THE POLYNESIAN.

SATURDAY, SEPTEMBER 14, 1861.

☞ We call our readers' attention to the Royal Proclamation in another column touching the neutrality of this country pending the contest now waging between the United States of America and certain States thereof, styling themselves the Confederate States of America. Having been officially notified of the fact by the Hon. Th. J. Dryer, Commissioner of the United States at this Court, His Majesty has in this step but followed the example so promptly set by England, France, Spain, Belgium, and other powers, and it is to be hoped that nothing will happen to compromise the position now taken.

This Government had hoped that the disunion sentiment in the United States would have been quelled or appeased at an early day, but finding it assuming proportions too large to be ignored, and careful lest its hostile enterprises at sea might in any way compromise the friendly relations existing with the Government of the United States, or work any damage to their large commercial interests in this country, His Majesty has taken this early opportunity to proclaim his neutrality and his adherence, in principle, to the treaty of Paris, 1856, as regards the fitting out or harboring of privateers.

The neutrality of this Kingdom is understood to comprise one English marine league at sea, from low water mark, including the whole area of this archipelago, and the channels and seas between the different islands. In 1856 the Department of Foreign Relations notified the Foreign Diplomatic Representatives at Honolulu that the Domain of the Hawaiian Crown comprised the islands of Hawaii, Maui, Oahu, Kauai, Molokai, Lanai, Niihau, Kahoolawe, Nihoa (known as Bird's Island), Molokini, Lehua, Kaula, and all Reefs, Banks and Rocks contiguous to either of the above, or within the compass of the whole.

While the question of privateering is again engaging the attention of the civilized world, and the principle modifying the ancient international law in this respect, as laid down by the Congress of Paris on the 16th of April, 1856, has, as we learn, been adhered to by the United States Government, it may not be amiss to mention, for it redounds to the honor of this country and its late King, that in his proclamation of neutrality, during the late great war between the maritime powers of Europe, and dated the 16th May, 1854, he prohibited privateering, directly or indirectly within his jurisdiction, thus by two years forestalling the enlightened sentiment which those great powers then adopted as an integral part of the international code. And the same just and lofty sentiment is again reiterated by the present King, in the proclamation which we to-day publish.

Setting aside the justice and equity which prompted the recognition of the above principle both then and now, it was due as much to the self-respect of this Government as to the implied treaty obligations, especially the 15th Article of the Treaty with Sweden, the constant friendly relations and the memory of the many kind offices received from the United States Government, as well as in consideration of the important fact that every year a fleet of American whalers and merchantmen, amounting in value to several millions of dollars, rendezvous at these islands—it was due that their property should not needlessly be imperilled while within the domain of this Kingdom, or their enemies' cruisers be emboldened by the silence of this Government to venture within its waters for hostile purposes or find shelter and accommodation, except such as humanity dictates, in its ports and harbors.

To proclaim a neutrality, however, is one thing, and to enforce it is another. Strong and powerful governments are seldom imposed upon in this respect, and when they are, they right themselves as the occasion may call for; as the United States did in the Anglo-French war with Russia, when they sent the English Minister his passports for violating the neutrality of their country. But weak and small powers may not always be in a position to repel or resent an infraction of their neutrality. Still, if they have done their best and shown a proper disposition and spirit, there is no doubt that in justice, and international law and equity, the will will be taken for the deed, and such a power be held guiltless in the eyes of the world.

☞ Everybody sympathises with everybody else when times are dull and nothing to talk about, for "misery likes company;" but nobody commiserates an editor when times are so deplorably straightened for "items," as they now are and have been for a long time—witness the condition of both our own paper and of the *Advertiser* for some time past. We have talked about educational matters till our teeth are loose, and now patiently await the action of the Government. We have talked about missionaries and politics until they insulted us by asserting that we had no religion whatever, and thus compelled us to show that we had, by not resenting their calumny. We have held up the sanitary condition of the people until opposition was silenced and nothing more remains to be said on the subject. We have talked about the necessity of increasing our agricultural products, and shown how it may be done, until everybody is astir and going in for either rice or cotton, and do not want to be bothered. We have given statistics and "commercial" reports until we put our contemporary in a bad humor; but even that source is drying up with the hot weather and no arrivals. Everybody seems to be posted on the finances of the country and anxiously expecting the Minister's budget at the next Legislature; and as talking without the book may only breed confusion, we hold our breath and would recommend our neighbor to observe the same discreet policy. The morality of the place is amending at such a prodigious rate, that whole days transpire sometimes without a single case at the Police Court, and our itemizer is absolutely frost-bitten with the chill of its naked walls. There have not been any balls, dinners, parties, picnics, etc., etc., for a long time, in our set at least, and we believe it is the most numerous, liberal and jovial in town; and we never report other people's fixings where we have not the entree. Let those who enjoy their lives do so in moderation; let those who crucify the flesh, get some of "Montgomery's Dairy Salt" in 50 lb. bags. Deaths, births and simil[illegible] referred to "by special request," and our own is the most modest of any. Weddings there have not been any for months, and God only knows when there will be one, although thirty-two pairs have been spoken of as probable. It seems difficult to tie the knot; the threads are so slippery in this warm climate. Personal matters we eschew on principle, and are therefore debarred from speaking of Grinbaum's elegant clothing store just opened in Makee's block, or Waterhouse's resurrection in the "Bee-hive." Of distinguished arrivals we have none to gloat over, except that of the Camel or Bactrian Dromedary. If we stand on "the bridge of sighs" at night and look up Nuuanu Valley, musing on the lights glimmering below, like glow-worms in a churchyard, or on the stars above with their unutterable splendor, or on the dark moutains putting on their night-caps, fringing the sky in the mysterious background, and we give vent to our feelings in strains as lofty and in music as sweet as that of "Dixie" or of "Yankee Doodle" (without variations), our words and notes but fall on callous ears, for the soul of poetry is fled and "Tara's harp" hangs mute on Honolulu walls.

In such a drought of items we defy the cleverest editor in the world to make head against the popular clamor for local items, sensation articles and so forth. The thing cannot be done without belying somebody or falsifying some fact, and we frankly confess our inferiority in that style of composition. Even the Foreign Department has failed to furnish an exception to the general dullness of the times, for peace and amity continue to reign between this country and "the rest of mankind."

Failing thus in internal resources, we are obliged to look abroad and depend on a foreign supply. Here we are lucky, for however placid the world's center may be, in which we live, yet its circumference is deeply agitated by the winds of war, revolution, famine, disaster and horrors innumerable. The hot breath of the Italian war had hardly cooled ere the Celestial rumpus took up the refrain of blood and desolation, though the Chinese disappointed the world by the shortness of the contest, and are in honor bound to make amends at the earliest opportunity. No sooner had the Chinese consented to open their "old curiosity shop" to the gaze of the "red-haired barbarians," than pop comes a nullification gun from South Carolina, and ere one hardly knows how or what about the row began, the whole of Uncle Sam's family are in the hair of each other, and the earth trembles and the peaceful land shrinks beneath the tread of serried legions. In Boston, New York, Philadelphia, there is moaning in the widow's house; her husband lies at Manassas and her cup-board is empty. There is desolation in Virginia, and high in air the vultures nod their welcome to the waving plumes of the contending hosts. In Charleston, Savannah, New Orleans, sits many a mother with breaking heart and looks for the coming of her gentle and brave, who looked his last on the broiling sun on that July day. He promised her victory, and he kept his word, but what is victory to the childless, lone matron? Peace will come some time or other, but her loved one never. North and South the God of love and peace is appealed to, and his vengeance invoked, and pulpits thunder, and lawyers harangue, and scribblers write, and printers print, on either side, that it is a war for principle, and that it is upon principle that father and son stand up to shoot at each other. It is mournful that

> "States that never knew
> A change but in their growth, which a long peace
> Hath brought unto perfection, are like steel,
> Which, being neglected, will consume itself
> With its own rust."

It is mournfuller still that men should be hooted at and scoffed for saying as much. We cannot believe in the dissolution of the American Union; in its glorious stars dying out one by one on the world's political firmament, with a glare and a fiz, and a drip of burnt out tallow candles at a Christmas show. There must be a Union of some sort; the world's best interests demand it, and therefore we have faith that it will be, but whether to be accomplished by the sword or through "a more perfect Union," as the men of '87 accomplished theirs, —that we leave to each individual reader to answer for himself according as feeling or reason command the hour.

It is a very old saying that "there are two sides to every question," but to judge from the predominant sentiment of the foreign residents in this place one might think that there was only one side to this all absorbing subject. But Rabelais, we think, has exposed the absurdity of all one-sided questions, as being alike contrary to common sense and a sound digestion. We believe therefore that there are also two sides to the American question, viz: the right and the wrong one. We claim no credit for our discovery, and fearlessly await the calm and impartial judgment of posterity.

But enough of the troubles that are plowing the finest fields and paining the purest hearts in the United States, North or South, East or West. The States are looking for a Decius, and perhaps they will find him. It is a new edition of the Peloponesian war, let us hope, with less disastrous results.

Having thus led our readers around the world, let us return to our *moutons*, and see what this week has brought forth.

—On MONDAY the *Comet* sailed with a full freight and 32 passengers for San Francisco. The Californians are greatly indebted to us, for we sweeten their tea and preserve their butter; sugar and salt being our principal exports. And such sugar, and such salt! If we don't make a noise in the world, it will be because the San Franciseans lack appreciation.

—On TUESDAY, His Excellency the Minister of Foreign Relations had the honor to entertain at dinner M. de Cornulier-Lucinière, Capitaine de Vaisseau and commanding H. I. M. corvette the *Galathee*; M. Perrin, H. I. M. Consul and Commissioner; Mr. Ogden, Secretary to the American Legation, and his lady, and several other distinguished personages.

—On WEDNESDAY the schooner *Maria* returned from a secret expedition to the South Pacific, but reports no discoveries and no luck. The Hawaiian flag has swept the Pacific lately pretty extensively in search of guano, but it seems that the area of Guanodom is limited to present discoveries. There is still one expeditionist to hear from, the schooner *Queen*, Capt. Keyte. Unless he varies the present monotonous report of "nothing seen," the guano companies may begin to take stock of their islands and calculate upon an advance in the market whenever the blockade of the Southern ports shall be raised.

—THURSDAY was the loveliest day in the year. Pale blue as a marine's jacket, and bright as the bottom of a new tin kettle, the sky hung over head, and white fleecy clouds drifted lazily along to the seaward. There was a breach of the peace "on the corner" in the morning, but as that is work for the lawyers, we shall probably hear more of it hereafter. In the evening there was a wedding at the Fort Street Church, and all the town went up to see how the bride dressed and the bridesmaids looked. An eglantine in a diamond case. We hope that admiration and envy had full elbow room. Long and happy live the young couple.

The first arrival of the fall merchant fleet from the East came also on Thursday, when the *Raduga* arrived in 133 days from Boston.

The *P. C. Advertiser* also appeared on Thursday The only thing we noticed worth reading was a communication from a correspondent in the sugar region on Maui.

— FRIDAY was a *dies non* in the news calendar, an editorial banyan-day.

— SATURDAY. That is to-day. The *Polynesian* appears, and we modestly leave it to our contemporary to comment with its usual discretion and fine taste.

— SUNDAY. That is to-morrow. There will be a grand military Mass at the Catholic Church.

And now, dear reader, we have attempted that hopeless task of making "a silk purse out of a pig's ear," or, in other words, to get up an article when there is nothing to write about.

SUPREME COURT.

In re Kamaha, *et als.*—Before JUSTICE ROBERTSON, at Chambers.

The petitioners, Kamaha and eight others, procured a writ of *Habeas Corpus* to be issued, by my order, upon a petition stating that they are unlawfully confined in the prison of Oahu, by the Marshal, Wm. C. Parke, Esq.

The return of the Marshal is to the effect that the petitioners were committed to prison on the 28th day of January last, in pursuance of orders of commitment from Wm. Ap Jones, Esq., Police and District Justice of Lahaina, which orders set forth that the petitioners had been convicted in said Justice's court, of the offense of larceny of cattle, for which they were sentenced to imprisonment at hard labor, for terms varying from nine months to three years.

At the hearing, counsel for the petitioners admitted the truth of the whole return, except that in regard to Kamaha and three others, who are said to have been convicted of two larcenies, and to have received sentence of extra punishment, under Sec. 16, Chapter 16, of the Penal Code, he offered to show by a certified copy of the record of proceedings before the Police Justice, that this was not correct. The court refused to permit any part of the record from the Police court to be read for that purpose, except the transcript of the judgment. (See case of William Riley, 2 Pickering's Rep. p. 171). That transcript is now before me, and upon examination thereof I find it to correspond exactly with the orders of commitment, as returned by Marshal.

The petitioners are in the position of parties who are imprisoned upon execution, after judgment by a court of criminal jurisdiction, a court to which is expressly charged with the enforcement of the law, for a violation of which the prisoners stand incarcerated. (See Act to prevent the Larceny of Animals, Civil Code, page 426). Such being the case, the question now is, to what extent can a justice of this Court, sitting in chambers, upon a writ of *Habeas Corpus*, go behind the return, the truth of which is clear, for the purpose of inquiring into the alleged illegality of any part of the proceedings which led to the imprisonment of the petitioners.

The only statutory provision we have upon the subject is the 855th Section of the Civil Code, which reads as follows: "The several justices of the Supreme Court shall have power at Chambers, upon any sworn application made in writing, to issue writs of *Habeas Corpus* for inquiring into the cause of any alleged unlawful imprisonment or restraint, or of *ad testificandum*, and they may enlarge on bail persons rightfully confined, in all bailable cases." We are therefore without any statute, similar to the English and American statutes, for regulating our proceedings upon a writ of *Habeas Corpus*, and the exercise of this part of our judicial power has hitherto been left, (wisely perhaps), by the Legislature, to the discretion of the Supreme Court, which has a supervisory control over all the courts of inferior jurisdiction. But this discretion is not a wild or arbitrary discretion. It should be exercised not only with reference to the peculiar condition of this country, but with reference also to the laws and usages of other, and more advanced, countries. (Civil Code, Section 14).

Several cases have, from time to time, been brought before the justices of the Supreme Court, on behalf of parties imprisoned under civil process, or restrained of their liberty without process; and cases have occurred of the analogous proceeding, by motion, where parties were imprisoned as fraudulent debtors. But we are as yet, I believe, without any precedent which can be cited as in point in the present case. In the case of M. M. Webster, (Hawaiian Rep. Vol. 1, p. 56), who was committed for contempt, by the Police Justice of Honolulu, LEE, C. J., refused to interfere, on a writ of *Habeas Corpus*, as the commitment appeared to have been made by the Police Justice in a matter within his jurisdiction, and that he had not exceeded his authority. In the report of this case mention is made of that of Laumia and Makaukau, who were convicted of adultery before the District Justice of Koolauloa, fined, and sentenced to imprisonment for non-payment of the fine, in which the Superior Court held that the Justice having competent jurisdiction to try and decide the case, that court would not inquire into the legality of the sentence, on a writ of *habeas corpus*, and that the parties must be left to their remedy by appeal. That case comes nearest to the present of any case which has come up in our courts heretofore. In Re Marion Landais, (Hawaiian Rep., Vol. 1, p. 199), was a case depending upon international law and the comity of nations; while the case of Le Flanchet, (see *Polynesian* of November 20th, 1858), and Charles Kauffman, (see *Polynesian* of November 24, 1860), were those of seamen arrested under peculiar treaty stipulations, and under other judicial process.

After having consulted such authorities, both English and American, as are within my reach, I am of the opinion that in a case like the present, any judge in England or the United States would feel bound to remand the petitioners as a matter of course, after the return was put in, or, probably, upon a petition framed in accordance with the practice of the Courts of those countries, which would necessarily disclose the circumstances under which the petitioners are confined, the judge or court applied to would refuse to issue a writ of *habeas corpus*, upon a rule to show cause.

By the Statute of Massachusetts upon this subject, it is declared that, "persons convicted, or in execution upon legal process, civil or criminal," shall not be entitled, as of right, to demand and prosecute the writ of *habeas corpus*. (Revised Statute of Mass., 1836, p. 655.) By the Statute of New York it is declared that, "persons committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon such judgment or decree," shall not be entitled to prosecute such writ; and "if the party is detained in custody, "by virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree," he shall be remanded. (N. Y. Revised Stat., Vol. 2, pp. 797 and 801.) The provisions of both those statutes are based upon, and closely resemble, the English statutes on the same subject. (See Kent's Com., Vol. 1, pp 642, 644, and Blackstone's Com., new ed., 1813, Vol. 3, p. 127.) The learned author of Kent's Commentaries says, "If the party be in custody by civil process from a competent power, he may be discharged when the jurisdiction has been exceeded, or the party has become entitled to his discharge, or the process was unduly issued, or was not legally authorized. But no inquiry is to be made into the legality of any process, judgment or decree, or the justice or propriety of the commitment in the case of persons detained under process of the United States, where the court or officer has exclusive jurisdiction; or where the party is detained under the final decree or judgment of a competent court; or where the commitment made by any Court, officer or body, according to law, is for a contempt, and duly charged. The remedy, if the case admits of one, is by *certiorari*, or writ of error." (See also Hill's Rep., Vol. 3, p. 664, notes.) Bronson, J., in "The people *vs.* Cassels," remarked, "A contempt was specially and plainly charged in the commitment, and it was that the duty of the judge forthwith to remand the prisoner. The statute expressly forbids an inquiry into the justice or propriety of the commitment in such a case. If there had been no statute, it is clear upon principle, that the judgment or decision of any court or officer of competent jurisdiction cannot be reviewed on *habeas corpus*. If there has been error, the remedy is by *certiorari* or writ of error. When the return states the imprisonment to be by virtue of legal process, the officer may inquire whether in truth there be any process, and whether it appears upon its face to be valid; and he may also inquire whether any cause has arisen since the commitment for putting an end to the imprisonment, as a pardon, reversal of the judgment, payment of the fine, and the like. But he cannot rejudge the judgment of the committing court or magistrate." (5 Hill's Rep., p. 167, and cases there cited.) In the case of the King against John Suddis, (1 East's Rep., p. 306,) the Court of King's Bench seems to have held it "a sufficient return to a *habeas corpus* that the defendant is in custody under the sentence of a court of competent jurisdiction to inquire of the offense, and to pass such a sentence, without setting forth the particular circumstances necessary to warrant such a sentence." (See, also, Commonwealth *vs.* Keeper of Debtor's Apartment, 1 Ashmead's Penn. Rep. 10; case of J. V. N. Yates, 4 John. Rep., 317; and Commonwealth *vs.* Lecky, 1 Watts' Rep., 68, referred to in Kent's Com., Vol. 1, p. 644, note c.)

From the general tenor of the authorities, both English and American, I am inclined to think that in a case like the present, of commitment after final judgment, even where the jurisdiction of the court or magistrate is questioned, it is not usual for their courts, in a proceeding upon *habeas corpus*, to inquire further than as to the jurisdiction of the offense, and the power to pass the particular sentence. In this case, the jurisdiction of the justice is, to that extent, admitted. In the case of Johnson *vs.* United States, (3 McLean's Rep., p. 89), an application was made for a rule to show cause why a writ of *habeas corpus* should not be issued to bring up the body of a party confined in the penitentiary, after sentence, for aiding and assisting in making counterfeit money. The indictment charged the offense to have been committed more than two years before the indictment was found, whereas the statute limited the prosecution of the offense to two years after its commission. The court overruled the application, and said, "Where there is a want of jurisdiction apparent upon the record, the proceedings of a court are not valid. But there is no want of jurisdiction in this case. The court had jurisdiction of the offense, and if there was a bar under the statute, it should have been pleaded. No such plea was interposed, and the question is, whether the objection can be raised on a writ of *habeas corpus*. We suppose it cannot. By failing to set up the defense, the defendant waived it. And if this were not the legal effect of failing to set up the statute it is clear that on the *habeas corpus*, the court cannot look behind the sentence of the court, where the jurisdiction is undoubted." (See also, *Ex parte* Gill, 7 East's Rep., p. 376).

But the power of every court which tries and condemns a party for a criminal offense, consists of several ingredients. Such power, if complete, includes jurisdiction both of the particular *subject matter*, and of the *person* of the party accused. In the case of a commitment, after judgment, by the Supreme Court, or by either of the Circuit Courts, I would *presume* jurisdiction over the person; but I have doubts as to the propriety of extending that presumption to similar commitments, when made by the inferior courts. It was sought to be argued that the magistrate had no jurisdiction in this particular case, because the offense was not committed within his district. But this objection is clearly unsound. The Police and District Justice of Lahaina has power to try a party, accused of having committed an offense coming within his jurisdiction, in whatever district of the Kingdom the offense may have been committed, provided the party accused resides in the district of Lahaina, or for the time being is found there. (Civil Code, Secs. 893, 916).

Counsel for petitioners offered to introduce oral testimony to show that the petitioners were not residents of the district of Lahaina, and that they were not arrested in that district, but on the Island of Molokai. The court refused to hear such testimony, on the ground that it being apparent that the petitioners had been committed after final judgment, by a court competent to try them for the offense of which they were accused, and it not being denied that they were produced before the magistrate at Lahaina, for trial, the court, upon *habeas corpus*, should not go further. Upon reflection, I consider that ruling sound. If the petitioners were not residents of Lahaina, and were not found there when arrested, they might have raised that objection before the justice (unless they were arrested with a view to examination and commitment) and moved for their discharge, on the ground that the arrest was irregular, and if the justice had refused to discharge them, they could have excepted and appealed. But the petitioners appear to have waived that objection, and, in my opinion, they cannot raise it *after conviction*, upon a writ of *habeas corpus*.

It is said to have been declared by the court, in the case of Commonwealth *vs.* Leckey, already referred to, (see Bacon's Ab. Tit. Habeas Corpus, p 571), that no imprisonment under process is regarded as unlawful, on *habeas corpus*, when the process is a sufficient justification to the officer. I find a similar doctrine stated in several authorities. In this case there can be no question that the orders of commitment under which the petitioners are detained in prison, are an ample justification to the Marshal.

One objection of great weight has been urged against the discharge of the petitioners, on *habeas corpus*, because of any alleged irregularity in the proceedings in the court below, which, if it existed, should have been availed of before judgment, or made the ground of an appeal, and that is this: that if the petitioners should be discharged on this proceeding, they could not be again arrested and tried for the same offense. In my opinion that is sound law, and if the petitioners should be put on trial again, they might successfully plead their former conviction; for their discharge on *habeas corpus* would not vacate the judgment now standing against them. That judgment could only be vacated, if at all, by pursuing a different form of remedy from this.

The petitioners being imprisoned on execution, after final judgment, by order of a court of competent jurisdiction, to try and punish for the offense of which they were convicted, the motion for their discharge on *habeas corpus* seems to me to have no foundation, if we are to be guided by the rules which govern the courts of other countries; and it will no doubt be found expedient to conform our practice generally to theirs. But as the practice of our Courts, in relation to this subject, is not yet clearly defined, and as the transcript of the record of proceedings from the Court below has been put in for the purpose of showing the judgment, I have looked further at that transcript to see if any irregularity was apparent upon its face. Upon examination, I have discovered something which seems to have escaped the notice of counsel, and was not adverted to at the argument. It appears that the warrant for the arrest of the petitioners was issued by the Magistrate upon the sworn information of J. C. Farwell, accusing them of the crimes of larceny, and receiving stolen property. When the prisoners were brought before the Court, Mr. Bond, the District Attorney for Maui, who appeared to prosecute on behalf of the Crown, charged them with larceny of cattle of the value of eighty dollars, and also with receiving stolen goods. Now, as the jurisdiction of the Police and District Justice of Lahaina is co-extensive, for the purpose of examination and commitment for alleged offenses, with the limits of the judicial circuit in which he resides, (Civil Code, Sec. 893) and therefore extends to the island of Molokai, upon application, he may in this case it was his duty, upon application, to grant a warrant of arrest against these parties, unless it appeared to him from the terms of the sworn information, that the prisoners were only charged with a crime or crimes coming within the jurisdiction of the District Justice of Molokai to try, and to pass sentence for. If the petitioners were charged with crimes of such magnitude that it appeared probable they would have to be committed for trial, before the Circuit Court, then it was the duty of the Police Justice of Lahaina to issue a warrant for their arrest in any part of the second judicial circuit; and if, after examination, it should appear that the offense of the prisoners came within his jurisdiction to try, and to punish, it would be his duty to proceed to judgment in the case, and not to discharge them. A discharge under those circumstances could not benefit the parties accused, because they would be liable to be re-arrested, instanter, for trial. The several Police Justices, in the exercise of the power conferred upon them by statute, for the arrest, examination, and commitment of parties charged with crimes, must be allowed a reasonable discretion, and the question whether or not sufficient ground was laid in the information, in any case, to authorize the justice to issue a warrant for the arrest of the party accused, outside of the justice's own particular district, cannot certainly be enquired into, upon a writ of *habeas corpus*, after conviction and judgment passed, (though it might be on a commitment before trial, but even in that case the Court would not look beyond the sworn information upon which the Magistrate had acted. When the petitioners were arraigned before the Police Justice, they were charged with larceny of cattle to the value of eighty dollars, and also with receiving stolen goods, the value of which was not specified. It was therefore uncertain at that time whether or not the petitioners would be proved to have received stolen goods to the value of twenty dollars, in which case the offense would have been beyond the Justice's jurisdiction to punish, and he would have had to commit the petitioners for trial before the Circuit Court. (Penal Code, Chap. 53.) It is impossible that parties laying information of crimes, or that prosecuting officers, should always be able to specify, precisely, the degree of crime with which the party should be charged, where that degree is measured by a pecuniary standard. It is not reasonable or necessary that they should be required to do so in a Court where no formal indictment is required. The assumption of jurisdiction by the Magistrate, for the purpose of issuing process, whether with a view to examination and commitment, or with a view to trial and sentence, must be regulated by his discretion, having due regard to the *nature* of the charge preferred before him by sworn information.

I have already stated that, in my opinion, the rules applicable to proceedings upon *habeas corpus* require me to dismiss the application for the discharge of the petitioners, and I may add that the proceedings below appear to me to have been entirely regular, so that this application seems to have no basis whatever. If any application should be made to me hereafter for a writ of *habeas corpus*, in a case like the present, I shall require a petition more formal and specific than the one presented in this case, and I shall adopt the practice which prevails elsewhere, of granting a rule to show cause, before allowing the writ to issue.

The motion is refused, with costs, and the prisoners remanded into the custody of the Marshal.

Mr. Harris, for the prisoners.

Mr. Bates, for the Crown.

10th September, 1861.

[PER PONY EXPRESS.]

Who Caused the Battle and Defeat of Bull Run.

The following is editorial correspondence of the Albany *Evening Journal*, (edited by Thurlow Weed) dated Washington, 26th July:

The public mind, painfully but reasonably excited is entitled to be informed of what so deeply and vitally concerns the general welfare. When rebellion broke out into open war, upon Fort Sumter, the people rose with a unanimity unexampled in the world's history, offering themselves and their possessions to the Government, asking only, in return, that a war thus wantonly and wickedly provoked should be vigorously prosecuted. Passing over an interval of three months, we come to the disastrous battle of Manassas. Who is responsible for this great National disaster! Officials cannot answer—individuals may speak—their answers passing for what they are worth, according to the estimate which the people put upon their judgment and means of information.

Lieutenant-General Scott, in the discharge of his duty as Commander-in-Chief of the Army conceived and perfected a plan of programme, by means of which he confidently, as the results of a summer and fall campaign, anticipated the overthrow of the Confederate Army, and thus virtually to end the rebellion. This plan, primarily, contemplated camps of instruction, where raw levies might, during the months of June, July and August, be subjected to discipline and inured to service, sending the regiments, as they became fit for duty, into the field, making room, as they departed, for green organizations.

With his disposable force (after the safety of the Capital was assured) General Scott commenced operations at Fortress Monroe, near Harper's Ferry, and in Western Virginia, the latter point being most favorable, profiting as no other section did, by the co-operation and sympathies of loyal inhabitants. With Washington for his base of operation, the western wings of his army were to feel and fight their way southward, until, at the appointed time, having reached their designated positions, all his columns were to move simultaneously, Richmond falling, as Mexico fell, before an irresistible army. But this plan did not accord with the popular idea. Prominent individuals whose councils and clamors precipitated the outbreak, demanded precipitate action. These demands were more and more clamorous. Exciting appeals to popular feeling were soon followed by open aspersions and denunciations of General Scott. And finally, with a presumption and insolence unheard of, a leading journal, assuming command of the army, issued and reiterated the order—"On to Richmond!"

While widely spread newspapers were thus weakening the Administration by assaults upon the commanding General, his embarrassments were aggravated by the persistent hostility and every-day aspersions of the Postmaster-General, whose brother, a prominent member of Congress, assailed him from the stump. Meanwhile Congress assembled. Senators and Representatives, with more zeal than knowledge, caught up and reiterated the cry, "On to Richmond!" The impatient Congressmen were leading and influential. They waited upon the President to complain of the inactivity of the army; and upon Gen. Scott, urging him "on to Richmond." Army bills, prepared with deliberation by Senator Wilson (in accordance with the views of the Government) were emasculated by the House Military Committee, of which Blair is chairman. The President and his Cabinet had reason to apprehend—if not the censures of Congress—the failure of measures essential to the prosecution of the war, unless the *Tribune* order of "on to Richmond" were obeyed.

And now the sensation journals began to disparage the strength and course of the rebel army. "The rebels will not fight!" "The cowards will run!" etc., etc., appeared in flaming capitals over flash paragraphs. The whole popular mind was swayed by these frenzied appeals. A movement upon Manassas was universally and blindly demanded. Passions and animosities kindred to those which once deluged France in blood, were being excited. The tyranny of the press, the denunciations of a Cabinet Minister, and the impetuosity of a dozen members of Congress, exciting the masses, "moved" Gen. Scott "from his proprieties." For once in his whole life his purposes were thwarted—for once "his mind became the mind of other men." The result has shown that it was a fatal weakness. And yet who knows what would have been the effect of an adherance to his plan? The N. Y. *Tribune* was educating millions to distrust the wisdom of the Administration and the fidelity of the commanding Generals. Every day emboldened its audacity—every rail and wire disseminated its treason—and every hour augmented the popular discontent. Congress, though its session opened auspiciously, began to falter. The Blairs—one in the Cabinet and the other in Congress—were organizing an "On to Richmond" faction. To have resisted these demands would have overthrown the Administration—and might have destroyed the Government. Madness ruled the hour, and a battle at Manassas, right or wrong, became, not a military, but a political "necessity."

It is not true, however, as has been asserted, that Gen. Scott was constrained to hazard this battle by the President. Between the President and, with one exception, the Cabinet, and Gen. Scott, there has been mutual regard and confidence.

I will not now stop to consider details or criticise acts. The major blunder includes all the minor ones. There should have been no general engagement until we were in the field with an army strong enough to overwhelm and crush out rebellion. There were other points at which we could have been advantageously and successfully occupied.

But even if it were excusable to assault an army equal in numbers to our own, in its chosen position, and behind its intrenchments, the purpose should have been abandoned when the army of Manassas was reinforced by that from Winchester. Then, surely, the conflict was too unequal. With all the conditions and circumstances so changed, General McDowell should have taken the responsibility of disobeying orders. The reason would have justified him in the judgment of the Government and the people.

But the order of "On to Richmond" was obeyed; and where does it leave us? Where we were three months ago, with a harder conflict on our hands, and a dismal, if not doubtful future! The "On to Richmond" dictators have added another year to the war, an hundred millions of dollars to its cost, and opened graves for 15,000 or 20,000 more soldiers.

And what have we gained? Alas, too little for such a fearful expenditure of time, treasure, blood and reputation? We have learned, what few doubted, that our army is all that is expected of it; that our men fought with the courage of veterans; that every man did his duty under all circumstances, relying on these. We have learned what was also too well known, that the army was, in many instances, indifferently officered. We have learned, too, the importance and necessity of discipline. Effective troops however excellent the material, cannot be found in workshops, the corn-fields or the cities. They must have military training, without which, every "On to Richmond" movement will prove a failure.

Though we have encountered a great and disastrous check—though we are pained and humiliated—we possess the means and the energy to retrieve all, if these means are henceforth wisely employed. I may in a future letter indicate how, in my judgment, those means should be employed. T. W.

—*S. F. Bulletin, Aug. 22.*

The Royal Family.

By letter from Kailua, Hawaii, we learn that His Majesty the King returned on the 8th inst. from a tour to Waimea and the adjacent country. The health of His Majesty, of the Queen and of the Young Prince are excellent. No day has yet been set for their return to Honolulu.

Bullocks' Doings on Maui.

A correspondent in the *Advertiser* of this week is complaining of the damage which the wild cattle on Maui are doing to the young woods, and thereby causing drought and barrenness to the country. We have received a letter from Mr. Conant, of Hamakuapoko, Maui, in which he informs us that in June last a native in Waihee was attacked by one of those wild bullocks and completely torn to pieces, so much so that his friends were obliged to bind his body up with ropes to hold it together while being carried home.

On the 2d instant Mr. Conant himself was attacked by a wild bullock, while watering his horses, and was thrown some two rods, receiving several severe bruises, but luckily having been caught between the horns of the animal escaped death. What droves of wild cattle are doing around thickly settled neighborhoods without a herdsman to attend to them and prevent them from endangering the lives of men, women or children in passing to and from the watering place of a village we do not see. Perhaps that is the way of herding cattle on Maui. Here on Oahu we never hear of damages to persons from cattle.

Photographs, Ambrotypes, &c.

Who does not like to look upon "the face divine," especially if that face be his own or that of one dearer than self? Well, that human yet undying desire can be satisfied by going to Mr. King's Ambrotype Gallery, on Merchant Street. What he can do in that line is pretty extensively known already; what he will do, he tells our readers in his own advertisement in another column.

Clothing Store.

We thought that there were clothing and clothing stores in Honolulu enough for all human wants in these islands for a generation to come, but the Messrs. Grinbaum assure us that they have the newest patterns and the finest styles, just from San Francisco. They have opened in Makee's block, opposite Wilcox, Richards & Co.

The "Beehive."

Mr. Jno. Th. Waterhouse has returned from San Francisco with the heaviest and most varied assortment of goods that ever graced the shelves of any store in this city. He has reopened next door to the corner of Nuuanu and Queen Streets, and named his place the "Beehive."

Born in an Ox-Cart.

A short time ago, a married couple started with their cart and oxen from Wailuku, Maui, for Hamakuapoko. *Chemin faisant* the wife became a mother, but the inexorable cart still continued on until mother and child reached their journey's end. Both child and mother are doing well.

ASTRONOMICAL.

PHASES OF THE MOON IN SEPTEMBER, 1861.

	d	h	m	s			d	h	m	s	
New Moon	4	11	41	12	M.	Full Moon	18	3	30	6	A.
First Quarter	11	2	44	36	M.	Last Quarter	26	7	52	48	A.

POLYNESIAN MARINE JOURNAL.

PORT OF HONOLULU.

Arrived.

Sept 7—Haw sch Odd Fellow, Candage, fm ports on Kauai, with 18 cords firewood, 9 bbls and 2 kegs butter, 2 bbls vinegar, 4 bales awa, some natv produce, 5 cabin & 9 deck passengers.

8—Haw stmr Kilauea, Berrill, fm windward ports, with 21 head of cattle, 20 sheep, 1 horse, 15 hogs, 4 bales fungus, 7 rolls leather, 12 hides, 55 goat skins, 2 cks oil, 20 bags potatoes, 3 cs mdse, 1500 oranges, 300 cocoanuts, 20 logs wood, a large quantity of native produce, 6 cabin and 90 deck passengers.

9—Haw sch Keoni Ana, Bingham, fm ports on Kauai, with 9 cords firewood, 3 hogs, a large quantity of native effects, and 7 passengers.

Haw sch Molokai, fm windward ports.

10—Haw sch Moikeiki, Napela, fm Kahului and Lahaina, with 30 bags sugar, 1 bbl tallow, 75 goat skins, 2 coops fowls, 1 bag corn, 1 canoe, 3 bxs mdse, 40 bgs flour, a quantity of native effects, and 5 passengers.

Haw sch Moiwahine, Kuheana, fm ports on Kauai, with 10 cords firewood, 100 mat bags, 4 bales fungus, 5 hides, 1 bbl tallow and 10 deck passengers.

11—Haw sch Warwick, Harry, fm Molokai, with 1 large coop of fowls, a quantity of natv produce & effects, and 18 passengers.

Haw sch Maria, Brown, fm a guano hunting cruise, with nothing.

Haw sch Nettie Merrill, Borres, fm Hilo, with 300 kegs sugar, 135 bbls and tcs molasses, 7 cabin and 30 deck passengers.

12—Haw sch Henry, Rivierre, fm Hana and ports on East Maui, with 3 hogs, some natv produce and 1 passenger.

Haw sl Express, fm Molokai, with 50 bags lime, some produce and 4 passengers.

Haw sch Halava, fm Hana and ports on E Maui, with natv produce and 5 passengers.

Haw sch Kamehameha IV, Morse, fm ports on Kauai, with 13 cds wood.

Am sh Raduga, Burditt, 586 tons, 133 days fm Boston, with freight and mdse to C Brewer & Co.

13—Haw sch Ka Moi, Shephard, fm Kahului and Lahaina, with 50 pkgs sugar, 30 bags flour, 10 head of cattle, 2 cabin and 9 deck passengers.

Haw sloop Louika, Stennick, fm Kalepolepo, with 8 cds wood, a few hogs, turkeys, natv effects and 17 passengers.

Haw sch Kekauluohi, Marchant, fm Kona and Kau, with 40 bales pulu, 26 bags fungus, 20 bags (about 1000 lbs) coffee, 3000 oranges, 1 bbl tallow, 400 feet koa lumber, 3 bndls goat skins, 2 do awa, 100 bnchs bananas, 12 hogs, 5 hides, a large quantity of natv produce and effects, and 80 deck passengers.

Sailed.

Sept 7—Haw sch Ka Moi, Shephard, fr Lahaina and Kahului.

9—Am pkt bk Comet, Smith, fr San Francisco.

Haw stmr Kilauea, Berrill, fr Lahaina, Kohala & Hilo.

Haw sch Molokai, fr Molokai.

10—Am stmr Santa Cruz, Bennett, fr Shanghae, via Hakodadi.

Haw sch Odd Fellow, Candage, fr ports on Kauai.

11—Haw sch Moikeiki, Napela, fr Lahaina and Kahului.

Haw sch Moiwahine, Kuheana, fr ports on Kauai.

12—Haw sch Nettie Merrill, Borres, for Lahaina, Molokai & Hilo.

13—Haw slp express, for Molokai.

MEMORANDA.

The *Raduga*, Capt. Burditt, sailed from Boston May 2d; crossed the Line May 27; was up with Staten Land June 28; crossed the Line again this side of the continent August 29; sighted these Islands Sept 11; was telegraphed here at 3 P M on the 12th, and came to an anchor inside about dusk.

From Boston to Line, 25 days; from Line to Staten Land 32 days, from Staten Land to Line again in the Pacific, 62 days; from Line to this port 14 days—133 days' passage in all.

Had generally good weather till off the Cape, when she experienced heavy Westerly gales for 25 days in succession, lengthening the passage 13 days more than the last one to this port, which was made in 120 days, and her previous one in 123 days. Her dates of arrival have been very close together, that of 1859, Sept 7th; 1860, Sept 16; and that of this year Sept 12.

CAPTURE OF THE "MESSENGER BIRD."—A letter has been received in this city by Messrs. Chas. W. Brooks & Co., announcing the capture, at Calcutta, of this celebrated bark, after nearly three years of ineffectual attempts. Her captain, John H. Delee, of Richmond, Virginia, had escaped, accompanied by one sailor, and gone across the country to connect with the Over-