THE POLYNESIAN.

SATURDAY, JANUARY 21, 1854.

Sugar Planting at the Islands.

A shrewd and candid observer of matters and things at the islands cannot but be impressed with the fact that our staple articles of export are by a thousand fold too limited for either individual or national prosperity. We are poor because we have so little to sell. We have but little to sell, because but little capital and effort are bestowed upon the production of staple articles, which are always in demand, and not dependent upon a prosperous or adverse whaling season.

It cannot be denied that the supply of the whaling fleet and the shipping connected with it, is the life of the agricultural interest, in its present condition. By far the larger proportion of the labor bestowed upon the soil, has immediate reference to the demand thus created. And this is right and natural. That demand should be promptly and fully supplied, in every particular, so far as the islands have the ability to produce what is wanted.—We would go farther, and say that the whaling fleet should not only be provided for, to the fullest extent of its demands, but many articles of their greatest necessity should be furnished them at a rate considerably lower than the now current prices of the market; and this could be done, were there more system in the matter, and still leave a profit to the producer. But this is not the point of our remarks; we would supply the whaling fleet, and thus secure that important business to the islands, and in addition, strongly urge the increased production of such staples as will bear exportation and yield a profit to the producer.

It is a palpable fact that forces itself upon the observation of every business man in the community, that with the whaling fleet departs the active business of the islands. Not only are the principal ports where they touch affected; the stagnation is felt also in every corner of the land, and every branch of business languishes alike. The demand being cut off, the supply of course ceases, and with it, the means of keeping business in a state of activity.

Under such a state of depression, a multitude of opinions are broached in regard to the cause of the dullness of the times. One is of opinion that it is occasioned by the tonnage dues on merchant vessels; another, that 5 per cent. duties on merchandise is the cause. Another thinks that a property tax would remedy the evil, and make money plenty; while another still attributes it all to the Legislature, which fails to do something that would act as a specific against "hard times." Without attempting to discuss these various opinions, we assert it as our belief, that they have very little to do with the matter. The causes lie deeper, and are scarcely affected by the ripples upon the surface. Ships bringing cargoes, or coming for them, will not be deterred by the tonnage dues. As much merchandise is, and will be imported, as we can pay for, even with 5 per cent. duties upon it. A tax upon property would not bring an additional dollar into the country, and it is the lack of dollars that makes the times hard. If the Legislature could force men to become industrious, or could they compel capitalists and laborers to cultivate our waste soil, and produce from it some staple article that would *sell*, then indeed could they reach the cause, and apply the remedy. But this may be beyond their province. If we are ever to expect an increase of business at the islands, it must be brought about, as we apprehend, by a greatly increased development of our agricultural resources. We see no other possible way for its accomplishment. We already supply the demand for recruits and supplies of a perishable nature, and when the demand for these ceases, by the departure of the whaling fleet, we have nothing to fall back upon. Coffee, sugar, syrup and molasses may be in demand, at a remunerating price, but unfortunately there is nothing of the kind to be had.—**Indigo, arrow root,** cotton and wool may be produced to a large extent, but they are not. The simple fact stands out boldly before us, that we have very little to export, the sale of which would bring money into the country. And as a consequence, the business of the islands is limited to the necessities of the whaling fleet, which will never exceed its amount for the few past years.

In view of these facts,—and we deem them such—the inquiry is apposite and of vital consequence, How can the business of the islands be increased? In what way can an export be produced, that will bring money into the country?

Without for a moment overlooking the importance of our present business, based upon the wants of the whaling fleet; or that coffee, salt, arrow root, fruits, &c., are all-important articles of export that should not be neglected, it is still our opinion that the production of sugar, syrup and molasses must become the great staple of the islands, and be relied upon, chiefly, to increase our business.

Our reasons for this opinion are founded upon certain facts, which we shall briefly state. Our soil and climate are adapted to the production of cane, at an expense much less than in many sugar producing countries where it is a profitable business. To prove this, we will cite Louisiana, one of the States of the American Union best adapted to the growth of cane. With a soil unsurpassed for depth and fertility, the sugar grower there is subjected to an expense, and to hazards, entirely unknown here. It is well known that the country is low, and to produce cane, a regular system of drainage is absolutely indispensable. On this subject a late writer says, "Ditches form one of the most important and expensive necessities of a sugar estate; for, with the exception of frost, standing water is the most destructive thing to cane.—Rains that fall in torrents in these latitudes, not only have to be guarded against, but also the more insidious and ever-encroaching 'transpiration water.' To form an idea of what is meant by this term, it must be remembered that the lands on the Mississippi are protected from annual inundation by embankments known as levees. In the spring of the year, the Mississippi, as the conductor to the ocean of more than half the running water of the North American continent, rises not only until its banks are full—but would, if left to itself, overflow for a season the whole lower country through which it passes. To remedy this evil, embankments for hundreds of miles confine its waters within its usual channels. * * * Consequently there is a constant percolation up to the surface; and if this were not provided against by the most liberal and scientific method of draining, although the sun might shine uninterruptedly for weeks, the cane crop would sicken and die. * * * In draining a plantation, it is customary to cut parallel ditches, about two hundred feet apart, from the front to the rear of the plantation, with cross ditches every six hundred feet. This complication of artificial canals requires not only an *enormous outlay of capital*, and occupation of valuable land, but also taxes the scientific engineer to give them their proper levels. In many instances it is found impossible to accomplish this, and costly draining machines, driven by steam, have to be called into service. * * * There are plantations on which, within the compass of a square mile, can be found from twenty to thirty miles of ditching! * * * and on some plantations can be seen a regular system of deep and carefully-constructed canals, a mile long, ten feet deep, and fifteen wide. It may with truth be said, that the industry and capital expended in Louisiana alone, to preserve the state from inundation, have erected works of internal improvement, which, united, far surpass in extent, and if concentrated, within the vision of a single eye, would be superior in magnitude to the renowned pyramids of Egypt." And all this is chiefly to enable the Louisiana planter to grow sugar.

All this labor and expense is uncalled for at these islands.

The necessity for replanting is another disadvantage to which planters are subjected in Louisiana, but exempted from here. The same writer says, "The growing crop in Louisiana consists of three kinds of cane; the first is technically called 'plant cane,' and is that which springs directly from the 'seed cane;' the second is called 'rattoons,' which is the growth from the roots of the previous year's plant cane; the third is called 'stubble,' which is the growth from the roots of the rattoon cane. In Cuba and the other West India Islands, there are but two kinds of growing cane—the plant and the rattoon,—for the latter never becomes 'stubble,' by degenerating, as in Louisiana. * * * Taking the sugar crop of Louisiana to be three hundred and fifty thousand hogsheads, and each hogshead weighing one thousand pounds, sugar cane is returned to the ground *as seed* that would annually produce the enormous amount of seventy thousand hogsheads of sugar; and this is lost to the State by the disadvantages of climate alone, for the soil is superior to any other portion of the world."

Another considerable expense in Louisiana, and to which planters here are but partially subjected, is for fuel. "The amount of fuel consumed in the production of sugar is enormous. Three cords, on an average, are necessary for the manufacture of a hogshead of sugar of a thousand pounds. Ten years ago, five cords were necessary to the hogshead, but the improvement in the setting of kettles has lessened the number of cords nearly one-half. This wood will readily sell to the steamboats throughout the sugar region of Louisiana for three dollars per cord; consequently each thousand hogsheads of sugar costs nine thousand dollars in its manufacture, for wood alone."

"As may be imagined, the primitive forests are rapidly disappearing, and already many large plantations are lessened in value, because they have little or no timber left upon them. In Cuba," and we may add, at the Sandwich Islands, "the begasse, or the remains of the cane after it has been ground in the mill, is quite sufficient to make the crop; but in Louisiana this vegetable matter is destroyed. This begasse is a spongy, fibrous mass, composed of the crushed pith and outside covering of the sugar cane. It absorbs water from the atmosphere, and is very difficult to dry. Various ingenious expedients have been resorted to, to make this vast refuse of the crop, as in Cuba, useful for the purposes of fuel, but none, we believe, have been successful. * * * In Louisiana, the climate is damp, and in the fall, showery; and the begasse, in the open air, so far from drying, absolutely becomes more incombustible from wet than when it is first brought from the mill. The necessity of economy in fuel is everywhere acknowledged, and ingenious men are endeavoring to invent machinery for rapidly drying the begasse by artificial means, so as to render it fit for immediate use; but up to the present time this grand object has not been accomplished, and the begasse still remains a mass of vegetable matter, not only of no use to the planter, but absolutely causing considerable expense, in order to get it out of the way.'

We will only mention one other disadvantage experienced in Louisiana, to which planters are not subject here, which is frost. There the crop has to be gathered in three months from the time the canes ripen, or they are subject to the frost.—Here, no such haste has to be practised. For five or six months, where cane tassels, the planter can continue grinding; and where it does not tassel,—as it does not at a certain altitude,—he can grind the whole year.

Our object in making the above comparisons, is simply to show, that while sugar growing is profitable in Louisiana, under all the disadvantages to which it is subject, it is fair to presume that here, without those disadvantages, it must be profitable also. And further, that if the business of the islands is to be increased beyond its present condition, we know of no more probable way by which so desirable a result is to be brought about, than by employing the natural advantages we enjoy, in climate and soil, in producing it.

The plantations for growing sugar at the islands have all been begun under the disadvantage of either a want of experience, or a want of capital; and the whole amount invested upon them all, has not, we imagine, equalled the sum invested in some of the single plantations in Louisiana. A fair experiment has not, therefore, been made, of the ability of the islands, to render sugar growing profitable. It was fifty years after the introduction of cane into Louisiana, before they thought it possible to make sugar. Their only product from it was syrup, until near the close of the last century. The discovery that sugar could be made, immediately gave a spur to the business, and at the present day there are over fifteen hundred plantations in that State, producing 350,000 hogsheads of sugar, with its corresponding molasses.

We have not at hand the means of knowing the gross amount of capital employed in this particular branch of business, but we give the value of one estate, together with its production in 1852, that our readers may judge of the expense of a sugar plantation in Louisiana:

VALUE OF THE ESTATE.

Land—900 acres, at $40,	$360,000
Buildings,	100,000
Machinery,	60,000
Slaves,	170,000
Stock,	11,000
Total,	$701,000

PRODUCTIONS OF THE ESTATE IN 1852.

Sugar—1,300,000 lbs. at 6 cts,	$78,000	
Syrup—60,000 galls. at 36 "	21,600	
		$99,600
Corn, 9000 bbls. for consumption on the estate; Wood, 3000 cords for engine house,—estimated value,		14,400
Total product of the estate,		$114,000

This is, of course, one of the larger plantations, which produced from eight hundred acres of cane, 1,300 hogsheads, or 650 tons of sugar. The average produce of the 1500 plantations was 233 1-3 hogsheads. Some of the plantations were larger, but the majority smaller, than the one here cited. Now we would ask, if capital, labor and machinery were employed at the Sandwich Islands, in something like the proportions they are employed in Louisiana, should we complain of "hard times?" Would not business be increased, until all would be satisfied?

To establish sugar or coffee plantations in any country, successfully, requires a large capital, as experience and common sense would dictate; and this is just what is wanted here to render the business profitable, and of the highest benefit to the islands. Without it, we must be content to see our business confined to its present limits, and raise potatoes and squashes for the whaling fleet, while thousands of acres of good soil lie uncultivated and unproductive.

Correction.

By some unaccountable mistake, the dimensions of the blocks, as laid down upon the map of Mr. Webster, as well as the size of the lots, were all wrong in our issue last week.

The rectangular blocks are 300 by 200 feet, divided into 12 lots, each 50 by 100 feet. The lots in the irregular blocks on Fort street have 50 feet frontage, and vary in depth from 100 to 150 feet.

"It is also proposed to continue Fort and Richard streets through to the front, and to open two or three others from Fort street to the front."—The word Queen should be read in the latter place for "Fort."

ERRATA.—In the law entitled "an act to amend the law relating to Public Auctioneers," published in the Polynesian of Nov. 5, 1853, read "*For the Island of Maui two hundred and fifty dollars.*" the words "and fifty" being omitted. The same error occurs in the volume of Laws for 1853.

Gold Mines of California.

Up to the close of December, 1853, it was five years and two months since the first discovery of gold in California. The whole product is thus estimated by the Alta California:

1848,	$ 3,000,000
1849,	25,000,000
1850,	40,000,000
1851,	60,000,000
1852,	63,000,000
1853,	68,000,000
Total,	$260,000,000

A scientific and practical man, says the same paper, upon whom we rely much, is inclined to the opinion that California has reached the maximum of her gold production, but believes that the product will not diminish for three or four years, and will then recede slowly for eight or ten years, when it may reach ten or fifteen millions, and at which point it will remain for a long period. This, however, is but conjecture. It will be seen by the estimate above, that the product has up to this date been steadily and rapidly increasing.

A New Auctioneer.

Mr. John F. Colburn has taken out an auction license, in place of A. P. Everett, Esq., whose license had expired. The business will be continued at the old stand of Rice & Co. At the first sale of Mr. Colburn, on Wednesday last, a lunch was given to his friends, and judging from the rush on the occasion, they embrace the whole population of Honolulu. Success to Mr. Colburn in his new business. See advertisement in another column.

☞ A correspondent on East Maui writes,—"I am happy to report the state of things on this part of the island, as prosperous. There have been from six to ten cases of small pox in Hamakua, and three deaths. No new case during the past six weeks. We can now report freedom from the small pox, if no new case should be introduced from abroad. There has been no case in Koolau, none in Kula, none in Honuaula, and but one or two in Wailuku. We hear that there are but few cases remaining in the districts of Hana, Kipahulu and Kaupo."

"A word in respect to agricultural prospects at Makawao and vicinity. The weather has been quite favorable all along for plowing, and much has been plowed. Cattle and horses are still busily employed, and as we have three months remaining, in which wheat can be sown, there seems a strong probability that much will be put in; especially as there is no lack of seed."

Further Election Returns.

From Hawaii we learn that in the district of North Kona, A. G. Thurston, Esq. has been elected; in Kohala, Nahie; in Hamakua, Nahakuelua; South Kona, Papaula. The last two we hear, are contested.

From Kauai, district of Hanalei, S. P. Kalama; district of Puna, J. F. B. Marshall; district of Koloa, J. W. H. Kauwahi; district of Waimea, Wana.

At Waialua, on this island, the election has been declared illegal; there having been many more votes polled than there are voters in the district. A new election has been ordered, as we are informed, by the inspectors.

Improved Rifle.

We were shown yesterday, at the store of Capt. Snow, a beautiful rifle, made by Robbins & Lawrence, of Boston, embracing the improvement, also, of Mr. Mason, whose celebrated lock is well known. This rifle loads at the breech, with cartridges prepared for the purpose, and primes itself by the act of cocking. It is a fine piece of workmanship, and combines many improvements of utility. This rifle is being introduced into the U. S. army, where it is highly valued.

Winter Weather.

We have had several days of winter weather during the past week, and the thermometer has actually been down to 60,—a degree of cold which attracted the observation of every body, and has elicited as much remark as ten degrees below zero would have called forth in cold climates. This temperature has been highly enjoyed by most people, and no cases of freezing to death have yet come to our knowledge. We should like "a few more of the same sort."

HONOLULU, 16th Jan'y, 1854.

Editor of the Polynesian:

SIR: As a friend of public improvements I read with interest your editorial of the 14th inst., respecting the disposition of the Government property, to the eastward of the Fort.

There can be no doubt about the propriety of rendering available to commerce the land in question with the least possible delay, nor can there be any doubt that instead of this useless, because unproductive property, the Government would be better off with its value in ready money, for the purpose of completing the public works which have already been ordered by the Legislature, and for the public defence. The question is as to the best manner of doing the thing.

Your remarks upon the proposal to sell the lots at auction as they lie under water, appear to me to be good common sense, and well worth the consideration of the Government, but I do not concur with you in the opinion that it is advisable for the Government to fill in the whole with substantial materials, lay out the streets, number the lots, and then offer them at auction to the highest bidder. Jobbing and speculating on the part of a Government tend to render it odious and unpopular. One such enterprise might be successful, and the Government might make money by it, but the very next attempt might prove a failure, and involve the country in a heavy debt, which could not be swept off without oppressive taxation. An attempt to remedy the losses by one speculation—for the plan proposed is nothing more than a speculation—might involve the Islands more deeply in debt, or, if successful, create on the part of Government officials a dangerous love of speculations, which could hardly fail of bringing utter ruin, instead of prosperity, upon the Islands. The ruin of individuals by bad speculations, although greatly to be deplored, never endangers the sovereignty of a country, but situated as these Islands are, the Government cannot safely run any risk in money matters.

Again: It is proposed to borrow money under legislative authority for carrying into effect this operation. Past Legislatures have not seen fit to borrow money for building prisons, court houses, and other public offices and works. Can we depend on the Representatives of the people, now elected, to contract a debt equal to more than one-third of the entire revenue, for the sake of profit? I think not.—I should be ashamed of them if they should, needing as we do, $150,000 at least, for other objects of public improvement already voted. They certainly would do wisely to provide for immediate necessities ere hoisting sail before the breeze of speculation, *a la California.*

I hope Mr. Webster will publish in detail his estimate of the cost of filling in this property, that the public may know how he calculates. Mr. W. is a very good surveyor,—at least his charts are clean and free from blots, but I am not aware of his practical acquaintance with any business of this kind, as conducted in the Islands; and certainly the present high rate of wages and cost of materials will not be reduced, in view of an undertaking of such magnificence. The use of machinery, steam engines, &c., would involve an outlay greater than one could well imagine, who never undertook a work of this kind, in a country situated like these islands. Such estimates generally fall short of the reality. A government should never begin without a determination to complete their undertakings. Without knowing Mr. Webster's data, I could easily imagine an estimate of $130,000 a safer one at $200,000, and the actual cost by the time the work is done, $300,000. If it is proposed to offer the contract to the lowest bidder, every one who bids would calculate for himself; but if the Government undertake it, through the agency of salaried officers, there might be a vast deal of table-turning before the work was ended.—"New Lords make new laws." Perhaps Mr. Webster will be able to inform the public when the work will be done, and the lots offered for sale by auction, all filled up and ready to build on. Perhaps he will inform us how soon *he* would complete it, if he had the job, under a guarantee that he would not be removed from office during the time, and another man with different notions put in his place. Perhaps he will calculate the interest on the money borrowed up to the time when the purchasers come forward with the money. But I forbear.

It is desirable that, some way or other, this property should go out of the hands of government, in order that it may come in for a share of a property tax, and had we in our midst any number of enterprising men, with sufficient capital to improve the property, they might form a company, and purchase the whole at a fair unimproved value. In such an event, the filling up would soon be done, since the interest of the purchasers would compel them to do it. Any loss would be theirs, not the government's.

I would remark that Mr. Webster's streets are too narrow by 20 feet, for purposes of commerce and ventilation. They should be at least 80 feet wide. It will cost no more to do it right at first, although the space for building on will be so much reduced.

AMICUS.

Supreme Court.—January Term.

Pierce Hegarty vs. B. F. Snow.—This was an action brought by the plaintiff to recover the price of 150 bbls. of Rye Flour, purchased by the plaintiff of the defendant in December 1852, for exportation to San Francisco, together with all damages resulting to the plaintiff from his inability to sell the flour on account of its sourness. The ground of the action was an alleged violation of a warranty on the part of the defendant that the flour was sweet and in marketable condition.

The facts as they appeared in evidence were, that the flour was purchased without any express warranty as to its quality, at $14 per bbl., and that, at the time of the purchase, it was not open to inspection, but in the hold of the bark Auckland, lying at the wharf in Honolulu. That subsequently it was rolled out on the wharf and delivered to Hegarty's agent, who, discovering that some of the barrels were stained and in bad condition, refused to accept them, and they were rolled aside. Snow found fault at the rejection of these stained barrels, and said that their discoloration outside was no evidence that the flour was bad inside, whereupon the agent consulted with Hegarty, after which he procured a flour trier and examined the barrels. The agent testified that he thought the flour upon taste and smell to be sour, and so informed Hegarty, but Snow thought it was not, and Hegarty subsequently accepted part of the stained barrels, though not all. The flour was shipped to San Francisco with lumber and other cargo, and on its arrival there was found to be sour, and nearly, if not quite unsaleable. The plaintiff brought the flour back to Honolulu and offered to return it to the defendant, who declined receiving it, upon which the plaintiff stored it in the custom house, and brought this action, not only to recover back the money he had paid for the flour, but the freight on the same to and from San Francisco, together with storage and all other expenses consequent upon the purchase.

The case was conducted and argued with marked ability by Messrs. Montgomery and Blair for the plaintiff, and by Mr. Bates for the defendant, the former contending that there was an implied warranty in the sale, that the flour was sweet, and suitable for exportation to San Francisco, the purpose for which it was bought, and that the doctrine of *caveat emptor* did not apply to the plaintiff in this case, inasmuch as the flour was not open to inspection at the time of the purchase, but lying in the hold of the bark "Auckland." The counsel for the defendant argued on the contrary, that, in the absence of any express warranty or deception on the part of the defendant, no implied warranty could be raised as to the quality and condition of the flour; and that the doctrine of *caveat emptor* did apply in this case, as the plaintiff had the opportunity of inspecting the flour on its delivery, and actually did inspect such barrels as he thought unsound; and also rejected some.

CHIEF JUSTICE LEE charged the jury in substance as follows, viz:

This case, gentlemen of the jury, is an interesting one, and no more interesting than important, involving as it does, serious questions of law, affecting the every day commerce and business of the islands; and which, hitherto, have never been fully discussed and settled in this court. We are called upon in this case to establish rules for the government of our merchants and others in all their sales and purchases. How important then, that while we are free and unembarrassed by former decisions and precedents, we should establish sound rules,—rules which shall have a firm foundation in reason, justice and equity, and such as shall promote fair dealing, good morals, the highest honor and the public weal. Instead of adopting the harsh old doctrine of *caveat emptor*, or, buyer beware, which requires the vendee to be constantly on his guard against the gross representations, the deceitful praises and cunning lures of the vendor, we should lay down such rules as will check fraud of every kind, protect the ignorant, and teach the vendor that in all the representations made by him as an inducement to the sale of his goods, he should tell the truth, the whole truth, and nothing but the truth. Such rules as will require of both vendor and vendee not only good faith, but the most scrupulous good faith, not only honesty, but the most exalted honesty, or as that great and good jurist, Judge Story, has expressed it, *uberrima fides* in all that relates to the sale and purchase. The maxim of *caveat emptor*, or, that the purchaser buys at his own risk, unless the seller gives an express warranty, which is contended for on the authority of the leading case of Chandelor vs Lopus, and the long line of cases which followed that precedent, can no longer be said to hold that empire over the law of sales, which it formerly did; for the modern decisions on this subject have so trenched upon the doctrine as to reduce it to a mere shadow.

I do not consider the case of Chandelor vs Lopus good authority for the purpose for which it is cited; for it was decided on the pleadings of the case, and not on its merits. The old common law rule of *caveat emptor*, says Story on sales, has been losing ground, and the law has been tending towards the doctrine of the Roman law, which is its antipode.—*caveat venditor*,—or, beware seller, until it now occupies a middle ground between the two, by requiring the strictest good faith on the part of the seller in all that he says and does, and throwing on the buyer the responsibility for any foolish mistakes, or wrong conclusions, which may result from his trusting to his own judgment.

It is not contended, in this case that there was any express warranty of the quality of the flour, but it is said the law implies one. It is true that the law does imply a warranty in some cases; for example, it implies a warranty that the article purchased is merchantable, that is, that it possesses some value,—that it is fit for some purpose, and can be sold at some price. Secondly, it implies a warranty that it is reasonably fit for the use for which it is *known* to be intended; that is, if a man sells an article for a particular purpose, he thereby warrants it fit for that purpose.

But lest I should be misunderstood, or state this doctrine of implied warranty too strongly, let me illustrate my idea by examples. The law will imply a warranty that goods are merchantable in all cases where, from their nature or situation at the time of the sale, an examination of them was impossible. Thus, if goods be at sea, or stowed in the hold of a ship, as in this case, or in a storehouse, so that only the surface can be seen; or if they be in bales, so that an examination of the centre cannot be made without tearing each bale to pieces, the seller will be understood to warrant them to be merchantable, and of the quality demanded and expected by the buyer. He cannot, says Lord Ellenborough, in the case of Gardner vs. Gray, without a warranty, insist that the article shall be of any particular quality or degree of fineness; but the intention of both parties must be taken to be, that it shall be *saleable* in the market under the denomination mentioned in the contract between them. But where a man can examine the goods if he choose, and especially where he does examine them, as it is said Hegarty did in this case, he must take the consequences, if through carelessness or negligence, he omit to make a thorough examination. The law will not protect a man from the consequences of his own carelessness in such cases, where the seller has not undertaken to furnish an article of a particular kind or quality, and has done nothing to mislead the buyer.—This, if I mistake not, is the language of all modern writers and judges, on the law of sales.

But, say the learned counsel for the plaintiff, this is a sale of provisions, and whatever may be the law in reference to other goods, in the sale of provisions there is always an implied warranty that they are sound and wholesome. It is true that an implied warranty of soundness is raised in the sale of provisions, on the ground that such a warranty is necessary for the preservation of health and life. But a distinction has been made between the sale of provisions in small quantities for domestic use and consumption, and the case of a sale of large quantities of provisions, *as merchandise*, for exportation. For example, if a man should step into one of our stores and order a barrel of flour to be sent up to his house, for family use, there would be an implied warranty that it was sweet and wholesome; but if he should ask for flour, and buy a hundred barrels, without a single question as to its condition and quality,—the flour being open to his inspection, and he relying solely on his own judgment, the case would be far different. In the latter case he has bought the flour in the same manner as he would any other merchandise, and in the absence of any misrepresentation or act on the part of the seller, calculated to mislead him, he must be supposed to have taken the risk of the sweetness of the flour upon himself.

But even granting, says the defendant, all that the plaintiff contends for—that the flour was in the hold of the ship and could not be examined, and that there was an implied warranty of sweetness, still he has no ground for this action. The flour was open to his inspection, when it was delivered on the wharf, he undertook to examine it, he rejected certain barrels of it as sour, accepted the rest, shipped it to San Francisco, and after all this, will he be permitted to treat the purchase as a nullity, and throw the flour on my hands? Has there been any false representation in this sale,—has there been any breach of an implied warranty in the case? If there has been, then the plaintiff is entitled to recover; otherwise not.

If the plaintiff is entitled to recover at all, it is said he should recover not only the whole purchase money with interest, but the freight of the flour to and from San Francisco, together with storage and all other expenses incurred by the plaintiff on account of this purchase. The rule governing this point is, that where the contract has been executed, and the goods paid for, the vendee has no right, in the absence of fraud, to return them upon their failure to correspond to the warranty, but must sue upon the warranty, and he can then recover the difference between the price paid and the actual worth of the goods, which in this case, so far as we have any evidence in the matter, is shown to be the difference between $14 and $8 per barrel. In no event could the plaintiff recover the expenses incurred by him in bringing the flour back from San Francisco, and for storage, &c., subsequent to his arrival here, for it is the duty of the vendee, when at a great distance from the vendor, and the goods cannot be returned without a great expense, to give notice to the vendor, and await a reasonable time for his orders, after which he may proceed to sell the goods on account of the vendor, and he will then be allowed to recover the difference between the net proceeds of such sale and the price paid.

The jury, after a short absence, returned a verdict for the Defendant.

Messrs. MONTGOMERY and BLAIR for Plff.

A. B. BATES, Esq. for Defendant.

The King vs. Puahiki—The prisoner was indicted for murder in the second degree. It appeared in evidence that the prisoner and his brother Kekualua, who were residing in the same house at Koolau, on this island, fell into a quarrel over a tinder box, which the deceased wished for the purpose of lighting his pipe. That from words they came to blows, clinched and fell to the floor, the prisoner being under. There was no one in the house with them at the time except a little girl nine or ten years of age, who immediately ran out and called for help. On her return the brothers were on the floor, and Kekualua immediately died from a stab in the heart. Puahiki said "my brother is killed," and immediately commenced wailing over him. The little girl did not see the wound inflicted, and the prisoner was silent as to the manner of the death.

On the part of the defence it was shown that the prisoner was in a very feeble condition at the time of the quarrel, while his brother, the deceased, was a strong athletic man, who had threatened to kill the accused the day before, and hurled a bottle at his head. He was evidently a man of violent passion. There was no proof that the prisoner had a knife in his hand, and his counsel contended that the knife was in the hand of the deceased, and that in his fall he inflicted the wound upon himself. Dr. Judd, the physician who made the post-mortem examination, testified that the wound might have been thus inflicted. The defence also contended that if the accused did inflict the wound, it was done in self defence.

Chief Justice Lee charged the jury, that if they found the prisoner guilty of the killing, they should take into consideration the question whether or not he did it in self-defence. If they found that he had acted in self-defence, and that it was clearly necessary to take the life of his brother in order to preserve his own life, he should be acquitted.

Verdict of Not Guilty.

A. B. BATES, Esq. for the Crown. G. M. Robertson, Esq. for the prisoner.

A New Coaster for the Sandwich Islands.

The fine new clipper schooner SOVEREIGN was launched in New Bedford early in November, from Miller's yard. She is a beautiful vessel, of about 130 tons burden, clipper built, and it is believed will be a very fast sailer. She is intended for the Sandwich Islands business, and will be commanded by Capt. Thomas Hobron, Jr. (now of the Maria,) for whom she is built. She will be brought to the Pacific by Capt. Godby, of Sagharbor.

MAILS.—The Mail for San Francisco will be despatched this day, at 3 o'clock P. M.

For Ascension and Strong's Island, a mail will be despatched on Monday next, at 2 P. M.

☞ The Board of Health have no report to make this week—no new cases of small pox or deaths having occurred since the last report.

☞ Firewood is becoming scarce in Honolulu. The present is a good time to send wood to market.

FRANCIS B. SWAIN. CHAS. H. BUTLER.

NOTICE.—The undersigned having formed a copartnership under the style of Swain & Butler, have taken the shop recently occupied by J. C. Walters, and intend carrying on the *COOPERING BUSINESS* in all its various branches. Hoping by strict attention to merit a share of the public patronage. On hand and for sale, 2000 bbls casks, barrels, buckets, tubs, shower bath and bathing tubs.

Jan. 16, 1854—3m* SWAIN & BUTLER.

NOTICE.—My wife, Nawahineokawai, having left me without good cause, all persons are forbidden trusting her on my account, as I shall pay no debts of her contracting after this date.

Jan. 16, 1854.-3t-37 R. HALLODAY.

DISSOLUTION OF CO-PARTNERSHIP.—The co-partnership between the undersigned L. Sigalas and R. E. Wakeman in the firm of National *Hotel*, is this day dissolved by mutual consent, in the following terms:

1. I, the undersigned, R. E. Wakeman overtake from to-day, the house and responsibility of the said house, so that I, R. E. Wakeman pay all the debts there are contracted regarding the business in the house, and all debts due to the house are to be paid to me, R. E. Wakeman.

2. I, the undersigned, L. Sigalas withdraw from to-day from the business carried on in the National Hotel, so that I, L. Sigalas have from to-day no responsibility of the said house.

(Signed) L. SIGALAS,

Witness, H. H. Sawyer. 3t-37*

Honolulu, Jan. 14, 1854.

2,000 GALLONS POLAR OIL for sale in quantities to suit purchasers.

PORTER & OGDEN.

Honolulu, Jan. 21, 1853-6t-37

List of Letters

REMAINING IN THE HONOLULU POST-OFFICE, January 20th, 1854.

	A.	
Adams, C. H. Mrs.	Allen, James	Albertson, Wm.
Allen, Henry C.	Alden Nathan L.	
	B.	
Baker, Almira Mrs.	Butler, H. Capt. 2.	Bush, J. R.
Barnes, E.	Baker, Henry R.	Bailey, Thos. R.
Brewster, G. W.	Bancroft, John	Bacon, Wm. C.
Bailey, Henry	Bebee, James	
	C.	
Colson, Chas. 2.	Cram, Ira	Crawford, S. C.
Childs, C. C.	Callery, John	Clough, Thos. J.
Cadiz, Eugine	Crocker, John Capt.	Church, Warren
Clayton, Geo. H.	Childs, P. E. Capt. 2	Cuff, Wm.
Comstock, H. Capt.	Caldwell, Samuel B.	Champlain, Wm.
	D.	
Dixon, James	Davall, Thos. M.	Dexter, T. Capt.
	E.	
Ellis, Edwin	Ellis, John	
	F.	
Fisher, Andrew J.	Fisher, N. C.	Ford, S.
Fitzgerald, James	Furniss, Robert	Furgens, Mr.
Finney, N S.		
	G.	
Gorham, Geo. R. 2	Greenwell, H. N.	Gill, Mr.
	H.	
Hatcher, Mr.	Howard, Chas. F.	Hancock, John
Hoxie, Allen	Hauger, Don Jose	Hathaway, John C.
Homan, Benjamin	Howland, George	Hernandez, R. R.
Hill, Charles	Holmes, Jason	
	J.	
Jenney, F. W. 4.	Johnson, Lewis	Jones, Wm. A.
	K.	
Knapp, Byron	Kelly, R. Capt. 2	Knapp, Mrs.
Kerk, Chas. H. 2.		
	L.	
Littlefield, Charles	Lawson, James	Lawrence, Robert
Lake, Charles	Lowell, Joshua	Lake, Samuel A.
Lane, Charles H.		
	M.	
Macy, Chas. G	Mandelbaum, L. H.	McGloin, Francis
Morton, David	Maxfield, Warren S.	McDonald, John
Mayar, Edward M.	Manchester, W.	McGinnis, Pat. R.
Morrill, Frank	Mosburn, Capt.	McDouble, Mr.
Murry, Joseph 2		
	N.	
Newton, C. D.	Nolon, Joseph H. 2	
	P.	
Perkins, Erastus B.	Pease, Samuel Mr.	Pearson, Mr.
Persquion, L. Mons.	Poppleton, Wm.	
	R.	
Richards, Geo. M.	Rich, John	Reeves, Wm. C. 2
	S.	
Spence, Ass Dr.	Sea, Henry	Speaden, R. V.
Smith, A. N. Mrs.	St. John, Henry	Smith, Varanus
Sturbuck, C. F.	Scovel, Horatio	Sumner, W.
Sanborn, Freeman	Smith, James	Sherman, Wm. R.
Streeter, George	Stein, John F.	
	T.	
Tinker, Henry A.	Thorn, John	Thomas, N. L.
	W.	
Willson, A. F.	Washburn, John 2	Weaver, M. Capt.
Williams, Chas. S.	Wilson, John	Waldron, R. R.
Wood, D. B. 2	Wheeler, John P.	Warren, Robinson
Walters, James		

HENRY M. WHITNEY, P.M.

Merchandise,

ENTERED FOR DUTY, WEEK ENDING JANUARY 19.

1 box salmon, 20 hf bbls 10 bbls tongues, 27 bbls flour, 4 cases shoes Invoiced at $604 05.

WITHDRAWN FOR EXPORT.

7 1-2 tons hoops, 72 bdls shooks, 13 casks flour, 57 do bread, 10 do towline, 4 do flags, 4 do sails, 149 bbls provisions, 20 coils rigging, 2 cases craft, 1 cask meal, 1 bbl coffee, 1 case metal, 3 bbls beans, 3 bbls sundries, 1 bbl rice, 1 keg nails, 1 do rivets Invoiced at $10,228 20.

ALSO—1 cask, 5 kegs, 2 cases brandy; 1 cask 6 kegs rum.

WITHDRAWN FOR CONSUMPTION.

49 bbls bread, 119 do flour, 99 hf do flour, 50 kegs nails, 1 casks flour. Invoiced at $1758 10.

ALSO—5 cases, 1 cask gin, 1 hhd 3 qr casks 25 cases brandy.

Honolulu Port Charges.—Merchant.

Tonnage (ships loading or discharging cargo) per ton register,	15c
Pilotage, in and out, each way per foot,	$1 00
Health Certificate,	1 00
Buoys,	2 00
Manifest,	1 00
Harbor Master,	1 00
Clearance,	1 00
Pilotage for anchoring a vessel outside, which does not enter the harbor,	10 00
Wharfage per ton per day,	2c
Water, filled at the wharf, per bbl,	15c
Ballast per ton, stone,	$3 @ 3 50
Shipping Seamen, foreign,	3 00
do. do. native,	1 50
Day Labor, do.	1 00
do. do. foreign,	2 00

Port Charges.—Whalers.

Buoys,	2 00
Health Certificate,	1 00
Pilotage, in and out, each way per foot,	1 00
Harbor Master,	3 00
Clearance,	1 00

Whalers can land goods to the value of $200 free of duty, $1,000 worth additional at 5 per cent, without being liable to tonnage dues; but if they land more than $1,200 (including the $200 free of duty,) they are subject to the same liabilities as merchant vessels.

Products of the whale fishery transhipped free, except entry and permit.

☞ Merchant vessels touching for repairs, supplies or refreshments, advices, shipping or discharge of crew, and landing passengers, are exempt from tonnage dues.

PASSENGERS.

By the Alphonso, for Sydney.—Mr. and Mrs. H. I. Ray and Master H. Ray, R. H. Miller.

By the Boston, for San Francisco.—Messrs. W Brown, G. L. Howe, J. H. Straus, N. R. Morse, H. Ellis, H. Brown, R. G. Childs, J. Witkins, G. W. Ryckman, J. C. L. Wadsworth, J. B. Childs, Mr. Moses, Mr. Froeborn, J. McMann.

MARINE JOURNAL.