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THE HAWAIIAN GAZETTE.

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Judge Not.

BY ABRAHAM L. PRENTICE.

Judge not! the workings of his brain
And the heart from which they spring,
God alone can know or explain,
None but He the secret can bring
To the light of day these springs of action,
Which, to us, so oft appear
Springing from some well-spring of evil,
Which, to us, wrongly, only bear
Bitter fruit, when, perhaps, if we knew all
The motive, the cause, the spring
That to us, so often, seems
Worthy of our censure, or
Our scorn, we should, with
Charity, say, "I know
Not what I would do if
Tempted as he has been tempted."
Then, if we see a man
Do a deed which we
Think we can see the
Result of, we should
Not say, because we
Think we know the
Motive, that we know
The man who has
Done the deed.
Then, if we see
Some one
Do a deed
Which we think
Will be
Productive of
Good to
Himself
Or others,
We should
Not say
That he
Is a good
Man, because
We think
We see
The motive
Which
Induced him
To do the
Deed.
Then, if we see
Some one
Do a deed
Which we think
Will be
Productive of
Evil to
Himself
Or others,
We should
Not say
That he
Is a bad
Man, because
We think
We see
The motive
Which
Induced him
To do the
Deed.
For we
Do not
Know
The
Motive
Which
Prompted
The
Man
To
Do
The
Deed.
We do not
Know
The
Temptations
Which
Have
Assailed him
In
The
Past,
We do not
Know
How
Much
He
Has
Been
Tempted
To
Do
Or
Not
To
Do.
We do not
Know
How
Much
Of
Temptation
Has
Been
Withheld
From him
In
The
Past.
We do not
Know
How
Much
Of
Temptation
There
May
Be
In
The
Future
Before
Him
To
Do
Or
Not
To
Do.
We do not
Know
How
Much
Of
Temptation
There
May
Be
In
The
Future
Before
Us
To
Do
Or
Not
To
Do.
Judge not!

Variety.

Chairs should never be covered with silk, but satin.

"Let well alone," as the tippler said to the bottle.

The press is credited with having caused Stokes' incarceration.

The will of Samuel N. Pike has been admitted to probate. The amount is $3,000,000.

Woman was made of a rib-bone: she loves rib-bone to this day.

The man most likely to make his mark in the world—One who cannot write his own name.

Barnum is here stocking his new menagerie to be renewed and re-established next spring.

Louis Rois, a Canada farmer, has just baptised his thirteenth child. Twenty-six are living and all "Rois."

Pinchback, the Senator elect from Louisiana, was once a dining-room boy at the Barnet House, in Burlington, Ohio.

Barnum wants to get ten elephants to draw his great initiative Car of Juggernaut all over the country next summer.

The difference between true and false doctrine is often only the the width of a hair, I see. And yet, the false doctrine is the heresy.

What relation is a loaf of bread to a steam-engine? A steam-engine is an invention, and bread a necessity: therefore necessity is the mother of invention.

"Well, Pat, Jim didn't quite kill you with the brickbat, did he?" "No, but I wish he had." "Why so?" "So that I could have seen him hang the villain!"

"Murder is a very serious thing, sir," said an Arkansas Judge to a convicted prisoner. "It is next to stealing a horse or a mule, sir, and I shall send you to State Prison for six years, sir.

Sickes' jury consisted of a printer, a builder, an architect, a brick-maker, a carpenter, an insurance agent, a broker, a provision dealer, an iron merchant, a flour dealer, and a retired merchant.

An individual who has an eye—like Shakespeare's play—with a wild leer in it, was soundly thrashed in Memphis, last week, by a bashful damsel from the rural districts for staring at her.

A mother's sweet hope found a cartridge the other day, and rubbed it on the stove to see if it was good. As his mother now knits left-handed mittens, the cartridge is generally supposed to have been a good one.

Miss Lenora Mechum, a young girl of sixteen, residing near Marysville, Cal., took her little gun and a dog the other day, and, sallying out, bravely pursued and slew a thirty-pound wild-cat, the destroyer of her pet lamb.

No better evidence can be found of the fact that the American people are long-suffering and of forgiving disposition than the statement that among all the persons who met death at the hands of their fellows last year, there was only one life insurance solicitor.

A South Adams, Mass., boy carried enterprise to the very last of earth, the other day, by circulating advertising sheets along a funeral procession of forty-seven weights. He stood by the roadside, unobtrusively handing in his bills, and didn't miss anybody outside the hearse.

A lady, who made pretensions to the most refined feelings, went to her butcher to remonstrate with him on his cruel practices. "How can you be so barbarous as to put little innocent lambs to death?" "Why, madam," said the butcher, "you surely wouldn't eat them alive, would you?"

The only persons fit to be trusted with the deadly pistol, which does so much damage, are Detroit policemen. One of them recently worked all day trying to kill a hog he had a grudge against. He emptied thirteen dozen cartridges, but wouldn't have hurt the animal then, if he hadn't walked up to smell the muzzle of the pistol.

The Little People.

A boy eight years old, at Lowell, Mass., spelled seven thousand words without a miss, and he put one hundred to the committee and they missed fifteen.

A lady who was urging some friends to stay to dinner, felt disgusted when her eight year old boy came in and said: "Mrs. Jones says she can't spare no bread, and Mrs. Fox ain't to home, so I didn't get any butter." The friends thought they had better dine elsewhere, and the lady thought so too, but she taught that boy that the way of the transgressor was hard before evening.

One of the Ohio papers tells about a brave little boy on there who found a broken rail on the railroad track, and perceiving the peril in which the train would be placed if it should come dashing past without warning, sat out on the fence for five long hours, in the bitter winter cold, in order that he might carry the first news of the accident to his father, who is local editor of a paper published in the neighboring village.

A few years ago, a gentleman who had lost his nose was invited out to tea. "My dear," said the good lady of the house to her little daughter, "I want you to be very particular and make no remarks about Mr. Jenkins' nose." Gathered around the table, everything was going well; the child peeped about, looked rather puzzled, and at last startled the table: "Ma, why did you tell me to say nothing about Mr. Jenkins' nose: he hasn't got any."

Supreme Court—April Term, 1873.

IN BANCO, BEFORE CHIEF JUSTICE ALLEN, AND HARTWELL AND WIDEMANN, J.J.

The King vs. Kahalewai.

Decision of the Court delivered by Chief Justice Allen.

The defendant was indicted for the crime of murder, upon which he was tried and convicted of manslaughter in the first degree; whereupon a motion was made by defendant's counsel that the verdict be set aside and a new trial ordered, on the ground, 1st, that the verdict was against the weight of evidence, and 2d, that a juror, Meanauli, after the jury had retired to consider their verdict, called in aid of an argument for his conviction, the former life of the defendant and alleged former actions, the same not having been put in issue on the former trial, and that said juror in the jury-room manifested such a bias and prejudice against defendant as to render him an unfit person for the trial of this case, and that he could have been successfully challenged.

It is in evidence that the prisoner was a strong man, and that his wife was sickly, disabled by paralysis, and it is in proof that a short time before the alleged violence to his wife, the prisoner became very angry with Mrs. Wort, in whose house they were residing, and in his passion broke a portion of the banisters of the house, and also some crockery, and that the persons present were frightened at his conduct.

It appears by the testimony of Mrs. Wort that she was up-stairs when she heard the noise below, and went down and went into the room where the deceased was lying on her face, and ran to her where she was lying and called to one Antone, who was still in the room, and said "Why do you not go to the assistance of the sick woman?" "I ran to her and lifted her up nearly in a standing position, when the prisoner came up to me and pushed me over, and the first I knew was I fell down on my back, and his wife fell out of my arms;" whereupon she, the witness, immediately left and went for a policeman.

It is further in evidence by Antone that the prisoner not only broke the dishes, but he writing desk, and jumped on the bedstead and tried to break it; that he seized his wife by the back of the neck, and jammed her head down with one hand, and Mrs. Wort, the witness referred to, ran to her assistance and said to him "Why are you standing there?" He also corroborates the testimony of Mrs. Wort, who swears that the prisoner pushed her back, and that she got up and ran out, and there was then remaining in the room no other person than prisoner, his wife, and the witness. The prisoner then exhibited other acts of violence, such as throwing the cover of his writing-desk at his wife, which, in his anger, he had broken. This, however, did not do any particular injury.

At this time, the witness says that he was standing at the door, and thinking, as he says, that the prisoner might attack him, he ran out, and stood by the open window, muska, on the veranda, and he then saw prisoner drag his wife by the right leg from the inner room into the veranda room towards Waikiki, the entrance to that room having a step four or five inches high. He dragged her with all his strength and force, and the witness then ran for the police, and on his return with the police he looked in at the windows and saw prisoner embracing his wife with his arms around her, speaking to her, but she could not reply; she was gasping for breath, and soon after died.

Dr. Trousseau, who made a post mortem examination, says that "although the examination does not show sufficient violence to cause immediate death, my opinion is, that had not the woman been subjected to violence of some sort she might have lived for years." He further states "that invalids, if they suffer from violence, die easier than persons in health, and in my opinion the death was caused by concussion of the brain and spinal cord by injurious causes that night."

The counsel for the defence contends that there is a conflict of testimony between the testimony of Antone and Mrs. Wort, in relation to the presence of Antone at the window, when he says he saw prisoner drag his wife from one room to another.

Mrs. Wort testifies that when prisoner pushed her down, she immediately left; and Antone swears that he was left with the prisoner and his wife; all of them were frightened, and the whole transaction took but a few moments; but there is much more reliance to be placed on Antone's testimony in relation to the dragging of the body thus in the precise time of the meeting of these parties on the street. Besides, Antone's testimony is corroborated by that of the doctor, who swears that, in his opinion, had the woman not been subject to violence of some sort she might have lived for years.

The violent temper of the prisoner is illustrated by the breaking the banisters and the dishes; by his pushing Mrs. Wort over, and thereby letting his wife fall; by his breaking his writing-desk, and throwing the cover at his wife; and by his jumping on the bed, as if to break it down; all go to convince one that the statements of Antone of his dragging his wife from one room to another were in accordance with his conduct immediately preceding.

The jurors visited the scene of this alleged homicide, and they were enabled to judge whether Antone's testimony was consistent with the situation of the rooms.

The rule of this Court, repeatedly made, is that a new trial will not be granted for the reason that the verdict is against the weight of evidence unless it clearly appears that it is so manifestly against evidence as to lead to the conviction that a mistake has been made, or that injustice has been done through abuse of power on the part of the jury.—Howland vs. Jacobs, 2 Hawaiian Rep.; The King vs. Cornwell, same vs. Kauna, same vs. Heinricks, Forbes vs. Gibson, 3 Haw. Rep.

In this case case, after a careful re-examination of the testimony, we are satisfied that the verdict was legally found, in accordance with the evidence.

In support of the second ground of exception, two affidavits are filed, in which one of the deponents declare that he was in an adjoining room to the jury room when the jury were considering the case of defendant, and overheard one of the jurors, named Meanauli, say in the discussion with each other, after the case was given to them, "That he, the defendant in this case, had been circuit judge at Maui, and had trampled on the law there; that he had afterward been accused and imprisoned for trampling on the law here, meaning on Oahu; and now he is brought here for killing his wife, and therefore, he continued to argue, he ought to be punished severely."

Kaliioli, who had the jury in charge, in his affidavit, says that he heard J. Meanauli, one of the jurors say, while ther were deliberating on the verdict: "We are not more learned in the law (or know the law better) than Kahalewai, for he is a man that was made circuit judge of the island of Maui, and was afterward removed from that office; he first trampled the law under his feet and was imprisoned for it; this is the second time, how are we to reduce his punishment like people who do not know the law?"

Mr. Justice Shepley, in the case of Stadley vs. Hall, 22 Maine, 201, says: "that jurors cannot be permitted to disclose their deliberations and proceedings while consulting together in their private room," but the rule does not extend to their conduct at other times and other places.

In the case of Bridge vs. Eggleston, 14 Mass., 247, the court ruled that jurors are not to be permitted to testify to the motives or inducements upon which they have given in a verdict.

In the case of Howland vs. Jacobs, 2 Haw. Rep., 137, the Court say, "that the jury make up and deliver their verdict under the solemnity of an oath, and no declarations of theirs can be received to convert its truth by showing misconduct on their part," and it would be very unsound for a court to set aside a verdict for any irrelevant conversation.

In Murdock vs. Sumner, 22 Pick., 156, the Chief Justice declared the rule to be inflexible, that affidavits of jurors will not be received to show misconduct, or irregularity on the part of the jury, or any of them.

This principle is recognized in the 9th Cushing, in Cook vs. Coster, 278; and also in Stroker vs. Graham, 4 Meeson & Welsby's Rep. 724. There are no conflicting authorities on this subject.

It is a rule founded upon principles of public policy. It would not be difficult for parties to raise a question of irregular discussion by the jurors, and that they in the course of their deliberations discussed matters that ought not to have had any influence on their judgment, and may not have had any. In Cook et al. vs. Costin et al., 9 Cush. Rep., the Court say, "that all communications among the jurors are confidential; they are intended to be secret, and it is best that they should remain so." If this principle is to be recognized, it follows of course that affidavits of one over-hearing their discussions would be clearly inadmissible.

A jury in their discussion may perhaps refer to too much irrelevant matter, but it is impossible to tell how much influence it has in the formation of their verdict. If such evidence was admissible, there would be no verdict safe from further investigation. A man intent on listening would imagine that he heard what he wanted to hear. It is a mode of obtaining intelligence of the deliberations of a jury that should be at once discouraged.

When the jury have declared their verdict in open court, it would certainly be unsafe to admit affidavits of a limited portion of their discussions. They are supposed to make their decision upon the law and the evidence aided by the arguments of counsel and the charge of the judge, and to admit affidavits of a single remark made by a juror would compel the necessity of re-opening the whole case and examining the best testimony, which would be the whole panel. If public policy requires that all communications among the jurors should be confidential, and that they are intended to be secret, then it follows, that affidavits of persons overhearing the discussions should not be received. In our view, it is incompetent as the affidavits of jurors, and far less satisfactory, as only giving a very partial and imperfect representation of their deliberations. A single sentence from the whole discussion would be at best very unsatisfactory.

The general principle contended for by the counsel for the defendant is correct, when a juror before a trial had declared that he would be bound to find a party guilty. This, of course, is our opinion, based on the presumption that the defendant did not know at the time of the statement having been made, as it would have been a good cause of challenge. But this case, and all the authorities cited are in reference to cases totally distinct in this, they refer to declarations of jurors made before the trial, and of course concealed from the party, and not to declarations made by a juror in the discussion of the case with his fellows. But as we are of the opinion that the affidavits introduced are inadmissible on the same principle that affidavits of jurors are, of course, the authorities cited are not applicable.

Exceptions overruled.

His Ex. A. F. Judd for the Crown.

Messrs. C. C. Harris and F. H. Harris for the defendant.

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By writing small lines & carefully selected risks, well distributed, offers
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Claims against Insurance Companies within the jurisdiction of the above Boards of Underwriters, will have to be certified to by the above agent to make them valid. [1-1y

CALIFORNIA
INSURANCE COMPANY.
THE UNDERSIGNED, AGENTS of the above Company, have been authorized to insure risks on Cargo, Freight and Treasure, by Coasters, from Honolulu to all ports of the Hawaiian Group, and vice versa.
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Are prepared to furnish KEG and BARREL SHOOKS in any quantity required, and respectfully solicit Consignments of Sugar and Island Produce.
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FIRST.—To Manufacture, all such Books and Stationery as can be done here as well as elsewhere, and thereby benefit our customers and ourselves.
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CHLORODYNE
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Beef, Mutton and Veal of the Best Quality.
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Have constantly on hand, Stoves, Pipe, Galvanized Iron Pipe, Plain and Hose Bibbs, Slop-cocks, India Rubber Hose—Lead Spdy, in lengths of 25 and 50 feet, with couplings and pipe complete. Bath-Tubs, and also a very large stock of Tinware of every description.
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Thankful to the Citizens of Honolulu and the Islands generally for their liberal patronage in the past, we hope by strict attention to business to merit the same for the future
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