## amurrial <br> PAGES 1 TO 8.

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 Scene of Beauty at Progress Hall. WEALTH ANDFASHION THERE toi People Who Were Preas Hundred.

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 company have, without exception, shown themselves possessed of under
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When the PRINCESS GOWN made its bow here a few weeks ago it took our breath away
The lines were trying-too trying for any but tall women.
Since then it has been worked with and $r$ made and so beautified that you, who saw it first will scarcely recognize in the soft graceful flow-
ing beauty of this the stern lines of It is a case of the ugly duckling that. Making Deen women crowded our Dres Making Department where it, and other beauThere are some wonderfin wiss dress patterns inderful new embroidere came to us on the last steamer. When whic their delicate workmanship. you will not be able to help falling in love with their sweet, artistic quaintness.
Then there's that new "Straight Front" Corset--but we told you all about that laweek. Perhaps you ve noticed though, that
has forced the price of the old-fashioned, out-ofhas forced the price of the old-fashioned, out-o
date corset down to 50 cts. Pretty good sign to what's going to become of the old corset, isn

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WEDNESDAY, APRIL 3,1901 Will offer for sale by order of MR
Lours MAKS, on the premisea cor the McCully tract, and about one biock
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Houres, , hace curtans, shates.
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Gold, Silver
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We anticipated the recent rise in the Cotton Market, and secured an immense stock at old prices. We bought more than we

We must reauce our stock during the next few days Everybody knows the goods. The following prices speak for themselve.
Sale Commences
Monday, March 4th.
Pillow Cottons,

| Lockwoo | Brand, |  | nches | wide, | 10 |
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|  |  | 45 | " |  | $12 \frac{1}{3}$ |
| . | . | 50 | " | " | 15 ce |
| Dallas | " | 42 | " | " | 10 |
| Pepperell |  | 45 | * | " | $12 \frac{1}{2}$ |
| Pequot | . | 42 |  | " | 1212 |
|  | . | 45 | " |  | 15 |
|  | " | 50 |  |  | $17 \frac{1}{2}$ |

Shectings, Sheetings,
a Special Leader of 50 pieces of White and
Brown 10-4 Sheetings---Sale Price 15 cents Lockwood Brand in the following widths: 6-4-16 cents; 7-4-18 cents; 8-4-20 cents;
9-4-22 $\frac{1}{2}$ cents; 10-4-25 cents.
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Linen Sheetings
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EQUALLY REDUCED.

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Space will not permit us to quote prices, but a this sale we will offer Bargains that will astonish

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 This is an agreed case brought under Sections 1255 to 1258,
 parties hereto which might be the subject of a civil action. That the parties hereto have agreed upon the following statement o facts upon which said controversy depends and have agreed to
submit the same to the decision of the Justices of the Supreme Court without suit,
Second. That said Puna Sugar Company is the owner in fee simple of a tract of land at Waiakahiula, in Pahoa, in the Dis-
trict of Puna, Island of Hawaii. That said tract of land borders on a road constructed by the Hawaiian Government in part through a natural foreat
Third. That said Puna Sugar Company, within three month last past, has been engaged in cutting and destroying forest trees,
shrubbery and underbrush on its said land within two hundred shrubbery and underbrush on its said land within two hundred
and fifty feet of said highway. That said Puna Sugar Com pany claims that it has full right and lawful authority to so cu and clear said forest, shrubbery and underbrush.
Fourth. That it is claimed by said Attorney-General that said Puna Sugar Company is liable to prosecution and fine fo so cutting and destroying such forest, shrubbery and under-
brush, notwithstanding the same are growing upon land of the said Puna Sugar Company, in accordance with Sections 1617 Fifth. That it is claimed by sail
Fifth. That it is claimed by said Puna Sugar Company that said Sections 1617, 1618 and 1619 of the Penal Laws are unconstitutional and void; and that said sections of said Penal Laws
would deprive the said Puna Sugar Company of its property without compensation and without due process of law; and that said sections are contrary to the provisions of Article Fifth of the Amendments to the Constitution of the United States.
Sixth. It is agreed by the parties that in casé said law is held $t$ be unconstitutional that judgment shall be rendered in favo of ${ }^{\prime}$ said Puna Sugar Company, otherwise in favor of the Govern ment of the Territory of Hawaii.
The sections of the Penal Code brought in question are as "Sec. 1617. From and after the passage of this Act it shall not be lawful for any person to cut, mutilate or destroy any dred and fir growing shrubbery or underbrush within two hun after may be construeted by the Government through any nat ural forest."
"Sec. 1618. This Act shall not be construed to prevent any land now being have already cleared and planted land, such and underbrush therefrom to a sufficient extent to properly con tinue such cultivation, nor to prevent the holder of such lot frem constructing a road to the rear of such lot."
"See. 1619. Any person violating this Act shall be fined not less than ten dollare nor more than fifty dollars for each offense." The submission recites that the question in difference between brings the case within the provisions of the statute, Sec. 125 and counsel for each of the parties agree that this is true as a matter of law. However, whether or not a civil action between could be successfully and which need not now be decided. There are authorities on both sides of the question. In favor see Central Trust v. Citizens' Street Ry. Co., 80 Fed. 225; Lattery Co., v. Fitzpatrick, Fed. Cases, No. 8541 . Contra. Chon \& Co. v. Com patrick, Fed. Cases, No. 8541. Contra. Chon \& Co. v. Com
missiomers of Galsboro, 77 N. C. p. 2; C. B. \& Q. Ry. Co. City of Ottaica, 148 Ill 397. Those cases in favor of the juriz diction in equity seem to be sufficient upon which to base a prima facie argument in support of the maintenance of a civil action. Even though it should be finally held in such a case these parties, still the quiestion of difference between them would The plaintiff contends that this statute misde mutilate or destroy any forest tree or shrubbery or underbrush" on its own land within two hundred and fifty feet of the govern ment road, is contrary to the Constitution of the United States and void; that the effect of the statute is to take its property for
public use without just compensation or in fact any attempt at public use without just compensation or in fact any attempt at
compensation; that under the 5th amendment to the Constitution private property can only be taken for public use after just compensation has been made for the same.
The Attorney-General does not controvert the correctness of this contention; in fact concedes it to be correct. Still this does not relieve the Court from responsibility in the premises. We recognize it to be one of the highest duties of the Court, in a proper proceeding, to set aside and annul a void statute but understand that a court should never go out of its way to do this or to declare a law void if its legality can with judicial pro-
priety be upheld. "It must be evident," says Cooley, "to any one that the power to declare a legislative enactment void is one
which the judge, conscious of the fallibility of the human judg scientiously and with due regard to duty and where he can conthe responsibility." $*_{*}^{*}$ "The courts may declore tive enactments unconstitutional and void in some cases, but no cause the judial power is superio in or dignity to egislative, Being required to declare what the law is in th
cases which come before them, they must enforce the constituion as the paramount

The statute seems to be an attempt under cover of the police power, to effect an appropriation of private property to public
use without compensation. Can the statute be upheld either as

Eminent domain is the right or power of a sovereign stat 0 appropriate private property to particular uses, for the pur-
pose of promoting the general welfare. It embraces all casee where, by authority of the state and for the public good, the purpose of being devoted to some particular use, either by the tate itself or by a corporation, public or private, or by a private ys the Levi, Em. Dom. pp. 1 and 2. The same author aleo interfere with the general welfare of the community in which he lives. It is the enforcement of this last duty which pertains power affects private property. Whatever restraints the legisia ture impose upon the use and enjoyment of property within the and principle of this duty the owner must submit $t$, and without remedy. It is a regis may sustain hereby, he ise of police power, and not of eminent domain. But the mo nent the legislature passes beyond mere regulation and attempt deprive the individual of his property or of some substantial interest therein, under pretense of regulation, then the act bo mes one of eminent domain and is subject to the obligations 14 and 15 .
In all constitutional goveruments one of the "obligations and estraints" placed upon the use of the power of eminent domain is the provision written in the constitutions that private property shall not be taken for public use without making just compensation therefor. In our constitution this provision is found of the United States that:
"It is not necessary that property should be absolutely taken, in the narrowest sense of that word, to bring the case within the rotection of this constitutional provision. There may be such serious interruption to the common and necessary use of propstitution." Pumpelly v. Green Bay Co., 13 Wall. 166.
In forbidding the plaintiff to cut trees or underbrush, etc., on its own land within two hundred and fifty feet of the governend road there is such serious interruption to the common nd necessary use of property as will an a a taking within he rule announced by She Sureme of the United States compensating the plaintiff for the land so taken. It cannot be claimed that the public morals, health or the general welfare of he community require a strip of natural forest two hundred and fifty feet in width along the govermment road. The conclusion that the statute is void necessarily follows whether it be considered as the attempted exercise of the police power or that of eminent domain.
A statute of the State of Wisconsin forbid any one "to drive piles, build cribs or other structures in Rock River." The lawful for the defendant who owns this ground and has the right to use it under said Lappin, to drive piles into it anywhere within the river for any purpose. It prevents the lawful use of his property. It takes it away from him without compensetion or due process of law, and denies the defendant the equal protection of the laws. It is therefore in direct violation of Article V and XIV of the amendments of the Constitution of the United States and of Section 13 of Article 1 of the State Constitution, and is therefore void. * * * Any restriction or interruption of the common and necessary use of property hat destroys its value or strips it of its attributes, or to say tha the owner shall not use his property as he pleases, takes it in
violation of the Constitution." The City of Jamesville and another v. Carpenter, 77 Wis. p. 301.

A statute of the State of Missouri known as the "Boulevard passed providing that all houses thereafter erected on Forest Park Boulevard should conform to a certain building line, 40 feet back from frot of street and maing a viotion ordinance punishable as a misdemeanor, was by the Supreme Court of the State declared to be unconstitutional and
the reason that it violated that provision of the constitution public use without just compensation. Nhall not be taken in said act for condemning and paying for the forty feet quired to be left and forbidden to be built upon. City of s Lonis v. Hill, 116 Mo. 527
These laws of Wisconsin and Missouri above cited are paralle statutes to the one under consideration. These enactments wer possibly prompted by sentiments as refined and motives as alud able as that of preserving a natural park of forest jungle along
the public highways in the Hawaiian Islands, still the purpoer of the legislature in their enactment, however commendable might be, would not justify the court in upholding them wher as in this instance the statute is in conflict with the Constitution and violates one of the sacred safeguards thrown around private property, to-wit: That it sh
Iet judgment be entered for the plaint
Hatch \& Silliman for plaintiff.

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