Hawaiian Gazette,
PUBLISHED
Every Wednesday Morning,
AT SIX DOLLARS PER ANNUM.
Foreign Subscribers, $8.00 to $10.00.
OFFICE—On Queen Street, in the old Custom House Building, Honolulu, H. I.
Printed and published by R. RIPLEY, at the Government Printing Office, at which all business communications must be addressed.

HAWAIIAN GAZETTE.

VOL. VII—NO. 7. HONOLULU, WEDNESDAY, MARCH 1, 1871. $6.00 PER YEAR.

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Supreme Court of the Hawaiian Islands, January Term, 1871—In Banco.

ALLEN C. J., HARTWELL J., WIDEMANN J.

W. H. Davis vs. Charles Brewer.

Ejectment to recover possession of land in Honolulu held by the defendant under Royal Patent of Sept. 7, 1857, and claimed by the plaintiff under Land Award issued to him Nov. 6, 1852. The judge ruled at the trial that he should instruct the jury that the defendant on this evidence was entitled to a verdict, on the ground that a title by Royal Patent was paramount to that of an award, to which ruling the plaintiff excepted, and his exception being allowed, the case was withdrawn from the jury, with the agreement that if this ruling should be affirmed by the full Court, judgment should be entered for the defendant, otherwise that there should be a new trial.

H. Thompson and W. C. Jones for Plaintiff.
A. F. Judd for Defendant.

OPINION OF THE COURT, BY HARTWELL J.

Section 43 of the Civil Code which provides that "a Royal Patent shall issue to any holder of an award from the Board of Commissioners," was not in force at the date of this Patent, but the following: "The Minister of the Interior shall issue Patents or leases to the claimants of land pursuant to the terms in which the said Board shall have confirmed their respective claims, upon being paid the fees, &c., unless the party entitled to a lease shall prefer to compound with the Minister, as in the succeeding section allowed." Sec. ix, p. 109, Vol. I, Statute Laws. "The Minister of the Interior shall have power in concurrence with the Privy Council under the sanction of His Majesty, to issue to any lessee or tenant for life of lands so confirmed, being an Hawaiian subject, a patent in fee simple for the same upon payment of a commutation to be agreed upon by His Majesty in Privy Council." Ib: Sec. X.

The award by its terms conveys to W. H. Davis "an estate less than allodial which he can change according to law to an allodial title if he chooses, but if not, he has an estate for 30 years." Section IX above cited gave the Minister of the Interior no authority to issue on this award a Royal Patent, in fee simple, but this he could only do in concurrence with the King and Council on commutation of the price fixed upon, according to the provisions of Section X. The fee simple patent in that case issued, at the discretion of the officers named, "to the party entitled to a lease." This was no mere ministerial duty, and does not make it incumbent on the Minister to compound only with the original holder of the lease under the award of the Commissioners. Neither does the Statute preclude all claims by an assignee, heir or devisee of the original holder. It is well known that patents were so issued under this statute, to persons presenting the original award with a legal conveyance thereof. It has been held in the United States that a land patent may be issued to the heirs of the person who held the certificate entitling him to the land. Shanks vs. Lucas, 4 Blackf., 476; Forsyth vs. Ballance, 6 McL., 562; 2 Wash., Real Prop., 542. This would require evidence that the claimant was the person named in the award, or that he was holding under that person, succeeding to the right of the first holder. To rule that every Royal Patent issued to any person other than the one named in the award is *prima facie* void as against such award would upset land titles and make strange confusion. The presumption on the contrary is, that the Patent was issued to the legal holder of, or to the one legally entitled to the award. The words of Lord Coke apply, that royal grants shall "have no strict or narrow interpretation for the overthrowing of them," but "a liberable and favorable construction of them for the making of them available in law, *usque ad plenitudinem* for the honor of the King." 2 Inst., 49. "And so note," says the same author, "the gravity of the ancient sages of the law to construe the King's grant beneficially for his honor and the relief of the subject, and not to make any strict or literal construction in subversion of such right." Molyn's Case, 6 Rep., 6. Sovereign grants are said by Mr. Justice Story to be construed against the grantee only in cases of mere donation, and not when there was a valuable consideration, which does not appear as requisite to the award. It is not denied that a Patent conveys only a legal title, and leaves the equities open. Brush vs. Ware, 15 Pet., 93. But we merely decide that a Patent valid on its face is good in law as the best evidence of title, and that the equities can only be reached in a Court of Equity, and not by an action of ejectment. Otherwise, a Royal Patent "would fail to be as it was intended it should be, an instrument of quiet and security to its possessor," Beard vs. Federy, 3 Wallace, 492.

The authorities cited in the brief of the defendant's counsel are conclusive, that a Patent not void on its face, or appearing to be issued contrary to law, or without authority, can not be impeached collaterally in a Court of law, and that in order to set aside a Patent for mistake, fraud, or other reason, application must be made to a Court of Equity. Green vs. Liter, 8 Cr., 250; Stoddard vs. Chambers, 2 How., 318; Stringer vs. Young's Lessee, 3 Pet., 344; Minter vs. Cromelin, 18 How., 87; Bagnell vs. Broderick, 13 Pet., 436; Fenn vs. Holman, 21 How., 481; Field vs. Seabury, 19 How., 322; People vs. Livingston, 8 Barb., 253.

Since the foregoing opinion was prepared, the plaintiff's brief has been submitted and examined, which cites the following extract from the Act of July 30, 1854, page 415 of the Civil Code: "Section 3. Any award of the Land Commission not appealed from within ninety days after its date in accordance with the present laws shall be final and binding on all parties, and shall be a good and sufficient title to the person receiving such award, his heirs and assigns, and shall furnish as good and sufficient a ground upon which to maintain an action for trespass, ejectment, or other real action, against any person or persons whatsoever, as if the claimant, his heirs or assigns, had received a Royal Patent for the same: provided that nothing in this Section shall be construed as annulling the Government right to commutation in any freehold award as at present established by law." The plaintiff's argument is based on the assumption that only the original holder of an award could receive the patent, and he does not observe that this award gives, not a patent in fee under Section IX of the Act of 1846, but merely a leasehold interest to be commuted, if desired, into a Royal Patent issuable "*to the person entitled to the lease*," in the words of the Statute, and that this commutatio into a fee requires the exercise of a judicial as well as executive function. The Act of 1854 merely gives the holder of an award as good a title for bringing real action as if he himself held the Patent, but of course gives him no right of action against any to whom he may have assigned his claim; nor does this Act enable the plaintiff to impeach the Patent in law, on the ground of fraud or mistake, or because it was issued in violation of his rights.

The plaintiff's exception is accordingly *overruled*, and judgment for the defendant, with costs, is ordered.

Four-Footed Hypocrites and Criminals.

There was one pony at the farm that had a curious artful trick of shamming lameness when he was driven in a direction which he happened, from some cause or other, not to like. He was a good-tempered little animal, very pretty, and would have been a favourite, but for this perverse habit. His pretended lameness appeared so real and was so distressing to witness that every one felt ashamed of driving him, lest by any chance it was no longer make-believe, but a nail that pricked him, or else that he had sprained himself. Yet no sooner was he put in the field than he was all right again, and would even frisk about as if delighted at the success of his artifice. There were two roads, however, that he never liked, one to the mill and the other to a village in the opposite direction to Downham. But, as there was another pony besides himself, he was generally excused from those two objectionable roads. If, however, after an interval of six or eight months, or even more, he happened to be driven towards either of them, he again pretended lameness, dropped into a walk, and feigned so completely a state of suffering there was nothing for it but to excuse him and turn back. He had been beaten, poor fellow, for his falsehood; but it made no difference, and it was thought probable that he had, on some former occasion, before he came to the farm, been ill-used, either at the mill or in the village, and never being able to forget it, had hit upon this device to save himself from ever going there again. He might, it is true, have been taught this trick for some purposes by a former master or groom, for both dogs and horses are capable of being made the accomplices and even active co-operators in crime, as several instances on record prove. In the first place I mention that of the highwayman's horse, which has been cleverly illustrated by Mr. Harrison Weir. "Between 1750 and 1760, a Scottish lawyer made a journey to London. At that period such journeys were usually performed with horses, when the traveler might either travel post, or if desirous of studying economy, buy a horse and sell him at the end of his journey. The lawyer in question had chosen the latter mode, and accordingly sold the horse on which he had ridden to London, as soon as he reached that place. When the time for his return arrived he went to Smithfield, then a horse market, to purchase a hackney for his journey. Not finding one at first to his mind, he waited till towards dusk, when a handsome animal was offered, but at so low a price, considering his appearance, that he immediately suspected there was some secret blemish or defect which would not bear the daylight. However, after much careful examination none such being found, and he being himself a good judge of a horse, he consented to become its purchaser. The next morning, still better pleased with the appearance of his bargain, he again commenced his journey. The horse had excellent paces, and the lawyer, riding the first few miles on a well-frequented road, and observing that his horse was admired by almost all he met, did not fail to congratulate himself on his good luck in having obtained so admirable a steed at so low a price. By this time he had reached Flinchley Common, then a noted resort of highwaymen, and, coming to one spot in a hollow which lay between two slight ascents, he met a clerical looking gentleman driving to town in a one-horse chaise. The road was solitary, not a creature was in sight, when the horse astonished its rider by making a sudden manœuvre, by which he brought his hindquarters close to the chaise, and so stopped it, proving at once what the profession of his former owner had been, as well as his own complicity in the highwayman's art. The clergyman, believing of a certainty that a highwayman, as well as the horse was at hand, and fortunately not having a pistol to defend himself, or rather as appeared, being of a peaceful turn, produced his purse at once, assuring the astonished lawyer that it was quite unnecessary to use violence, as he was not about to offer resistance. The lawyer spurred up his horse, with many apologies to the terified clergyman, and went on his journey. In a while, however, they met a stage coach on another solitary part of the road, and again the horse perpetrated the same extraordinary manœuvre to bring it to a sudden stand. But here a different reception met him; a blunderbuss was levelled from the coach-window, with denunciations of death and destruction against the luckless rider, who was now in his turn more terrified than the unresisting clergyman had been.

So it went on through the day. Wherever an opportunity of robbing occurred, the horse offered it to his master, and did the best in his power to aid him. In short, after his life had been repeatedly endangered by the suspicions which the conduct of his steed naturally gave rise to, and his liberty threatened by the peace officers, who were about to take him up as the notorious highwayman to whom, of a truth, the horse had formerly belonged, the lawyer was obliged to part with him for a trifle, and to purchase at a high cost one in his stead, which, though far less beautiful, had not been trained to those criminal habits in which the other had become a perfect adept." My second anecdote, related by Sir Walter Scott, is of a sheep-dog, which had been trained to steal sheep by its master. The case came to trial in 1773. "Murdison and Millar were a sheep farmer, and his shepherd, who, having settled in the vale of Tweed, commenced and carried on an extensive system of devastation on the flocks of their neighbors. A dog belonging to Millar was so well trained that he had only to show him during the day the parcel of sheep which he desired to have, and when dismissed at night for the purpose, Yarrow—such was the dog's name—went right to the pasture where the flock fed, and carried off the quantity shown him. He then drove them before him, by the most secret paths, to the farm, where the dishonest masters were in readiness to receive the booty. Two things were remarkable. In the first place that if the dog, when thus dishonestly employed, actually met his master, he observed great caution in recognizing him, as if he had been afraid of bringing him under suspicion; secondly, that he showed a distinct sense that the illegal transactions in which he was engaged were not of a nature to endure daylight. The sheep which he was directed to drive were often reluctant to leave their own pastures, and, sometimes rivers and other obstacles intervening, their passage was made peculiarly difficult. On such occasions Yarrow continued his efforts to drive his plunder forward until the day began to dawn, a signal which he conceived rendered it necessary for him to desert his spoil, and slink homeward by a circuitous road. It is generally said that this accomplished dog was hanged, along with his master; but the truth is, he survived him long, in the service of a man in Leithen, yet was said afterwards to have shown little of that wonderful instinct exhibited in the employment of Millar." "Another instance of similar sagacity," continues Sir Walter Scott, "was discovered by a friend of mine in a beautiful little spaniel, which he had purchased from a dealer in the canine race. When he entered a shop he was not long in observing that his little companion made it a rule to follow at some interval, and to estrange himself from his master, so much as to appear totally unconnected with him. And when he left the shop, it was the dog's custom to remain behind him till he could find an opportunity of siezing a pair of gloves, or silk stockings, or some similar property, which it brought to its master. The poor little thing probably saved its life by falling into the hands of an honest man." —*Our Four-footed Friends.*

A MAIDEN OF SIXTY-FIVE MARRIES A YOUNG MAN OF TWENTY-THREE.—It isn't often that we have to record the marriage of a blushing youth to an ancient maiden; but here is a story of such a performance, related by a St. Louis correspondent:

At a fashionable boarding-house, on a fashionable thoroughfare, in this fashionable "future great city," an incident occurred recently of so unusually romantic a nature as to deserve passing notice. The house was, but is not now, kept by a maiden lady, who, of the temporal allotment vouchsafed mankind, has passed three score and five years, and in the management of her establishment she was ably assisted by her nephew, a bright lad of fifteen summers. Miss B— (for such was her name) unlike most fashionable or unfashionable boarding-house keepers I ever heard of, had, by close attention to business and personal supervision of her household affairs, accumulated a snug little fortune to wit, thirty or forty thousand dollars, and was very comfortably situated.

Last summer a handsome and fashionable young man, apparently about twenty-three years of age, came here from England, and engaged at a high figure an elegantly furnished room and board at the house aforesaid. He seemed to have no business, and for a time paid his monthly bills with the regularity of clockwork. It was noticed, however, that he no longer wore the costly jewelry he displayed on his arrival, and it soon became painfully apparent to the landlady that he was out of funds. She seized upon his costly trunk and contents during his absence one day, which she had no right to do under our laws, and he obtained a writ of replevin for the recovery of his property, and accompanied an officer to the house to identify it. The constable took a seat in the hall while the young man and the lady parleyed in the parlor. The consequence was, the young man came out and paid the costs that had accrued, and gave directions for the dismissal of the suit. He had offered the spinister his hand and heart, which she accepted.

"Was ever woman in this humor woo'd!
Was ever woman in this humor won!"

His father, who was a wealthy Birmingham manufacturer, had failed, became bankrupt, and hopelessly insane, and no longer able to send promised remittances. They were married the next day, the house and fixtures were sold, and he is now engaged in profitable business, all which proves at least that

"There never was a goose so gray,
But some day soon or late,
An honest gander came that way,
And chimed her for his mate."

GIANT POWDER—INTERESTING EXPERIMENTS.—Last Saturday afternoon a series of practical experiments were conducted to test the power and qualities of the Giant Powder. The works of the Company are situated on the Trent Tract, on the Central Road, about five miles outside of the city.

The first experiments were to test the relative strength of Giant Powder with common blasting powder. For this purpose a cast-iron mortar was provided, having a six-inch bore and a six-inch thickness of metal. The mortar was surrounded by a wrought-iron band one inch in thickness and five inches in breadth. Into this mortar, placed at an angle of forty-five degrees, we placed eight grammes (about one-fourth ounce) of common blasting powder, and 32-pound cylindrical shot. The charge was fired by a fuse, and threw the shot a distance of fifteen feet. The same charge of No. 2, (the poorer kind) of Giant Powder was substituted, and the same ball was thrown 410 feet. The same charge of No. 1 Giant Powder was used, and the same ball was thrown 569 feet.

Next, the mortar was placed upright and loaded with 32 grammes, or 15 grammes less than an ounce Troy, of common blasting powder, and then a 32lb ball which was packed in with sand. The charge was fired, but nothing came of it save a puff of smoke, the ball remaining stationary. The ball was then removed and the same weight of No. 2 Giant Powder was substituted, which sent the ball flying into the air out of sight. This experiment was repeated, and it was found this time that it was in the air 11 seconds. Next, the same charge of No. 1 Giant Power was used, and the ball was thrown still higher, the time occupied in its ascent and descent being 15 seconds. So powerful was the force of this last experiment that the band around the mortar was burst.

A third test was made to prove the non-explosiveness of the powder from common flame. A box containing about five pounds of the powder was thrown into a bonfire. As soon as the flame had burned through the box and to the powder a gaseous odor was discernible, and the powder burned with a pale green flame, but without explosion.

We have heretofore at length described the peculiarities of this powder. It is negrained, of a yellowish color, with a specic gravity of about 1. It is insoluble in water. The explosion of the entire mass is instantaneous. The force is so great that it cannot be used in firearms.

FISK, JR., begs leave to explain what he meant when he threw on the market the phrase: "Gone where the woodbine twineth." The explanation has an air of truth that will obtain for it an acceptance as far as the phrase is found. "You see I was before that learned and dignified body, the Committee on Banking and Currency, and when Garfield asked me where the money got by Corbit went to, I could not make a vulgar reply and say up a spout, but observing, while peddling through New England, that every spout of house or cottage had a woodbine twining about it, I said naturally enough, where the woodbine twineth. That is all. It seems the Congressional cheesewaxes did not understand my delicacy, nor my delicate allusion."

Song of the lee men—"We will gather at the river."