not contradictory, and so far as it is concerned, prescuts no embarrassment to the Court. He acted as cook so short a time,

fered as to the facts in the case by both partics was not contradictory, and so far as it is
concerned, presents no embarrassment to the
Court. He acted as cook so short a time,
that it is not necessary to consider his qualifications, as he ought not to be better paid for
that time than an ordinary scaman, that is
to say, to time of departure from Api, where
the old cooper went on shore, and where
also it is claimed by the libel that the libellant was promoted to the rank of cooper.

As to his capacities as cooper, I think it is
established, that he was a useful assistant to
the master, and for the time he worked with
him at coopering his services were more valuable than those of an ordinary scaman or
cook; it would seem that the master thought
so himself, by calling him from the forecastle
to the steerage to live, and permitting him
to take his meals in the cabin. I come now
to a consideration of the U.S. statutes regarding the shipment of scamen on board
American vessels, and the legal points made
thereon, comprehending the decision of the
American Courts, bearing upon the subject. American Courts, bearing upon the subject.

By the Act of Congress, 20th July, 1840,
section 8 it is made the duty of the master. By the Act of Congress, 3m July, 1896, section S, it is under the duty of the master when shipping a mariner in a foreign port to take the list of his crew and the duplicate of the Shipping Articles to the Consul, or person who discharges the duties of the office at that port, who shall make the proper entries thereon, setting forth the contract, and describing the person of the mariner; and all shipments of seamen made contrary to the provisions of this and other Acts of Congress shall be null and vold, and any scamen so shipped may leave the service at any time, and demand the highest rate of wages paid to any scaman shipped for the voyage, or the sum agreed to be given him at his shipment.

Although there was a Vice Consul at Bravo, no appearance was made before him with

Atthough there was made before him with the libeliant. But it is asserted by the res-pondent that he had no authority to certify to the shipment. Of this I am in doubt, as it appeared that he exercised on board the If appeared that he exercised on board the same ship, in my opinion, a much higher authority, that of taking two men out of the ship and confining them on shore to be sent for trial to the United States on a charge of attempting to set fire to the ship. What could be the functions of such an officer, unless they were such as are set forth in the language of the statute itself, to discharge the duties of the office of Consul at that port is of which certifying to the absence of the office of the statute of the office of the statute of the office of the offi port; of which certifying to the shipments of mariners in a foreign port is undoubtedly one. But had the Captain desired to have complied with the laws of his country, there was a Consul of the United States at Porto Prays, a neighboring port, allowing for the argument's sake, the disability to exist for the officer at Bravo, which is very questionable. But under any view of the case, admitting that the respondent was at a place devoid of all U.S. officials, and his ship seriously in the case of the case, admitting that the respondent was at a place devoid of all U.S. officials, and his ship seriously in the case of the cas ously in want of men, it is my decided opin-ion that he should have made his contracts

with the parties before proceeding to sea, while they were free agents and not yet under the supreme control of the master.

It is for this reason that I regard the contract as of no value. The admiralty looks tract as of no value. The admiralty looks with lealousy at such informal contracts made with seamen under such circumstances. This is to say nothing of the vaguences of the contract itself. There is no fimilation of the time or piace for which the engagement was made, and anless we are bound to infer it from the expression 1-150 lay, there is no description whether the voyage is to be a general trading and freighting voyage, tealing, pearl-diving or whaling voyage, The contract is unequal; he is to ship before a U. S. Consul when requested by the Captain—not at the first U. S. Consular port as ordered by statute, thus leaving it optional with the master to ever ship him at all. In point of fact the libellant remained on board this ship nearly two years without the scennity of fact the libellant remained on board this ship nearly two years without the scennity and matual obligations of shipment on the articles, and not until some ten days after the ship had arrived in Homolulu, and after the libellant had consulted counsel, did the Cap-tain request him to ship. I have doubts also, whether the libellant even understood the alleged contract

whether the libeliant even understood the alleged contract.

The seamon not under articles is subject to all the forfeitures imposed and rules fixed by the maritime law, which is part of the common law, yet he may not be bound by the regulations for the government of mariners, exactly as prescribed by the statute—Jameson vs. ship Regulus, 1 Peters' Adm., p. 212. He is not outlawed and left without any control, but is required to perform his duties, and entitled to receive the benefits as if the act had nover been made. The policy of the law will not admit of such a contract. of the law will not admit of such a contract, and as is said by the learned Judge in the case of the Cross der, Ware's Rep., p. 448—in its nature it is liable to be dissolved at the pleasure of either party, subject only to the equitable restriction, that this shall not be done and allowing no acous to be contected at all and office he hopes to give as good satisfaction in the future as he has in the past.

The Office on Jaz. Robinson & Co.'s Wharf, near the U. S. Consulate.

Honolulu, March 27, 1867.

Honolulu, March 27, 1867.

Honolulu, March 27, 1867.

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Honolulu, March 284, 288.

Honolulu, March 284, 288.

the maritime laws of the United States, there to enlist a#\$5 a month and found; that all who

the maritime laws of the United States, there was then no descrition. He might be guilty of no descrition under an unobjectionable agreement to ship, made at a place where there was no officer to certify to it, and the act of descrition done during the transit to the first Consular port; but holding the contract for the reasons given improper, I can not find the libellant guilty of descrition, either under the statute or the general maritime law.

It is only necessary to refer to the case cited by the respondent's counsel himself—Jameson vs ship Regulus, I, Peters' Admiralty decisions, pag. 212—as to the rule for fixing the amount of wages for a seaman shipped son vs ship Regulus, 1, Peters' Admiralty decisions, pag. 212—as to the rule for fixing
the amount of wages for a scaman shipped
without signing articles. He must be paid
at the highest rate of wages, given at the port
of shipment within three months next precedent. The Court say it was fixed at the
highest rate, that masters might be more on
their guard, etc. What that wages should
be, cannot be determined by the rates at
Bravo, for we are not informed of them. We
must be guided by the rates shewn by witnesses, both for respondent and libellant,
customary at Honoluiu, the port of discharge
and settlement.

Allowing then, that the libellant was not

eastomary at Honolulu, the port of discharge and settlement.

Allowing then, that the libellant was not bound by his contract to remain in the vessel at the pleasure of the master, but might at any convenient time put an end to it by his own act; it has not been contended that any inconvenience has resulted to the master by his leaving at this port, or that it would be even necessary to supply his place by another hand, or if so, that there could be any difficulty in filling the vacancy at this port.

My opinion is, that there has been no desertion within the meaning of the law, and I decree the libellant entitled to the 1-150 lay as ordinary seaman in the 30 barrels of olt taken prior to arrival at Apl, and after leav-

as ordinary scaman in the 30 barrels of oil taken prior to arrival at Api, and after leaving that place he is entitled to a higher lay, the 1-75 of the ship's catchings, less the 30 barrels, deducting all payments which have been made in the course of the voyage. Price of the sperm oil to be fixed at the Consular rate at this port.

Henry Thompson Esq., for libeliant.

J. W. Austin and A. J. Lawrence, Esqs., for respondent.

PROCEEDINGS OF THE

LEGISLATIVE ASSEMBLY---1868. TWENTY-FIRST DAY, TUESDAY, May 12.

Assembly met at 10 A. H., H. H. M. Kekuprayer by the Chaplain. Minutes of preceding day were read and approved.

PETITIONS.—Mr. Wood offered a petition from Honolulu, protesting against the taking of the Kunawai Spring. Referred to the Special Committee on that bill.

REFORTS OF CONSITTEES.—Military Com-

Reforms of Committees.—Military Committee reported that the expenses of the Department were in regular form, and recommended the passage of the appropriation as in the Bill. They also suggested an appropriation for each of the military companies of Honolulu, signed by four of the Committee.

Mr. Hitcheook moved to wrint the expenses. Mr. Hitchcock moved to print the expenses as in the report, except the estimate for the coming period.

Mr. Lyons amended, to print the entire re-

port. Carried.

Mr. Judd presented a minority report, which differed but little from the other. He had not reen the vouchers for an item of \$10,700 that was to have been expended for arms, ammuni-

tion, etc.
Minority report was, on motion, ordered to be printed with the majority report.
Mr. Hitchcock moved to table the reports, to be taken up with the Appropriation Bill. from Haalou, asking for the whole of the appropriation for mail carrying on Oahu, in favor of tabling said petition, as, on examination, they had found that the sum paid him was acording to his own contract with the Postmas

Mr. Kaukaba moved to bring up the matter before the Committee of the whole now. Mr. Mahelona supported the motion. Mr. Bishop explained, but he, not being sat-

In the United States the salaries of leading men were not large. Here the old chiefs out the thought that the Minister of Finance or the Postmaster had the money stowed away for their own use. This man Hanlou was getting but \$1 per week, when he should receive \$10, then he could buy himself a spoon, some beef and a loaf of bread. Therefore he wished to have this thing examined.

ter and Haalon. Let the contract be produced. He did not understand the accounts that were offered to the House. The books themselves should be produced. Like enough the excess of the appropriation over the expenditure had been returned to the Finance Department, but

He hoped the House would accept the report Committee of Representatives only, to exam-

ine the matter.

COMMITTEE.—Hons. J. A. Nahaku, S. W.
Mahelona, A. Hopu, D. Kankaha, J. Upa.

Mr. Hitchcock moved the order of the day. Oupen or the Day .- Mr. Keawehunahala moved to reconsider the appropriations for the Judiciary. Passed. A bill to amend Sec. 1247 of the Civil Code,

was read second time. The bill was to "limit the time within which claims of creditors against the estates of deceased persons should presented, and suits be con Mr. Nahaku moved to refer the bill to a ommittee of the House. Passed.
Mr. Kalu called to the chair. Bill rend.
Mr. Nahaku amended to have notice in-

serted in the Hauniian Gazette, An Okoa,

Committee rose, and report approved.

On motion the bill was referred to a select

**\$6.00 PER YEAR.** 

to enlist a \$55 a month and found; that all who enlisted did so of their own free will.

Mr. Hitchcock's motion was carried.

COMMITTER—Hons. Hitchcock, Pilipo, Kelijpio, Kgakanu and Gov. Dominis.

Refort or Committees.—Mr. Dominis reported several bills signed by the King.

Committee to whom was referred the horse tax bill reported on same as follows: that they had substituted a new bill, the substance of which was, that all horses worth less than \$50 should be taxed fifty cents, and all over, \$1. except such as were worth over \$100 on them

Mr. Boyd gave notice of a bill to amend Sec. 1074 of the Civil Code.

Mr. Kaine introduced a bill to provide a Circuit Judge for the Island of Molokai. Mr. Lyons moved to reject the bill. Passed.
H. H. Lunalilo effered a resolution that the
thanks of the Assembly be presented to the
King for his patronage of the Concert at Kawalahao in aid of the unfortunates at Kau. In-

definitely postponed.

Mr. Jones introduced a bill to appoint a Registrar of Conveyances at Lahaina.
On motion of Mr. Upa the order of the day was taken up.
Once or the Day—Appropriation Bill

was in order.

Mr. Keawehunahala moved to suspend the rules and reconsider the appropriation for Deputy Clerk of the Supreme Court. Passed.

House went into Committee for consideration of the Appropriation Bill. Mr. Boyd called to the chair.

Mr. Keavehaahala

Mr. Keawebunnhala amended the salary of Mr. Reawentannia amended the salary of the Departy Clerk to \$3000.

Mr. Nakila objected. He thought that the member for Wainlun did not bring forward any good reasons. The head of the Depart-ment probably knew what were the duties of the several clerks, and paid them accordingly. He did not like this reduction of income and

Mr. Mahelona compared the salaries of various clerks in government employ, and showed conclusively that the Deputy Clerk of showed conclusively that the Deputy Clerk of the Sopreme Court was under paid.

Mr. Hopu said that the duties of the Deputy Clerk at present did not exceed those of the last period, and he saw no reason to increase the salary. He thought that the first duty of the house was to study conomy, and all the government salaries ought to be reduced. The duty of the Representatives was to take care

nerease of salaries.

duty of the Representatives was to take care of the public money, and this continual increase of various salaries was throwing away the revenue.

Mr. Mahelona sustained the amendment Mr. Mahelons sustained the amendment without reserve.

Mr. Koakana was of opinion that the reason that the members for Ewa and Walanae and Walanae and Walanae upported the amendment was that they wished to increase the work of the Deputy clerk. The Chief Justice did not ask for an increase of pay, nor even had he heard it asked by the gentleman himself. The member for Walalua was raising the salaries. Perhaps he would propose to give the Minister of the Foreign Department \$12,000. Petitions have come in for appropriations for light houses, roads, bridges, wharves, and a great many other things, but if we increase the salaries we shall not have any money to devote to internal improvement. He supported the item as in the bill.

Mr. Hitchcock amended to \$2,700.

Amendment were put and lost, and the item as in the bill \$2,400 was passed.

Salary of Minister of War and Foreign Affairs, \$10,000.

Mr. Koakanu amended to \$8,000.

Mr. Koakanu amended to \$8,000.

Mr. Konkanu amended to \$8,000. Mr. Nakila amended to \$7,000. Mr. Lyons said that it was an unfortunate thing that in a small country like this, we had to discuss before those for whom we were leg-islating. The expense of the Government of Prussia was \$5, for Austria \$7, and France, with all her standing army, only \$8 a head. In the United States the salaries of leading

beef and a loaf of bread. Therefore he wished to have this thing examined.

Mr. Hopu thought that the House should examine the subject. There was no proof that a contract had been made between the Postmaster and Haalou. Let the contract be produced. He did not understand the accounts that were offered to the House. The books themselves should have been given. They were high, sometimes as high as \$50,000, country was not as rich as England, been returned to the Finance Department, but what proof have we.

Mr. Kaukaha was of opinion that this was one of the strangest things that we have heard.

Mr. Keawehunahala said he belonged to the Committee, and a full examination was made. He hoped the House would accept the report of the King. These men were the companions of the Committee.

Mr. Nahaku moved to appoint a Special Committee of Representatives only. In even of the abuse heaped upon the Government Officers by the press of Honolulu was from foreign lands. He wished to impress upon the native members that this was not a Republic, and that a Monarchy was an expensive form of Government. If the present holders of the Government offices were to resign, per-haps men could be found to do the work for \$2,000 a year, but what would become of the

country?

Mr. Wilder wished to support the item as in the bill. He should vote to reduce some of the appropriations for the Department, but he considered the place worth \$5,000. And especially if the money was spent in the country, he would not begrudge the gentlemen his beard and elaths.

try, he would not begrudge the gentlemen his board and clothes.

Mr. Kaukaha supported the amendment to \$5,000. He thought that was sufficient. The Minister did not work Sundays and a good many other days, and he thought that was to much. If he was paid \$10 per diem it would be about right.

Mr. Koakanu supported his amendment.

or some other paper.

His Ex. S. H. Phillips' amendment was put

His Ex. S. H. Phillips amendment was put

His Ex. S. H. Phillips amended to insert in

His Ex. S. H. Phillips amendment in the amount right.

Mr. Koakamu supported his amendment.

Many years ago this position was not tery

expensive, but the Minister received all that

was necessary. The remark of the Henolulu

was probably true, but it was not the wish of the people. They wanted to have taration re
duced. He agreed with the member for Ko
hala. He was post taiking for himself, but for

the people whom be represented. He thought the people whom he represented. He thought that the Ministers would agree with him.

Committee rose, and report approved.
On motion the bill was referred to a select
committee.

Committee

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accept a position under His Majesty. He did not see as any one was ready to de it. He supported the salary as it was, \$10,800. Hon. P. Nathaolean said that the times were changed. The King could not get native advisers as he used to, but must depend upon

Refort of Committees.—Mr. Dominis reported several bills signed by the King.

Committee to whom was referred the horse tax bill reported on same as follows: that they had substituted a new bill, the substance of which was, that all horses worth less than \$50 should be taxed fifty cents, and all over, \$1, except such as were worth over \$100 on them a tax of 10 per cent, additional on the value.

Mr. Lyons moved to approve the report of the Committee, and make the bill order of the day for to morrow. Passed.

RESOLUTIONS.—Mr. Martin introduced a bill in regard to the marriage of Lepers. Passed to 2d reading.

Mr. Mahelona offered a resolution that the Minister of Finance be instructed to pay the delegates to the Convention of 1864, \$100 each.

Tabled.

H. H. Lunaillo supported the amendment for \$8,000. Hon. P. Kanoa supported the passage of On motion of Mr. Lyons the ayes and mays were called. Question before the House was the item as in the bill. Ayes 22, nays 14. Committee rose, report approved, and the House adjourned.

TWENTY-THIRD DAY, THURSDAY, MAY 14.
Assembly met at 10 A. M. Vice President in the chair.

After prayer by the Chaplain, the minutes After prayer by the Chaplain, the minutes of the preceding day were read and approved. PRITIONS.—Mr. Pilipo presented a petition from Haanio, praying for \$60 to be returned to him that he paid for land, which has reverted to the Government. Referred to Committee on Government lands.

Mr. Mahelona presented a petition from Ewa praying to reduce horse tax to fifty cents. Tabled.

Resourcess.—Mr. House introduced a paid.

Tabled.

RESOLUTIONS.—Mr. Hoou introduced a hill to exempt parents sending children to select schools from school tax.

Mr. Mahelona introduced a hill to introduce a bill to suppower the collectors to exempt sick and infirm people from taxation. Rejected.

Mr. Boyd introduced a bill to amend Section 1074 of the Civil Code. Mr. Martin gave notice of a bill to appoint times for holding Circuit Courts.

On motion of Mr. Hitchcock the order of

the day was taken up.
Onders of the Day.—On motion the House went into Committee for consideration of the bill on horse tax. Mr. Kalu called to the chair.

Report of Select Committee including the amended bill was read.

His Ex. S. H. Phillips moved to amend
Section I by inserting, horses of all ages, so
all horses might be taxed. Section as amend-

ed passed.
Section 2d was read. Mr. Judd moved to reject. Second 2d passed, and the bill as a whole passed. Committee rose, report approved and the

Committee rose, report approved and the bill ordered to engressment.

A bill entitled "an act to amend an act to repeal Chapter 10 of the Civil Code, and to regulate the Bureau of Public Instruction, by adding Sections 26 (a), 26 (b), 26 (c) was read.

Hopse went into Committee for consideration of the bill. Mr. Nahaku called to the Bill read.

chair. Bill read.

The bill was to have parents pay for the books used by their children in Government schools, excepts in cases of inability. They should then be exempted according to the judgment of the School Agent.

Mr. Hitcheeck amended Section 2 by inserting "Government" before the words "common schools." Accepted.

Mr. Kcawebunahula moved to indefinitely postpone. Lost. postpone. Lost.
Bill as a whole passed.

Committee rose, report approved, and the bill ordered to engrossment.

A bill for a light house at Honolulu was read. On motion indefinitely pestponed.

A bill to admit copper, &c., free of duty, was read, and referred to Committee for translation. A bill to admit certain articles used in tan ning free of duty, was ordered to engrossment.
House went into Committee for considera-tion of the bill concerning land boundaries.
Mr. Kcakanu called to the chair, Bill read

ad discussed at some length.

Committee rose and reported progress. Re port zpproved. Gov. Dominis then withdrew from Select

TWENTY-FOURTH DAY, FRIDAY, May 15.

Twenty-Fourth Day, Friday, May 15.

Assembly met at 10 A.M. H. H. M. Kekuanaos in the chair.

After prayer by the Chaplain, the minutes
of the proceding day were read and approved.
Partrievas.—Mr. Ups presented a petition
from Hilo, praying that natives making contracts with foreigners do not engage at lesthan \$15 a month. Tabled.

Mr. Martin presented a petition from Kau,
asking that contracts may be drawn up in
both English and Hawaiian. Referred to
Judiciary Committee.

Reports or Committee.—Select Committee reported against taking possession of the Rapours of Committees.—Select Committee reported against taking possession of the spring called Kunawai, and in favor of erecting works for taking water from a spring near the Insane Arylum; also recommending the opening of School street to Lillia street, and grasting Lillia street, which would raise the value of property in that direction enough to pay in a short time for the expenses connected with new works. Signed by a majority of the Committee. Report approved.

RESOLUTIONS.—Mr. Hopu gave notice of a bill to tax cattle, sheep and goats.

Mr. Martin introduced a bill appointing a time for holding the various Circuit Coarts.

Ris Ex. F. W. Hutchison gave notice of a bill to take possession of portions of Honelniu for laying water pipes.

for laying water pipes.
On motion of Mr. Hitchcock the order of the

On motion of Mr. Hitchcock the order of the day was taken up.

Oudan or the Day.—Appropriation Bill.

House went into committee of the whole for its consideration. Mr. Mahelona called to the Items passed as follows: Salary of Secretary of Foreign Affairs \$4,000. Salary of Minister Resident in United States,

Salary of Minister Resident in United States, \$10,900.

His Ex. C. de Varigny moved to postpone action for the present. Carried.

Charge de Affaires at London, \$1,000.

Office expenses Foreign Agents, \$2,000.

Postage and incidentals, \$2,000.

Expenses Foreign Missions, \$5,000.

Mr. Lyons moved to postpone consideration of this item until the salary of the Minister Resident to the United States came up.

Mr. Koakana amended to strike out the item. He was in favor of esting aside a sum of \$5,000 to be put out at interest for the purpose of extenordinary expenses.

His Ex. C. de Varigny said that it was a necessity to have foreign agents, to keep up the name of the government, and we could nottell when an extracrdinary mission would be required, therefore he advocated this item. The south sea islands had no representatives in other lands and ware they respected? Were they not traduced?

Mr. Lyons said that we had been having a commissioner or something of that sort in the United States, and had he kept up the honor of the nation particularly? If this item passed it would in all probability be used, end where, no one knew. Now, all wished to have it anderstood exactly where this money was to be applied.

Mr. Hoskanu very strongly argued the ne-

applied.

Mr. Koskanu very strongly argued the necessity of setting saide a certain sum to be used
for extraordinary foreign missions. He thought
that if the sum of \$5,000 was put in the bank
to draw interest, it would pay all expenses of
these missions. But if we new appropriated

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