

## SUPREME COURT--IN EQUITY.

BEFORE McCULLY, J.

LYMAN S. THOMPSON AND JAMES W. THOMPSON, PLAINTIFFS. THE HALAWA SUGAR COMPANY, DEFENDANTS.

The bill recites that on the 25th October, 1879, Lyman S. Thompson, one of the plaintiffs with T. P. Tisdale, became the lessee for a term of years of certain lands (and a sugar mill) in Kohala, Hawaii; that in February, 1880, Thompson assigned his interest to Tisdale, and that in Feb. 1883, Tisdale assigned the lease and premises to certain persons who have been incorporated and as such corporation are the defendants. That beginning with October 27, 1879, sundry contracts were made with Tisdale & Thompson, and later with Tisdale, by sundry persons to plant cane to grind at the Halawa Mill, all of which contracts were successively assigned with the mill property and on the planters' side passed by assignments to the complainants. A particular description of the contracts and assignments will be given below. The bill alleges that by reason of these assignments the defendant corporation holds that the complainants are bound to plant, cultivate and deliver cane and ratoons as prescribed by the contracts between the original parties, whereas the complainants deny that they are so bound. That there are many parties having distinct rights or interests in the matters and things here involved which cannot be properly decided by action at law, and that only a Court of Equity can determine whether the complainants are bound, and to what extent, and can enforce and regulate the execution of any obligations.

The bill prays for decree that the defendant's claims are without foundation in law or equity, and for injunction against prosecuting the same or bringing actions at law or suits in equity for non-compliance or for specific performance, or for further relief.

(The Plaintiffs' brief and Defendant's brief follow.)

BY THE COURT.

The Court is asked by both parties to give an instruction of its views upon the effect of the contracts in view of the assignments which have been made of the mill property and grinding contracts on the one part and of the planting side of the contracts on the other. The proceeding may be treated as an amicable one to obtain construction and prevent future litigation. I do not understand that either party is charged by the other with having yet violated its obligation towards the other. The defendant holding the mill property is ready and anxious to take the cane and ratoons as contracted for with the plaintiffs assigners and the plaintiffs have not yet taken them to any other mill.

I am of opinion that the plaintiffs prayer for injunction to restrain defendant from prosecuting or bringing actions at law cannot now be granted upon "the mere apprehension of fears of future actions." High on Injunctions, p. 64--neither can there be an injunction against suits in Equity, Id. p. 45, 52, 64.

Upon the question of the assignability, or not, of contracts on the one part to grow cane, and on the other to grind it, as being within the description of contracts made upon personal choice of the parties respectively.

There are certain strong and reasonable considerations why this view should be taken that such contracts are not of assignable character, if that view can be supported on principle and by authority. It is a supposable case that a sugar mill be established that shall be entirely dependent for its business on cane planted on contracts with its owner, and that it be established on the faith of such contracts made previously to its establishment. A large amount of capital is embarked, and must be held invested for many years. It would be an unfortunate position if the owner of it could not sell to the other parties, could not alienate to a corporation, or that upon his death, the contracts for cane upon the execution of which the profit and the value for the most part of the buildings, machinery and everything constituting the mill plant, should become invalid. So of the contract to plant cane--it involves a large outlay. I take the case of it being entirely independent for realization on grinding at the mill with the owner of which it contracted. It would be equally unfortunate if a change of ownership was for any reason desirable or necessary, or made by act of law, or by act of God, through death, that the property might become of no value in the hands of assignees or heirs.

But I have no doubt on principle and authority that such contracts may be assigned on both parts. On the part of the mill owner the contract was to transport the cane from the field to the mill, and there to manufacture it into sugar and molasses. No part of this can be supposed to be done by Dr. Tisdale who contracts for it. It is done by his employees. One of the most important of these is the sugar boiler. Yet it will not be claimed that the contract contemplated that the sugar boiler then employed should be retained during the entire term of the contracts, or that Dr. Tisdale was not at liberty to make

such changes as to him and as to any of his employees who must execute the work, as he saw fit or might be necessary. In saying this I do not overlook the choice, the selection for personal qualities of such mill owner, by the cane planter, which might have its influence in the first instance.

Yet it is reasonable to hold that choice must be made subject to the contingencies of a change of ownership in the course of a term of years.

The plaintiffs on this point cite the leading case of Robson vs. Drummond, 2 B. and Ad. 303, wherein a contract to furnish the defendant with a coach for five years and keep the same in good order, was held not assignable. In a recent case, British Wagon Co. vs. Lea, Law Reports, 2 B Vol. 5, 149, Jan. 13, 1880, the Court per Lord Cockburn, C. J., say of this case: "We entirely concur in the principle on which the decision in Robson vs. Drummond rests, namely, that when a person contracts with another to do work or perform service and it can be inferred that the person employed has been selected with reference to his individual skill, competency or other personal qualification, the inability or unwillingness of the party so employed to execute the work or perform the service is a sufficient answer to any demand by a stranger to the original contract of the performance of it by the other party, and enables the latter to treat the contract as at an end, notwithstanding that the person tendered to take the place of the contracting party may be equally well qualified to do the service. Personal performance is in such case, the essence of the contract, which, consequently, cannot in its absence, be enforced against an unwilling party. The Court saying that the principle did not apply to the case before it, says, while fully acquiescing in the general principle just referred to, we must take care not to push it beyond reasonable limits. And we cannot but think, in applying the principle the Court of Queen's Bench, in Robson vs. Drummond, went to the utmost length to which it can be carried." Droin vs. the Mayor of New York 63 N. Y. 17, supports the assignment of a contract to sweep the streets of the city, the Court saying, "Parties may in terms prohibit the assignment of any contract and declare that neither personal representatives nor assignees shall succeed in any rights in virtue of it or be bound by its obligations. But when this has not been declared expressly, or by implication, contracts, other than such as are personal in their character as promises to marry or engagements, for personal services requiring skill, science or peculiar qualifications may be assigned and by them the personal representatives will be bound."

The observations made upon the assignability of the contract to grind cane will apply with equal propriety to the contract for growing cane. It is a common business, the most prevalent agriculture of this Kingdom. Perhaps one man may cultivate better than another, but there are no secrets in the business. The cultivators may be employees, and are liable to be changed without affecting the force of the contract in anywise.

(Quotes from Monsell v. Lewis, 2 Den, 224.)

In contracts of this kind we are considering the interests of both parties are in unison, for it is equally the interest of the cane planter to produce good cane, of which he is to have one half the proceeds, and of the mill owner to make the most and best sugar, of which he receives the half, so that both parties are bound by the same interest to the proper performance of their contract.

I hold, therefore, that the contracts do not come within the class of those which cannot be assigned, because depending upon personal qualities of the original contractors. It will be seen further that they have been expressly made assignable by their terms.

(Contracts between planters and mill owners are here quoted at length.)

My view upon these contracts in respect to several points raised, is that the cane planted, and that the ratoons grown upon the land of the mill owners, rented from them, is bound by the contracts. The assignees are in the position of tenants, bound not only to render the three dollars per acre, but the cane and ratoons upon shares to the lessors. This finding is limited in its application to the cane and ratoons now standing on the leased lot of 15 and 40 acres, without extension to obligation to take land or plant future crops.

The contract of 27th October, 1879, calls for "not less than 40 nor more than 50 acres to be planted." Deducting the fifteen to be furnished by the mill owners, there was not less than 25 nor more than 35 acres planted by Butler in the district of North Kohala for the Halawa mill.

I am of opinion that the assigners of this contract are bound to deliver the cane of the minimum extent of the crop of cane or ratoons which has been planted or grown in pursuance of this contract, and passed to them by the assignment. Such is the most direct interpretation to be given to its terms, and I see nothing to support any other view.

(Contract with Chapin and Thompson by Tisdale and Thompson here quoted.)

As to this contract, one of the original makers, L. S. Thompson, is one of the plaintiffs. The assigners of the grinding contract, hold themselves ready and demand performance. Having above expressed the

opinion that such contracts are assignable on the mill part, I further see no reason why the substitution by assignment of James W. Thompson for Chapin affects the obligation of the contract upon the two plaintiffs, or either of them. \* \* \*

(Questions of the construction of the extent of the contract are raised. \* \* \*)

By the common rules of construction the intention of the parties is to be gathered from all that they say upon any subject. Taking their expressions together, the most direct and consistent meaning to be given them, is that the mill is secured a certain area of plant cane every year, and that the planter may grow his ratoons to the extent he pleases, but is bound to deliver this optional quantity, whatever it may be, to the mill, and the mill is bound to grind the same.

The second question of construction is as to the quantity of plant cane for which the plaintiffs are holden. By one stipulation it is to be the crop of not less than 75 acres, and not to exceed 150 acres planted every year, and by another they are bound to deliver all that they plant on certain leased lands mentioned, and on all other lands now leased or held under agreement for lease.

There is no evidence to show that the area of the leasehold by the contracting planters at the date of this contract. I shall hold that the force of the two stipulations taken together is that at least 75 acres is to be planted in cane each year, but that if more is planted on these lands the mill is entitled to it and bound to grind it up to the extent of 150 acres, the indefinite stipulation of all the cane which may be grown on the lands being controlled by the definite maximum limit.

What is known as the Paty contract was made January 1st, 1880, between W. J. Paty and Thompson and Tisdale their heirs and assigns, for seven years. The agreement is to plant and cultivate yearly in the district of North Kohala, Hawaii, on land owned, leased or controlled by Paty not less than twenty-five or more than forty acres. The Paty contract was assigned to Butler and Blaisdell, August 25th, 1881, and by them assigned March 1st, 1883 to the plaintiffs and by the same assignments also were assigned the leases of the lands held by Paty of which a description is given from which the premises may be definitely ascertained. There is a brief supplemental contract of date December 6th, 1882, between Butler and Blaisdell and T. P. Tisdale in these terms: It is mutually understood by the undersigned that B. and B., plant in 1883, 40 acres of cane, B. and B., agreeing to furnish 15 acres of land in field makai mill adjoining Dr. Wright's store.

It is further understood that in lieu of the balance of sixty-five acres that B. B. and two cane rights call for, they have the privilege and agree to ratoon all their plant cane now growing.

The defendants' Counsel contends that this supplement must be held to refer to the Paty contract and the Philip Butler contract.

I think it cannot refer to the B. & B. contract of October 1, 1881 (1) because that plainly provides that ratoons may be raised, and therefore requires no new consideration to give that privilege, (2) because the 65 acres spoken of would be made by the sum of the minimum 25 acres of the Paty contract, and the minimum 40 acres Butler contract, (3) and there were no other contracts between the parties to which reference could be made to which this specification would conform. I therefore find as a fact that the supplement qualifies the Paty and Butler contracts.

And I also find that the plaintiffs are bound by the arrangement to deliver the cane and ratoons of the Paty contract planting, as qualified by the supplemental contract. This takes the minimum amounts of the two contracts to which it must refer and stipulates for the ratoons of the plant cane then growing which must be taken to be of the previous planting under the Butler and the Paty contracts, and not relating to the 40 acres therein agreed to be planted in 1883 now, as has been observed to the ratoons of the B. & B. contract of October 1, 1880.

I believe I have now covered all the matter presented for adjudication \* \* \* As both parties agreed in argument to ask simply the intimation of the Court upon the force of the contracts as now held by assignments, I will not, without further hearing, make any decree.

Messrs. Hartwell and Preston for Plaintiffs. Mr. F. M. Hatch for Defendants.

## CORRESPONDENCE.

EDITOR P. C. A.:--Occasionally it is a feeling of pleasure to our community to read extracts from foreign shores about our Island home. The following article copied from a San Jose California paper and written by a gentleman of culture on board the Alameda who recently took his departure from here is well worthy a reproduction and our thanks are due to Mr. L. C. Ables our fellow townsman for his kindness in presenting to us the following article:--

## The Islands.

LEAVE-TAKING ON STEAMER DAY AT HONOLULU.  
Ed. Mercury:--Tourists from the Coast generally visit two or more of the Islands of the group--taking in the great extinct crater of Haleakala on East Maui, and the active volcano of Kilauea on Hawaii. During the week preceding the sailing of the California steamers, the little inter-island vessels are crowded with returning tourists and all about the wharves is life and bustle from noon until 9 or 10 o'clock p. m. Streets choked with hacks and carriages carrying passengers to their hotels or boarding-houses. The steamer Alameda, having taken on board some

2,000 tons of sugar and other heavy freight, commences on the morning of the day of sailing, to receive bananas in immense bundles, to the number of 1,500 clusters, which are stowed away on the after part of the upper deck and covered with canvas. While this is going on, trunks and personal baggage arrive at intervals until 11 o'clock. During the hour before sailing Berger's Band commences playing and continues until the steamer leaves. The wharf and deck of the steamer swarm with people, coming and going, like bees at a hive. The natives turn out in a mass, and friends to take leave of departing friends. The gong sounds and there is a hasty boarding of all passengers and leaving of those that remain. The gangway is taken ashore, hawsers cast off, the propeller turns and the huge ship moves slowly backwards and outwards, until, describing a half-circle she is headed for the channel, when she moves out of the harbor with increasing motion until human faces are no longer distinguishable and all becomes a beautiful dissolving panorama. Just now, as we near the lighthouse, the little steam yacht "Waimanalo," with Berger's Band on board, runs alongside playing national airs; the United States steamer Hartford's decks are alive with officers and marines, in their white uniforms, and her band also playing lively airs, while handkerchiefs are waving and cheer on cheer are heard on every side. A dozen or more of the citizens remained on board, exchanging adieux with departing friends until outside the channel the ladder goes over the ship's side, the pilot and citizens run down into small boats, are transported to the yacht, and then the ship is put on her course at full speed.

There is something remarkable in all these demonstrations, showing the loyalty of Americans to their own nationality in whatever shape it appears. The O. S. S. Co. is very popular everywhere among the Hawaiians. The steamers of the Australian line arrive and depart without eliciting anything more than the ordinary civilities. The great popularity of Captain Morse and the officers of the O. S. S. Co. may have something to do with these demonstrations. But the facts of isolation and limited congenial social relations has much more. An incident on the departure of the Alameda is worthy of note. Mr. S. J. Shaw of Santa Clara county, Cal., having resided the last five years at Honolulu and endeared himself to many California visitors by various acts of kindness and self-sacrifice, on going on board for a visit to the coast, was attended by a large number of friends, loaded with wreaths, carrying in his arms a beautiful album filled with photographs of his friends. It was a most beautiful and touching tribute to a friend--seldom witnessed in these days of haste and hurry--and gives one a better estimate of these people than many of the rambling, unreliable letters of tourists.

AT SEA, March 5th, 1884. A. W. S.

## THE AGRICULTURIST

## OUR SUPPLY OF FRUITS AND VEGETABLES.

[BY A CORRESPONDENT.]

I am often asked why I do not make a business of growing vegetables for the Honolulu market. Some of my friends and others through them have heard of the sort of things I do from time to time, raise on ground, which, when I took it in hand, was deemed to be by no means promising. They occasionally besiege me with requests and suggestions, and are quite sceptical when I tell them that if I followed their advice I could not sell my produce. I thought that it might not be a bad thing by way of general reply to these friends of mine, to let them and the public know through the "Agriculturalist" columns of the PACIFIC COMMERCIAL ADVERTISER something about what might be done here and what the hindrances are. We all know what a Chinaman's vegetables are. From year to year, the same thing over and over again; no striking out into new lines, no improvement in the quality of what we have been accustomed to get from him. Now there are a few white men here who, like myself, grow vegetables and some fruit, chiefly for their own use. When any one is so fortunate as to obtain vegetables thus raised, he is sure to exclaim about the difference in quality between them and what he can buy from the Chinese peddlers. The superior quality thus observed is also supplemented by a wider range of variety. Now if there were any hope of the white man, or even of the Portuguese, many of whom are good gardeners, making this line of industry pay, there is nothing in the soil or the climate or the vicinity of Honolulu to prevent the growth of vegetables as fine in quality, and in as large variety as could be desired. My strawberries, for instance, this year are, many of them, nearly as large as a small hen's egg, and my plants produced them in brave quantities. What a contrast this large and luscious fruit presents to the miserable little sour things which the Chinamen hawk round in tins. It is as easy to grow fine

strawberries as poor ones if the grower knows something of what is required to ensure success. And so it is with the majority of our vegetables. Celery, turnips, beets, rhubarb, peas, sweet corn, (the real thing--not the rubbish the Chinaman cultivates) Dent corn, squashes of various sorts, and many other things can be grown here in great perfection. And they would be, if only there were any method of bringing the producer and the consumer into contact without much labor and trouble to either. This can only be brought about by the establishment of a good centrally placed market. White men who understand the business would grow and bring to such a market, if it existed, ample supplies of splendid vegetables. The only market we have--the fish market--is too much out of the way for such a trade. Very few of those to whom a really good supply of fruit and vegetables would be a boon, ever visit the fish market, except to show it to some stranger visiting the Islands for the first time. Nothing very large would be wanted in the first instance, but it is certain that until we have such an institution handily situated, we shall look in vain for any improvement on the present condition of our supplies and shall have to content ourselves with just the old bill of fare which the Chinaman has learned how to purvey.

## THE SUGAR DUTIES.

A correspondent of the U. S. Commercial Bulletin, writing from Washington, under date of February 28th, 1884, says that the representatives of the Louisiana sugar interests have a series of contests on their hands. Of all protectionists they are the most sensitive, irritable and domineering. During the last Congress they succeeded in making much ado over the Hawaiian Reciprocity Treaty. They stirred up the Foreign Affairs Committee of both Houses; they rattled the dry bones of the State Department; they disturbed the serenity of the Treasury Department; and they finally succeeded in securing from the Senate Finance Committee a resolution giving "notice of the termination of the reciprocity treaty according to the provision therein contained for the termination of the same." It was charged that frauds were being committed against the Government by the free importation of sugars not contemplated by the terms of the treaty. It was asserted that the United States had made a bad bargain, and should get rid of the treaty without further delay. Owing to this flurry, raised chiefly by Louisiana sugar men, the Secretary of the Treasury appointed a commission last summer to visit the Pacific coast cities and the Hawaiian Islands, and to investigate thoroughly the charges which had been made before the committee of Congress. The investigation was made, and the report of the commission was a complete refutation of the charges of fraud.

But the Louisiana sugar people are not yet satisfied, and through their sugar Senator, Mr. Gibson, himself a planter, they have renewed the agitation in favor of terminating the treaty. The Senate Committee on Foreign Relations, however, has made an adverse report on the subject. This report is now on the Senate calendar, and it may soon be called up.

But the activity of the Louisianians is not confined to opposition to the Hawaiian treaty. From the time it became known, over a year ago, that the proposed Mexican treaty provides for the admission free of duty of Mexican raw sugars, Congressional representatives of the Louisiana planters and refiners have been persistent in their efforts to secure the defeat of the treaty. They apparently act on the theory that the Government of the United States is maintained solely to protect their sugar interests. They will not tolerate the idea that Congress will be so utterly and unreasonably reckless as to pass a horizontal tariff bill, which proposes to make a twenty per cent reduction of the existing sugar duties and leave Louisiana sugars with a pitiful protection of only about 40 per cent *ad valorem*!

It is not strange that members of both parties and of all economic creeds in Congress are becoming impatient with the demands and the threats of the representatives of the Louisiana sugar plantations. Are the commercial and tariff policies of thirty-seven States to be subject to the dictation of a few comparatively small districts of the thirty-eighth State of the Union? is a question which is receiving consideration from Senators and Representatives in Congress; and, if by combinations and log-rolling the Louisiana Senators and Representatives should succeed in defeating the Mexican treaty and tariff reduction at this session, it would give great impetus to the movement, already strong, in favor of reducing the sugar duties not 20 per cent, but 50 per cent, if not to wipe them out "as with a sponge."