to enrich the chiefs only, without regard to enriching their subjects also; and hereafter there shall by no means be any laws enacted which are at variance with what is above expressed." And, further on, under the head of "Protection for the People Declared," it says: "The above sentiments are hereby published for the purpose of protecting alike, both the people and the chiefs of all these Islands, while they maintain a correct deportment; that no chief may be able to oppress any subject, but that chiefs and people may enjoy the same protection, under one and the same law. Protection is hereby secured to the persons of all the people, together with their lands, their building lots, and all their property, while they conform to the laws of the Kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws." The provisions of Article 14th of the Constitution of 1852 are merely a reiteration of a portion of the "sentiments" expressed in the passage just quoted.

Now, under what circumstances, and in what sense, were these sentiments or principles declared and adopted by the rulers of this Kingdom? The history of the country, and the origin of the present form of government, are familiar to the court, and have a proximate bearing upon this question; for the court is not bound to adopt the construction contended for by the defence, merely because general theory might give it a degree of countenance, independent of all practice and the prevailing understanding, since the foundation of the Government. The nation was emerging from its ancient state of absolute despotism, in which the rights of life, liberty and property, so far as the common people or serfs were concerned, were not only insecure, but not recognized as having any existence, beyond the capricious will of the chiefs. The Government, or rather the power to rule, was solely in the hands of the chiefs, who used that power, and ruled over the common people, entirely for their own benefit or aggrandizement. His late Majesty having resolved, with the concurrence of his high chiefs and councillors, to establish His Government upon just principles, granting to the people, equally with the chiefs, certain rights, to be held and enjoyed according to fixed laws, and not at the will of any superior lord, proclaimed the Constitution of 1840, and announced, in substance the same sentiments and principles now to be found in the 1st and 14th Articles of the present Constitution. The voice of absolute authority decreed that, in future, the King would conduct his Government for the common good, and not for the honor, profit or private interest of any particular family, or of the ruling class; and that in making laws for the nation, regard should be had to the protection, interest and welfare of the common people, equally with the King, chiefs and rulers. The controlling idea therefore is perfectly manifest, and the sense in which the language of the Constitution was used cannot be mistaken. Indeed, the form of expression used in the 14th Article scarcely admits of an argument. In that sense, and in that only, it is true that the Hawaiian Legislature has not the power of special legislation. With this reservation, it has that power, and may use it at its discretion, so long as the power is exercised in conformity with the letter and spirit of the 62d article of the Constitution. But, says the defendant's counsel, "The nature and ends of legislative power limit the exercise of it; and there are certain vital principles in every constitutional government which determine and overrule a parent and flagrant abuses of legislative power." This is emphatically sound. It is the very rule by which, as I understand it, I am endeavoring to test the validity of the law now under discussion and by which the validity of every law upon the statute book is liable to be tried. Whenever it shall appear that the Hawaiian Legislature has clearly transcended its power, and committed any such abuse, this court will administer the remedy. But to hold that section 1, chapter 42 of the Penal Code enhances the profit, honor, or private interest of any particular family, or of the higher classes only; or that it does not as much regard the protection, interest and welfare of the common people as of the chiefs and rulers, would be a perversion of the plain language and intent of the 14th Article of the Constitution; and the assertion that the law in question degrades His Majesty's native subjects to a condition of slavery or serfdom, is sheer extravagance, a total misapplication of terms.

The defendant's counsel admitted, in the course of his argument, that there is no provision in the Constitution which could prevent the Legislature from enacting a law to prohibit, entirely, the importation and sale of spirituous liquors within this Kingdom. In my opinion, this is true. But counsel went on to argue that because the Government has yielded, by the treaty stipulations already referred to, a part of the power of sovereignty, and can no longer prohibit the importation and sale of liquors by and to foreigners, that, therefore, the whole power is lost, and the Legislature cannot enact a law to confine the traffic to foreigners, and prohibit the sale to natives. But is this logical? Because the exercise of the legislative power is restrained in part by treaty, does it follow that the power, so far as it is not affected by treaty, may not still be exercised up to the limit allowed by the Constitution? I think not.

But it is contended that "It is an axiom in all constitutional governments, that all legislative power emanates from the people,—the Legislature acts by delegated authority, and only as the agent of the people;" that the Hawaiian Constitution was founded by the people; "that the government of this Kingdom proceeds directly from the people, was ordained and established by the people," and that it is against all reason and justice to suppose or presume for one moment, that the native subjects of this Kingdom ever entrusted the Legislature with the power to enact such a law as that under discussion.

Here is a grave mistake—a fundamental error—which is no doubt the source of much misconception. These ideas run through a large part of the case made by the defence, and much of the argument and reasoning predicated upon them, possesses no weight whatever. The Hawaiian Government was not established by the people; the Constitution did not emanate from them; they were not consulted in their aggregate capacity or in convention, and they had no direct voice in founding either the Government or the Constitution. King Kamehameha 3d originally possessed, in his own person, all the attributes of absolute sovereignty. Of his own free will he granted the Constitution of 1840, as a boon to his country and people, establishing his government upon a declared plan or system, having reference not only to the permanency of his Throne and Dynasty, but to the government of his country according to fixed laws and civilized usage, in lieu of what may be styled the feudal, but chaotic and uncertain system, which previously prevailed. The recognition of His independence by the great powers of Christendom; the claims of commerce; the influx of foreigners, and the gradual advancement of his native subjects, rendered necessary still further changes. The Government had to be regularly organized, the different powers separated and defined, and the whole land system of the Kingdom to be re-modelled. The first Constitution no longer furnished a sufficiently broad foundation. The King, by and with the advice and consent of the Nobles and the House of Representatives, voluntarily granted and proclaimed the present Constitution on the 14th of June, 1852. As before, the people at large were not consulted, and they performed no direct part in the adoption of the Constitution. That instrument was framed and sanctioned by the legislative body, consisting of the King, the House of Nobles and the House of Representatives, in whom, collectively, is now vested that supreme, absolute power of legislation, which was originally vested in the Monarch alone. Not a particle of that power was derived from the people. Originally the attribute of the King alone, it is now the attribute of the King and of those whom, in granting the Constitution, he has voluntarily associated with himself in its exercise. No law can be enacted in the name, or by the authority of the people. The only share in the sovereignty possessed by the people, is the power to elect the members of the House of Representatives; and the members of that House are not mere delegates. The several parts of the Legislative body, acting in unison, have power to change the form of government, to amend and modify the Constitution, or to abrogate it entirely and adopt another, without ratification by the people at large, as they did in 1852; and they possess full power to enact all manner of wholesome laws, general or special, which in their wisdom they may deem conducive to that highest of all objects—the public weal—within the express restraints of the Constitution. They are limited to that extent, and no further, by the rules which they have prescribed for themselves.

It has not been argued, nor could it have been with propriety, that the law prohibiting the sale of spirituous liquors to natives is pernicious in its effects, or that it is not a wholesome law, within the meaning of the 62d article of the Constitution; and there can be no question that if it tends to promote the well-being of His Majesty's native subjects, it assists in promoting the material interests and general welfare of the nation at large. The subject of the importation and sale of spirituous liquors in this Kingdom, has always been treated by the Government as a specialty, and the traffic has ever been kept under stringent regulations. With the limitation resulting from the treaty engagements already spoken of, the Legislature has full power over this subject, and so long as the law makers deem it wise to maintain the prohibition, it is the imperative duty of Executive and Judicial officers to enforce it.

In my opinion, the judgment of the Police Justice should be affirmed.

ALLEN, Chief Justice:

It is contended by the counsel for the respondent, that the law, which is alleged to have been violated by him, is unconstitutional and in derogation of the rights, privileges and immunities of native subjects. Questions which involve constitutional provisions, are always of the most grave and serious character, and should receive the most anxious consideration.

It is alleged that the Government, under the present Constitution, emanated directly from the people, and was ordained and established by them. It may be well for the full elucidation of the question involved, to review briefly the history of its formation. It is not necessary for this purpose to revert to the Government of these islands prior to the time of Kamehameha I. The entire group were conquered by him, and he was the founder of the Kingdom, and all the lands belonged to him, a portion of which he divided, according to ancient usage, among his warrior chiefs, and they did the same to an inferior order of chiefs, by whom they were subdivided again and again; but the title was in the King, and there was no one who could make a conveyance without his consent or direction. All persons in possession of lands, no matter whether chiefs or people, owed and paid a land tax, which the King assessed at pleasure; and also he called for service at his discretion, on all grades, from the highest down. They also paid, in addition to the yearly taxes, some portion of the productions of the land. In addition, they owed obedience at all times. The Treaty which was negotiated in 1836, between this Government, and Lord Edward Russell on behalf of the British Government, show the views then entertained by the contracting parties. It is therein declared "that the land on which the houses were built is the property of the King." This sketch illustrates the nature of the tenures, and the titles by which the lands were held. Land was the main property which gave authority. It was the only resource to support the retainers which were necessary to sustain the dignity of the King and his chiefs, and as the titles of all the lands were held by the King, it was literally true that the Kingdom was his. The Government was as exclusively in him as the titles to the lands were. When Kamehameha I. died, his will was: "The Kingdom is Liholiho's, and Kaahumanu is his Minister." In his time, "life and death, condemnation and acquittal," were in the hands of Kaahumanu, who was then, as declared in the first Constitution, the Premier of the Kingdom. This officer transacted business under the authority of the King.

On the 8th October Kamehameha III. granted to his people a Constitution, which on that day was agreed to by the Nobles, but it was then declared that "it should not be considered as finally established, until the people have generally heard it, and have appointed persons according to the provisions therein made, and they have given their assent by their Representatives, then this Constitution shall be considered as permanently established." This Constitution contained a declaration of rights. It declared, "God had bestowed certain rights alike on all men, and all chiefs, and all people, of all lands, and that some of the rights which God had given alike to every man and every chief of correct deportment, were life, limb, liberty, freedom from oppression; the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws." It secured protection to "the persons of all the people" It permanently confirms the Kingdom to Kamehameha III. and his heirs. A House of Representatives was established, and there were some salutary provisions of law contained in it not properly within the legitimate measures of a constitution. But probably for the day subserved their purposes. It will be seen that this Constitution was a grant from the King. Whatever power or rights which he alienated by this Constitution, was done from his own convictions of justice and of duty. The Constitution did not proceed from the people, neither was it ordained or established by them. From the consideration which he bore them, he declares to them in the instrument itself, that it shall not be considered as finally established, until the people, by their Representatives, have assented to it. There is no place in this Kingdom made memorable like Runnymede, where the Barons of England compelled King John to grant Magna Charta. Neither the chiefs or people have ever compelled the Kamehamehas by the sword to grant them a Constitution. It was a free will offering on the part of the King. It was regarded by him as a measure of wisdom to give strength to his Kingdom, symmetry to its laws and prosperity to his people. The first Constitution was limited in its provisions, and was thought not to answer fully the great purposes of such an instrument. In 1852, the same King which granted the Constitution of 1840, by and with the advice and consent of the Nobles and Representatives of the People in legislative council assembled, granted the Constitution which is now in force. Like the Constitution of 1840, it was a grant from the King himself, and not secured by any act of the people, other than the assent of their Representatives, which the King most graciously suggested as a matter proper for their consideration, and for the expression of their wishes. The declaration of rights evinces enlarged "and liberal political views, and a determination to conduct his Government for the common good, and for the protection, safety, prosperity and happiness of his people." Although it is very evident that the Constitution was a grant from the King, and not coerced by the chiefs or people, still it was a grant made by their advice and consent. It has no less binding force than if it had been the result of a revolution, although between the parties to the instrument it would doubtless have less technical and exacting rules of construction than if won by the sword. In the one case it is a grant from personal feeling, and in the other a charter secured by force. It was made in the nature of a gift, designed with other purposes to protect them in their personal liberty, and in the enjoyment of the fruits of their labor. It was the virtual abolition of a system which resembled the feudal system of a portion of Europe, and which was never imposed on the foreigner here; and while the Constitution amply secures him in all his rights, it was never designed to preclude the benefits and advantages of such legislation as the Hawaiian's should regard as adapted to their peculiar condition; always premising that it does not affect injuriously the rights of the foreigner. Most of the foreigners at the time of the adoption of the Constitution were under the protection of treaties and the law of nations.

The history of the Hawaiian Government and laws, prior and subsequent to the adoption of the Constitution, and the true meaning of the terms of the Constitution itself, fully sustain this construction.

The argument of Counsel was very able and eloquent in its application to the rights of British subjects under the British Constitution, and to the rights of an American citizen under the Constitution of the United States, on the great principle that laws should affect all people alike; but its fallacy consisted in its misapprehension of the true spirit, intent and purpose of the Hawaiian Constitution as applicable to Hawaiians. It is the great charter of the rights of the King, the chiefs and the people; for it has been so declared by mutual accord. But in giving a construction to its provisions, if there ever was an instance when the history of the grant and of the people, and the contemporaneous history of its laws, should have an influence in its construction it is unquestionably in this.

The Legislature of the Kingdom has always been peculiar in this, that it has made certain provisions of laws exclusively in reference to native subjects, since the formation of the Government.

For example, it has, by the law of 1846, interdicted the enlistment of natives as sailors on a foreign vessel without the compliance with certain requisitions, especially prescribed, and even then the power was placed in the hands of the Governor to grant or refuse the application for enlistment. A bond was required also to return the enlisted natives. By the Civil Code, a law similar in its provisions is re-enacted. The penalty is made higher by the last law. The master of the vessel is made liable to a penalty of five hundred dollars for taking a native out of the Kingdom, as a seaman or otherwise, without obtaining the consent of the Governor, and his vessel is liable to seizure, condemnation and sale to satisfy the same.

There are in force certain laws for the establishment of English schools for Hawaiian youth, on the several islands, at such places as are deemed most advantageous for extending a knowledge of the English language among the natives, and money is appropriated and expended for that specific purpose.

It is also made lawful for the Board of Education to establish family schools, for the domestic training of Hawaiian girls in which the English language shall be taught—and money is appropriated for this specific purpose.

The history of our whole legislation shows, that many laws have been passed which applied to the native subjects exclusively. Laws similar in provision, and for the same object, applicable exclusively to the native race, have met the approval of the King, Nobles and the Representatives of the People, at different periods since the year 1846, which is conclusive evidence that in their judgment the unrestricted use of spirituous liquors is dangerous in its consequences. For the good of the people, in their wisdom they have passed these laws. At any session of the Legislative Council they could have repealed them; but they have not deemed it wise legislation to do so. At any future Legislature they can do it, if they feel assured that the health and life of the people will not be endangered.

In the 14th Article are these words, "in making laws for the nation, regard shall be had for the protection, interests and welfare, not only of the King, the chiefs and rulers, but of all the people alike." All the laws which have been passed, applicable exclusively to Hawaiians, are applicable to all Hawaiians alike; and, because they do not embrace the foreigners, this constitutional question is raised. My own view is, that in forming the Constitution it was not the intention of the framers to prohibit legislation exclusively applicable to native subjects. Many of the men who were participants in framing the Constitution were members of the legislative councils, which have passed this class of laws. The counsel have pictured much injury to the Hawaiian by this construction. All branches of the legislative council always have been Hawaiian, and two brances at least will be as long as this Constitution exists, and any laws which they pass apply alike to all Hawaiians, and of course, to themselves, and cannot conflict with any of his constitutional rights; hence it is that the native subject can be in no especial danger in his civil or political rights. While some laws have been enacted of a restrictive character, such as the law in question, the law of shipping native seamen, and of restraining natives from leaving the islands without the Governor's consent, many provisions have been made especially for their benefit, to some of which I have already adverted. There can be no complaint of this construction from the foreigner, for whether a subject or not, the restricting laws do not apply to him. There is a peculiarity in the Government and in the business affairs of the whole nation, in this, the union and a co-operation of the foreign element with the aboriginal. Its workings have been harmonious and mutually useful. And while it has been so, it has been the gracious policy of the aboriginal race, in whom was vested the legislative power, in passing laws of [illegible]strictive character, to apply them exclusively to themselves. It ill becomes the foreigners to complain of this application, and it never could have been the meaning and intent of the framers of the Constitution to exclude from the legislative council the power to pass laws exclusively applicable to Hawaiian subjects, while those laws were in accordance with the spirit and genius of their Constitution. The aboriginal race would have never surrendered this power, because they always have been aware, and more especially at the period when the Constitution was adopted, that there were some laws which were regarded as wise for them, which were not applicable to foreigners, or at least would tend to promote difficulties, even if not in conflict with treaty stipulations.

A law containing this prohibition of sale to native subjects was passed by a legislative council, composed mainly, in the House of Representatives, of aboriginal inhabitants, elected by the suffrages of the people; and in the House of Nobles, by the high chiefs of the land, together with the Ministers, and finally approved by his Majesty the King. This law is the result of the deliberations of those who represent the aboriginal race, and it is sought to be defeated by a resident British subject on the special ground that the native is deprived of his constitutional rights in being under a prohibition to purchase ardent spirits at his hotel. The law has been in operation many years, and the native population sustain it on the ground that it is necessary for the health and lives of the people. While we as a Court are bound by the terms of the Constitution and laws, at the same time it is our duty to apply a sound common sense in their interpretation. It is an historical fact that when a foreign population makes a settlement with an aboriginal race, that while they introduce many good customs, they too often introduce many which are injurious, and of all the various tastes which they have introduced which is dangerous to the life of the aboriginal race, none equals that of a love of ardent spirits. It has generally proved fatal to their existence; and when this very people, aware of the fatal consequences of the unrestricted sale of ardent spirits, enact and re-enact laws for this purpose, it ill becomes the foreign race to take the advantage of a technical and verbal criticism, which the history of their legislation fully proves, is entirely unsound. The importance of some acts of legislation adapted especially to the natives, has always been regarded as promotive of the rights and interests of both, and often necessary. It is becoming less and less so, still there are and have been laws not necessary or desirable in their application to the foreigner, but which have been thought by the King, Chiefs and Representatives of the People themselves, as necessary for the protection and welfare of the native race. While the native population very largely predominates, still, in commerce and general business, the foreigners exert a large influence, and we regard it as the part of wisdom, that the peculiar wants, necessities and dangers of the native subjects should be especially regarded by legislation.

The counsel for the respondent further contended that the law in question is in violation of the second and tenth articles of the Treaty with France and this Kingdom, and by parity with all other countries having treaty stipulations with the Hawaiian Government, the substance of which articles, as the counsel allege, are embraced in the following extracts:

ARTICLE 2d. "There shall be reciprocal liberty of commerce between all the Territories of the French Empire in Europe, and those of the Hawaiian Islands, and their respective subjects shall have the right to buy and to sell, of and to whom they please, without any monopoly, contract, or exclusive privilege of sale or purchase, prejudicing or restricting in any manner whatever, their liberty in this respect."

ARTICLE 10th. "It is agreed that the importation and sale of wines and brandies of French origin shall not be prohibited in the Hawaiian Islands."

The first treaty made with France bears date on the 26th of March, 1846, and is in terms the same as that made with the Government of Great Britain of same date. The sixth article provides that, "French merchandise or goods recognized as coming from the French dominions, shall not be prohibited, nor shall they be subject to an import duty higher than five per cent. *ad valorem*. Wines, brandies, and other spirituous liquors are, however, excepted from this stipulation, and shall be liable to such reasonable duty as the Hawaiian Government may think fit to lay upon them, provided always that the amount of duty shall not be so high as absolutely to prohibit the importation of the said articles." At this time the Digest of the Constitution and laws, and a project of the organic acts, were under consideration by the Nobles and Representatives, among which was a provision imposing a penalty for the sale of spirituous liquors to natives. These acts were approved by the King on the 27th April of the same year.

It is a matter of history that France made great complaint that the law imposing duties on spirituous liquors were so high, that it was against the spirit of the treaty, but none whatever against the restrictions imposed on the sale to natives.

In December, 1849, the American Treaty was negotiated at Washington, and ratified in August, 1850. Article 9th of said treaty gives to the "citizens and subjects of the contracting parties, freedom in the states of the other to manage their own affairs themselves, or commit them to the charge of any one whom they may select. The buyer and seller have the right to bargain together, and to fix the price of any goods or merchandise imported into, or to be exported from the states or dominions of the contracting parties, except in cases where the laws and usages of the country require the intervention of special agents. But nothing contained in this or any other article of the present treaty, shall be construed to authorize the sale of spirituous liquors to the natives of the Sandwich Islands, further than such sale may be allowed by the Hawaiian laws."

In 1850 the statute in question was passed, which imposed additional restrictions on the sale of spirituous liquor and other intoxicating drinks or substances to natives of the Kingdom. The French Treaty, by virtue of which the respondent claims the right of sale, was ratified in 1858. This Treaty is especially distinguished for its express regard to the laws of each country. For example, article 2d, which, with article 10th, the counsel regard as controlling the law in question, declares that "they (the parties) shall have liberty to trade from place to place, under the provisions of the laws. They shall have liberty in their respective territories, to travel or reside, trade by wholesale or retail as native subjects." The whole paragraph, of which the counsel took a part, is in these words. "They shall have the right to buy and to sell of and to whom they please, without any monopoly, contract or exclusive privilege of sale or purchase, prejudicing or restricting in any manner whatever, their liberty in this respect. They shall be equally free in all their purchases, as well as in all their sales, to fix the price of their goods, merchandise and objects of every kind, both imported and destined for exportation, so long as they comply with the laws and regulations of the country."

It is very clear, as contended for by the counsel for the respondent, that parties have the right to buy and to sell of and to whom they please, "so long as they comply with the laws and regulations of the country." This is an express stipulation to that very article, and a controlling part of it. If the position taken by the counsel is sound, a Hawaiian can go to Paris, and there "will have the right to buy and to sell of and to whom he pleases, without monopoly, contract or exclusive privilege of sale or purchase, prejudicing or restricting in any manner whatever, their liberty in this respect." This freedom, from the necessities of a license, or of regard for any of the regulations of trade of the place, would be valuable, and it is a mutual grant unknown in the history of treaties. If the counsel in his construction of this article, had borne in mind an established principle, that every part of a treaty is to be considered, and the intention is to be extracted from the whole, they would see that while the parties had the right to buy and to sell of and to whom they please, only "so long as they comply with the laws and regulations of the country." The 10th article contains the further provision "that the parties shall not be subjected in any of the aforesaid cases, to other charges, taxes or imposts at the Custom House than those to which native subjects are subjected," limiting the interpretation of the article to its own terms, and even excluding for the moment from consideration the object and intent of the whole treaty, and it is clear that the buying and selling must be in conformity to the laws and regulations of the country.

By article 19th, "It is agreed: that the importation and the sale of wines and brandies shall not be prohibited in the Hawaiian Islands." The rate of duties to be imposed is detailed in this article. The treaty of 1840 contained a provision that the duties on these articles should not be so high as absolutely to prohibit their importation. France made especial complaint against the duties imposed at that time, and sought by the new treaty to have them reduced, which was subsequently done by the Legislature, but it is a matter of political history that they have never made complaints against this restricting provision. By this article, the duties are expressly set forth, and an importation only requires a compliance with its provisions. When the articles are in the country, the sale cannot be prohibited, but must be made according to the laws and regulations of the country. It is not contended that the law works a prohibition, but a restriction or limitation only. The law in question was in force when the treaty was made, and, of course, the contracting parties are supposed to know of this restriction in the sale. Why then, if it was the intention to give the "right to buy and to sell wines of French origin of and to whom they please," was not language employed which imparts that meaning and intention? There may be limitation or restriction in the sale of an article which by treaty or by the laws it is legal to import and to sell, but there shall be no "prohibition." It is not contended that there is. How then does the law conflict with the treaty in its terms? The law does not prohibit the sale, but it regulates, controls and limits it. Treaties and other contracts are to be construed according to their intent. "All international treaties, says Grotius, are covenants 'bonae fidei,' and are, therefore, to be equitably and not technically construed."

By the French Treaty of 1846, it was provided that no duties should be imposed which would prohibit the importation. About the same time, a law was passed by which it was rendered necessary for a person who purchased a license to retail spirituous liquors, to give a bond, with surety in the penal sum of five hundred dollars, that he would not sell or furnish the same to any native subjects of these Islands, and by doing so, he not only forfeited the penalty, but his license also. The law in question was passed in 1850. It will be seen therefrom, that this restriction of the sale was for many years prior to the date of the French Treaty now in force. Had it been the intent of the contracting parties to remove this restriction, it would not only have been expressed in the 10th article, but a duty to comply with the laws and regulation of this country in buying and selling would not expressly have been imposed by article 2d. Phillimore says "that abrogated treaties often furnish a necessary means of construing those which are in force. A due and judicial regard should be had to the occasion which produced them, the subject matter of their stipulation, and the object for which, and the epoch, during which they were contracted."

Article 10th of the treaty in force contains a detailed account of the duties to which the contracting parties agreed. The controversy under the old treaty arose from the amount of duties imposed by the Hawaiian Legislature. It was contended on the part of France, that the duties were so high, that they were hostile to the true intent and spirit of the treaty; and hence she insisted upon the duties being made specific in the treaty itself. While this is particularly done, there is no reference to the restriction imposed upon the sale—this having been in force for the whole existence of the old treaty. If it had not been regarded by France as legitimate and in conformity to the true intent and meaning of the treaty, her Minister would have insisted upon a provision to guard against it in the future.

This Government has treaties with most of the commercial States, and yet no complaint has been made of a violation of their stipulations in this particular. It has never been contended by any party to a treaty, that it was an object to secure a sale of spirituous liquors to native subjects; and the court do not believe that any civilized nation would entertain such a purpose. That the parties to the French Treaty have never given or contended for such a construction, is conclusive evidence that it was not so understood, and that the 10th article contained no such purpose. It is very clear that the law in question is not in conflict with the language of this treaty; and it would be a singular technical construction of a treaty to defeat by implication a law of a nation which was regarded as essential to the health and life of its people.

It is considered a sound rule to have regard to the consequences to the justice or injustice, advantages or disadvantages which would ensue from aff[illegible]g a particular meaning to doubtful expressions. (2 [illegible]il., 89.) The construction which the court gives does not depend upon doubtful expressions, but upon the entire absence of any expressions from which a restriction could be inferred. It is not [illegible]ssary to refer to the consequences of having an unrestr[illegible]e of spirituous liquors; but if regard is had to the consequences which might result from a defeat of the law, there can be no doubt of the interpretation of the treaty. The law in question was in force when the treaty was ratified, and had been for many years. Even in equity and fair dealing, to permit the sale as when the treaty was made, gives all the advantages the party had a right to expect. All nations who by treaties permit the importation and sale of spirituous liquors, impose such duties for license as they deem proper, and make such other regulations as legitimately appertain to the police power. "The power which every independent nation possesses to regulate its internal commerce, as well as its police, and to direct how, when and where it shall be conducted in articles intimately connected either with public morals or public safety, or the public prosperity," cannot be surrendered by doubtful construction of a treaty stipulation, or by the still more doubtful inferences from its terms. In a case of doubt even, it addresses itself to the political, rather than the judicial department, in the first instance. The material purpose of France in negotiating this treaty was to effect a reduction in the duties on her wines and brandies, and if she regarded that her rights had been violated by this restriction, it is more than probable that she would have entered her complaints. There is no doubt that this construction carries out the full intent and purpose of the contracting parties. It is not in accordance with the general history of nations, in their diplomatic relations, to refrain from asking the execution of the treaty in all advantageous particulars. A treaty is but a contract between two nations, and who can give its true meaning and intent better than themselves. It must contain stipulations, clear and definite, before third parties can take advantage of it, when opposed to the acts and construction of the parties themselves.

There is no injustice done the respondent. When he took the license, he knew its conditions. This provision of law has been in force for many years. Under this decision he will continue to have the same rights of sale by virtue of his license, as it was understood by the contracting parties to it that he would have. But he seeks to extend that license by the claim of a Constitutional right of sale to the whole native population, which the law prohibits, and in reference to which the contract for a license was made. He will continue to enjoy all the advantages for which he contracted and paid, and, equitably, he can claim no more. In saying this, the court do not controvert the legal principle that he should not be held responsible for the violation of a law which is unconstitutional. I am only adverting to his rights in "foro conscientiae."

My associate has ably presented the whole case, and I shall not advert to other points raised by the counsel for [illegible] respondent, for I fully accord with the legal exposition of them made by Justice Robertson.

Judgment of the Police Court affirmed.

Attorney-General HARRIS for the Crown.
Mr. GREGG and Mr. MONTGOMERY for Defendant.
March 25th, 1863.

CORRESPONDENCE.

To the Editor of the Polynesian:

SIR: At the meeting of the subscribers to the Cook's Monument Fund, at the house of the British Commissioner on Thursday last, a letter was read from Mr. John Thos. Waterhouse, to Mr. Synge, excusing his attendance, and concluding with a paragraph evidently intended to reflect a public censure upon me, in relation to this matter, as I alone have had charge of the subscription paper and of the funds subscribed. I need hardly state that the letter received from the meeting the consideration that was *due* to it.

Notwithstanding that Mr. John Thos. Waterhouse is a gentleman who has often before, on numerous and well remembered occasions, placed himself most prominently before this community, as the champion of correct principles in religion, morals, politics, trading, taxation and finance, I consider it only necessary to publish the paragraph conveying the reproof, in full, without further note or comment, to place the state of matters in a clear light before the Honolulu public, at any rate. Here is the paragrah.

"It would be well to have it made known who have subscribed and what the money has been doing this great length of time. It is the view of some as well as my own, that the material for the monument should be Hawaiian. The great neglect in this matter has thoroughly disgusted many of the subscribers, and I am glad you have it in hand, as I have confidence it will now be attended to."

I am, &c.,
W. L. GREEN.

Honolulu, March 28th, 1863.

THE POLYNESIAN.

SATURDAY, MARCH 28, 1863.

Crowded out.

Owing to the great length of the Decisions of the Supreme Court, and of the Peruvian Official Correspondence, which we publish to-day, our remarks upon the latter are necessarily crowded out, as well as editorial observations upon sundry matters and things in general.

Monument to Capt. Cook.

A meeting of the subscribers to the fund for a monument to Capt. James Cook, and of others interested in that object, was held on Thursday morning last, at the residence of Her Britannic Majesty's Commissioner.

Mr. W. L. Green, who has been acting as Treasurer, explained that this subscription was first opened by the late Acting Commissioner B. Toup Nicholas, Esq., in March 1859, who took a great interest in the matter. His illness and death taking place soon after, the subject did not seem to be very warmly taken up by most of the other subscribers. A few meetings were called which were indifferently attended, but nothing decided upon, and it appeared to be tacitly understood that the matter should lie over, especially as Gen. Miller, whose hearty interest in the question was well known, was at that time expected to return to this country. After some time, however, Mr. Green, whilst acting as Commissioner, advertised that a meeting of the subscribers would be held at the British Consulate, but none appeared sufficiently interested to attend. On arrival of Mr. Synge, the present British Commissioner, he was made acquainted with what had taken place, but for obvious reasons, the time did not then appear ripe for taking any action in the matter. Mr. Green exhibited a list of the subscribers. The amount paid in up to date was $889, and there were about $200 more subscribed, which only required asking for to be paid in also. Capt. Richards of H. B. M's. S. *Hecate*, suggested that a lighthouse near the entrance of Honolulu harbor would be the most appropriate monument to Capt. Cook, and towards that object the whole community might with propriety be asked to contribute.

The idea seemed to be warmly approved of, and after some conversation the following resolutions were put and carried unanimously:

Resolved, That in the opinion of this meeting, a lighthouse near the entrance of Honolulu harbor, to be called "Coo 's Lighthouse," would be the most appropriate monument to the memory of Capt. Cook.

Resolved, That a public meeting be called for *Monday next*, with a view of taking steps to raise the required funds to carry out this undertaking.

With the object itself we feel that lively sympathy which every civilised man would undoubtedly feel in seeing genius and enterprise duly honored; and the manner, in which it is now proposed to honor the memory of the great navigator, cannot fail to meet with the approbation of all who dwell in this land. There is a peculiar appropriateness in connecting the memory of the discoverer of this country, the man whose advent opened the portals of a higher existence to this people, with a beacon light at the principal harbor in the group. Here at least is truly neutral grounds for human passions. We hope the meeting on Monday will be numerously attended.

Corrections.

In justice to all concerned, we make the following corrections in the item of the *Advertiser* about the fire on board the bark *Florence*, on Friday last. First, that "the vessel had been set on fire about 4 P. M." This is simply another instance of facility in jumping at conclusions, as no evidence has yet been produced to show even that the vessel *was set* on fire. Secondly, the itemizer says: "Parties on shore immediately put off to the bark, and found her crew not only making no efforts to save her, but all ready to desert, having passed their effects out into the boats alongside, while the vessel was heading on to the reef." Capt. Joseph R. Spencer was the first man to board his vessel, followed immediately by Lieut. Hand, with his boat's crew from H. B. M.'s ship *Hecate*. So far from finding his ship in a state of mutiny, which the *Advertiser* intimates, Capt. Spencer awards to his officers the praise of saying that they had done and were doing everything that could be done under the circumstances, for the preservation of the vessel. That "several gentlemen from shore" made praiseworthy and effectual efforts to check the fire, is undoubtedly true, and all credit and honor is gratefully awarded them, but surely that may be done without giving a wrong impression about the officers of the ship, comprehended under the general term of "the crew." We may also add that the estimated cost of the necessary repairs on the *Florence* is something over $2,000, instead of $4,000, as stated by the *Advertiser*.

The Liquor Question.

We publish in to-day's paper the decisions of the Supreme Court in the case of "the King *vs* Jos. Booth" for selling liquor to Hawaiians, which was appealed from the Police Court of Honolulu. The decisions may briefly be summed up in this, that the X Chap. 41st Section of the Penal Code, under which Respondent was fined in the lower Court, is not repealed, by implication or directly, by the Act of the Legislature of 1862; that it is not inconsistent with itself, in conflict with the Constitution, or contrary to treaty stipulations with foreign powers; and that therefore the judgment of the lower Court stands affirmed. In other words, that section of the Penal Code is and must remain the law of the land until expressly repealed by the Legislature. The decisions are very ably and fully prepared with reference to the grounds taken by the Respondent's Counsel, which the Court holds to be untenable. The law is the law until formally repealed, and until then must be considered valid whenever enforced. The policy of the law is beyond the cognisance of the Court. We respect their decisions therefore as final, and shall address ourselves to the next Legislature to obtain a thorough revision of the various laws which now bear upon the liquor traffic and liquor consumption in this country. We invite our readers to a careful perusal of the decisions.

A Roland.

The *Advertiser* recommends that the *Polynesian* Office be given to a *practical printer*. There is evidently a sad want of a *practical writer* in the *Advertiser* Office, as the following sample will show:

"We do not learn *from whence* the *Virginia* came, but she is *evidently* from the Atlantic, *as no such vessel is known to be afloat*, and if the report is true, there can be no doubt of her being a Confederate craft."

Quære: There being no knowledge whence the *Virginia* came, what makes it *evident* that she comes from the Atlantic?

Resp: Because no such vessel is known to be afloat. (Syntax and Logic weeping in the distance.)

The schools have vacations just now, and the school-master has *evidently* gone abroad.

For the East.

The *Young Hector*, Capt. Paty, sails for San Francisco this morning with freight, passengers and the mails.

[OFFICIAL.]

Letter of Mr. Wyllie to Capt. Richards.

FOREIGN OFFICE, 21st March, 1863.

SIR: I have just heard from Captain Babcock that the American bark *Florence* was, in his opinion, under Providence, saved last night from total destruction by fire, through the personal exertions of your first Lieutenant and crew.

The ship at the time of danger was under the charge of Capt. Babcock, who is a respectable and intelligent ship master of many years experience. He assures me that he never saw any thing to surpass, or even to equal, the perfect coolness, collectedness and presence of mind of your first Lieutenant, and the admiral discipline of the men, under his command, in their prompt and efficient execution of his orders, all most wisely directed to the extinguishment of the fire.

In the name of the Government of the King, who is a friend, and by Treaty, an Ally of the President of the United States, I beg to thank you, most cordially—and also, through you, to thank your first Lieutenant and the brave men who served under him, for saving the ship of a friendly nation, at anchor in His Majesty's waters.

I pray you accept the assurance of the very distinguished respect and consideration, with which I have the honor to be,
Sir, your most obedient, humble servant,
R. C. WYLLIE.

CAPTAIN RICHARDS, H. B. M.'s Steamer *Hecate*, in port.

Reply of Captain Richards.

H. B. M. SHIP HECATE,
Honolulu, 22d March, 1863.

SIR: I have the honor to acknowledge the receipt of your communication of yesterday's date, conveying the thanks of His Majesty's Government, to the officers and crew of H. B. M.'s ship under my command, for services rendered to the United States ship *Florence*, on the occasion of her taking fire while within His Majesty's waters; and I beg to assure you that this prompt and handsome recognition of the exertions of my senior Lieutenant and crew, by His Majesty's Government, is very highly appreciated by them and by myself.

I have the honor to remain, Sir, with much respect,
Your most obedient servant,
GEO. HENRY RICHARDS,
Captain.

To His Excellency, R. C. WYLLIE, Esq., &c., &c., &c.

Special Notices.

A CARD.

HONOLULU, March 23d, 1863.

Sir:—Permit me, on behalf of the owners of the bark *Florence*, as well as in behalf of her crew and myself to offer you, and through you, the officers and men under your command, our sincere acknowledgements and deepest gratitude for the prompt, liberal and efficient assistance tendered by you and them in extinguishing the fire on board of said bark *Florence*, and in bringing her back into port on the night of the 20th instant.

With the highest respect and the warmest wishes for the prosperity and happiness of yourself and all under your command,
I have the honor to be, Sir,
Your very humble and obedient servant,
JOSEPH R. SPENCER,
Master of the American bark *Florence*.

To Captain GEO. H. RICHARDS, Commanding
H. B. M.'s Steam Sloop *Hecate*, Honolulu Harbor.

The Undersigned takes this method of tendering the sincere and unqualified thanks of himself, his ship's company, and of the owners of the American whaling bark *Florence*, to the Honolulu Fire Department, and all connected therewith; to Capt. Brown of the tug-boat *Pele*, and the public generally, for their assiduous, well-timed and well-directed services in subduing the fire on board of the said bark *Florence*, on the evening of the 20th inst.
JOSEPH R. SPENCER,
Master of the American bark *Florence*.

Honolulu, March 23, 1863. 1t

New Advertisements.

The Steamer
"ANNIE LAURIE!"
WILL LEAVE FOR
Nawiliwili
On Monday next, Mar. 30,
AND FOR
KOLOA
On THURSDAY NEXT, April 2,
At 1-2 past 4 P. M.,

And thenceforward she will leave for KOLOA every Thursday, and for NAWILIWILI every Monday.
JANION, GREEN & CO.,
Agents Hawaiian S. N. Co.
29 tf

THE STEAMER
KILAUEA!
Will lay up next week for repairs, and will sail again for
HILO!
And intermediate Ports,
On MONDAY, April 6.

Towage of Vessels.

NOTICE IS HEREBY GIVEN, that from and after the 1st day of April, 1863, the following rates will be charged for vessels towed in or out of the Harbor of Honolulu, by the propeller "PELE:"

For Merchant vessels of 1000 tons and upwards	$75
" " " 500 @ 1000 tons	60
" " " under 500 "	50
" Foreign Whaleships and Barks	45
" Hawaiian " "	40
" Brigs and Schooners over 200 tons	35
" under " "	30

By order of the Minister of the Interior.
S. SPENCER, Chief Clerk.
Interior Office, March 23, 1863. 48 3t

To be Sold or Let.

THAT ELEGANT AND COMMODIOUS family mansion, EMMA HOUSE (built two years ago, at a cost of $9,50), lately occupied by the Hon. David L. Gregg and his family.

Parties wishing to see the House can apply to Mr. N. Fuller, who resides in the adjacent premises, lately occupied as the Government Offices. 48 tf

NOTICE.

A MEETING OF THE SUBSCRIBERS TO the Fund for erecting a Monument to the memory of Capt. James Cook, and of others who may feel an interest in promoting that object, will be held on MONDAY NEXT, the 30th of March, at 4 o'clock P. M., at the Court House.
W. W. F. SYNGE,
H. B. M. Commissioner and Consul General.
Honolulu, March 28, 1863. 48 1t

Licenses Expiring in March, 1863,

RETAIL SPIRIT—10th, E Brown.
Wholesale do—13th F S Pratt.
Retail Store—6th J Perry, 15th P Michel, 19th Patshun, 21st Ahchu & Co, 8th P Cumings, Hawaii; 10th Apana, do.
Wholesale—4th Aldrich & Co.
Plantation—1st J Louzada, Maui; 7th Lihue Plantation, Kauai.
Hotel—14th J Davis.
Victualling—13th B Bastel.
Butchers—17th W Duffin.
Horse—No 18.
48 1t S. SPENCER, Clerk Int. Office.

Just Received!
Kellikinich & Oronoko Smoking Tobacco!
MANSANITA AND BRIERWOOD PIPES!
For sale by
JOHN CATTANACH,
Nuuanu Street, one door below King.
48 4t

FOR
SAN FRANCISCO!
The A 1 Clipper Bark
CAMBRIDGE!
N. C. BROOKS, Master,
Will have immediate dispatch.
For freight or passage, having superior accommodations for Cabin and Steerage Passengers, apply to
ALDRICH, WALKER & CO.
46 3t

FIRE-PROOF ROOFING
400 ROLLS ROOFING FELT;
100 bbls. Roofing Cement.
For sale by
ALDRICH, WALKER & Co.
46 1m

Advertisements.

BUTTER

MYER'S CELEBRATED
MOLOKAI
Butter
AT
50 Cents per lb.!

The best Butter made on the Islands!

RECEIVED FRESH
BY EVERY SCHOONER!
NOW SELLING AT
J. STEWARD'S,
Hotel Street.

For the last three years, I have disposed of no other than MYER'S superior quality of BUTTER, and shall not keep any other quality—either at 37 1-2 cents or any other price per pound—therefore there need be no fear of mistakes.
47 2m*

BUTTER! BUTTER! BUTTER!

MYERS'
CELEBRATED
Molokai Butter!
AT
50 cts. per lb.!

THE BEST BUTTER
Made on the Islands

RECEIVED FRESH
BY EVERY SCHOONER!
NOW SELLING, AT
S. SAVIDGE'S,
Fort Street.

Other Dairy Butter,
37½ Cts. per lb.
45 tf

List of Foreign Jurors

FOR the APRIL TERM of the Supreme Court, to be holden at the Court House, Honolulu, on Monday, the 6th day of April, A. D. 1863:

P. C. Jones, Jr.,	R. B. Neville,
Thomas King,	J. Bartlett,
C. W. Vincent,	John Gaskin,
John Ritson,	W. H. Pease,
J. H. C. Pratt,	Thomas Hughes,
George Clark,	Frank Molteno,
A. D. Cartwright,	Henry Wood,
C. Brewer, 2d,	Samuel Savidge,
W. Fetters,	G. C. Siders,
S. N. Castle,	Frederick Banning,
Jos. O. Carter,	Sherman Peck,
H. L. Chase,	W. K. Snodgrass.

JNO. E. BARNARD, Clerk Supreme Court.
Honolulu, March 12, 1863. 46-3t

Estrays.

PUBLIC NOTICE IS HEREBY GIVEN, THAT in accordance with the provisions of Section 1 of the Act entitled "an Act to amend Section 287 of the Civil Code, in relation to Pounds," approved on the 23d day of August, 1862, all estrays on the Islands of Maui and Molokai will be impounded in the Government pounds the number of days prescribed below from the date of the impounding, when, if not claimed by the owners, such estrays will be sold by the respective poundmasters at public auction, viz.:

District of	Lahaina, Maui,	15 days.
"	Olowalu "	15 "
"	Kaanapali "	15 "
"	Kahakuloa "	15 "
"	Kalepolepo "	15 "
"	Honnoula "	15 "
"	Kaupo "	20 "
"	Hana "	30 "
"	Hamakualoa	15 "
"	Hamakuapoko	15 "
"	Wailuku "	15 "
"	Manawai, Molokai,	15 days.
"	Kalae "	15 "
"	Kalaupapa "	15 "

L. KAMEHAMEHA,
Minister of the Interior.
Interior Office, March 10, 1863. 46 tf

FOR SALE.

A SEVEN OCTAVE ROSEWOOD PIANO, of superior tone—received per Raduga—made by Jacob Chickering, Boston.
Apply to
C. S. BARTOW.
45 3t*