By Authority.

AN ACT

TO REGULATE THE SALE OF SPIRITUOUS LIQUORS.

Be it enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled.

SECTION 1. The several laws and parts of laws mentioned in the Schedule hereto to the extent to which they are therein expressed to be repealed are hereby repealed except as to any proceeding under the said laws or any of them; and all offences committed and liabilities incurred before this Act shall come into operation shall be prosecuted and all licenses issued under the authority of the said laws shall confer the same right as if this Act had not passed, but no more. Provided that persons holding licenses under Sections 18, 19, 20, 21 and 22 of chapter 41 of the Penal Code may surrender such licenses in exchange for licenses under this Act upon paying a proportionate part of the license fee prescribed by this Act.

SEC. 2. The following words unless where the contrary appears from the context, are used in this Act with meaning hereby assigned to them respectively.

"Spirituous Liquors" shall mean any wines, spirits, ale, cider, perry, beer or other fermented or distilled liquors and all liquor of an intoxicating nature. "Sunday" shall mean the time between 11 of the clock on the evening of Saturday and 5 of the clock on the morning of the succeeding Monday.

"The King in Council" shall mean His Majesty, by and with the advice and consent of his Privy Council.

But nothing in this Act shall apply to any person selling any spirituous or distilled perfume *bona fide* as perfumery; nor to any duly qualified and licensed physician or surgeon, chemist or druggist who may administer or sell any spirituous liquors for medicinal purposes.

SEC. 3. The licenses issued under this Act shall be signed by the Minister of the Interior and sealed with the seal of his department, and shall not be transferable except as hereinafter provided, and shall be in force for one year from the date of issue.

SEC. 4. Whoever shall manufacture for sale any intoxicating drink or substance in this Kingdom shall be liable to a fine not exceeding Five Hundred Dollars, and in default of payment of such fine shall be imprisoned at hard labor for a term not exceeding two years.

SEC. 5. Whoever shall distill any Spirituous Liquor in this Kingdom except under a license issued pursuant to an Act approved on the 13th day of July, A. D. 1874, entitled "An Act authorizing the Minister of the Interior to grant to owners of Mills for the manufacture of Sugar Licenses to distill Spirituous Liquor," shall be liable to a fine of not less than fifty dollars, nor more than one thousand dollars; and in default of payment of such fine shall be imprisoned at hard labor for any term not exceeding two years.

SEC. 6. All Spirituous Liquors imported under the name of perfumery or preserved fruits with the intention of evading the laws relating to duties shall be liable to seizure, condemnation and sale for the benefit of the Public Treasury.

SEC. 7. All stills, distilling apparatus or other articles in use, except as provided in section 5 of this Act or having been used in distilling spirituous liquor or other intoxicating drinks or substances within this Kingdom, and also all spirituous liquors and all other intoxicating drinks or substances manufactured for sale within this Kingdom shall be forfeited to the Hawaiian Government, and may be seized and taken possession of by the Marshal, Deputy Marshal, Sheriffs or their Deputies, or by any constable; and all articles so seized by any other officer than the Marshal, Deputy Marshal or Sheriffs, shall without delay be delivered into the care of the Marshal, Deputy Marshal or Sheriff nearest the place of seizure who shall cause a notice of such seizure to be published in some newspaper, and unless the owner or some person authorized to claim possession thereof shall, within twenty days from the day of such notice of seizure, file with the officer having the same in possession a written claim to such property so seized, it shall be held to be condemned as forfeited to the Hawaiian Government; and in all cases where the owner or some person claiming the right of possession shall file a written claim as herein provided it shall be the duty of the Marshal, Deputy Marshal or Sheriff, having the property in possession, to furnish to the Attorney General a written statement of the facts who is hereby authorized and required to take legal measures to have the question determined whether the property seized has been forfeited in accordance to the provisions of this section.

SEC. 8. The Minister of the Interior shall have power to grant a wholesale vending license for Spirituous Liquors to any person having a license to sell goods, wares and merchandise at wholesale applying therefor in writing, and stating in his application the name of the vendor and where the applicant intends to establish his place of business.

SEC. 9. The wholesale vending of Spirituous Liquors shall consist of selling the same in quantities not less than the packages originally imported and in no other manner. Provided that no part thereof shall be drank or used on the premises where they are sold or in any other house or premises contiguous thereto, procured or rented for that purpose by the party holding such license, or any other person or persons whatsoever through his agency under the penalty of forfeiting his license and incurring the penalties of the law and his bond.

SEC. 10. Before granting such wholesale license to vend Spirituous Liquors the applicant shall pay for the use of the Hawaiian Government Two Hundred and Fifty Dollars, and give a bond to the Minister of the Interior in the penalty of One Thousand Dollars with at least one sufficient surety to be approved by said Minister.

SEC. 11. The Minister of the Interior shall have power in like manner to grant licenses to be called "Dealers' Licenses" to any person for the vending of wine, ale and other spirituous liquors, upon such person applying therefor in writing and stating in his application the name of the vendor and where the applicant intends to establish his place of business.

SEC. 12. Any person having obtained a license in accordance with the preceding section may sell ardent spirits in quantities not less than one gallon, wines, ales and other liquors containing alcohol in quantities not less than One Dozen bottles. Provided that the same and no part thereof shall be drank or used on the premises where they are sold or in any other house or premises contiguous thereto, procured or rented for that purpose by the party holding such license or any other person or persons whatsoever through his agency under the penalty of forfeiting his license and incurring the penalty of the law and his bond.

SEC. 13. Before granting such license to any person to vend wine, ale and other spirituous liquors as prescribed in Sections 11 and 12 of this Act, the applicant shall pay to the Minister of the Interior for the use of the Royal Exchequer the sum of Five Hundred Dollars, and give a bond to the Minister of the Interior in the penalty of One Thousand Dollars, with at least one surety to be approved by the said Minister.

SEC. 14. The Minister of the Interior shall have the power to grant licenses to retail spirituous liquors, upon application in writing, stating the name of the vendor and where the applicant intends to establish his place of business in each district.

SEC. 15. Before the granting of a retail license to vend spirituous liquors as contemplated in the preceding Section, the applicant shall pay to the Minister of the Interior, for the use of the Hawaiian Government, the sum of one thousand dollars, and shall give a bond in the sum of one thousand dollars, with one sufficient surety to be approved by said Minister.

SEC. 16. Such last mentioned license shall authorize the licensee to sell and dispose of any spirituous liquors by the bottle or glass on the premises therein specified between the hours of five o'clock in the morning and eleven o'clock at night on every day except Sunday.

SEC. 17. The Minister of the Interior, by and with the consent of His Majesty the King in Privy Council, shall have the power, and it shall be his duty to fix the limits or boundaries within which those obtaining a license contemplated by this Act shall carry on and transact such business, and shall cause public notice to be given of the same, and he shall designate in the license the house or store or place in which such licensed person shall be authorized to pursue his business, and the license so granted shall not be transferable except as hereinafter provided, or held to authorize such business to be carried on by any person or persons or at any other place than such as may be designated in the license. Provided that until His Majesty in Council shall recommend an alteration in the limits within which spirituous liquors may now be sold, such limits shall apply to licenses issued under this Act. And provided that His Majesty in Council may authorize the Minister of the Interior to grant and issue licenses for the vending of Spirituous Liquors at retail outside of the limits of the city of Honolulu, upon and subject to such terms and conditions as such Council may think proper, provided that the license fee shall be the same as provided by Section 15 of this Act.

SEC. 18. The sale and vending of spirituous liquors shall be regulated more definitely by the terms of the license, and the Minister of the Interior may prescribe in the license definite rules and regulations, to be observed by the vendors; provided that if any license shall be authorized or granted for any premises outside of the limits of the city of Honolulu, such license shall not authorize or allow the sale of spirituous liquors to be consumed off the premises for which such license shall be granted.

SEC. 19. All persons applying for a license under the provisions of this Act shall before receiving the same file a bond (in form similar to the following), the same being always subject to the approval of the Minister of the Interior:

"Know all men by these presents, that we..............principal, and ....surety, are held and firmly bound unto the Minister of the Interior, for the use of the Hawaiian Government, in the penal sum of..........dollars lawful money, to be levied on our respective joint and several property in case the conditions hereinafter set forth shall be violated.

"For the just and full payment of which we hereby jointly and severally bind ourselves, our heirs, our executors, administrators and assigns.

"Sealed with our seals and dated this..........day of.......... 18...

"The condition of this obligation is as follows: That whereas the above bounden ....has this day applied for a license to vend spirituous liquors in accordance with the law approved on the .... day of.........18..., entitled 'An Act to regulate the sale of Spirituous Liquors,' and has complied with all the requirements of law, and has consequently been granted a license to vend spirituous liquors in accordance with such law for the term of one year from date. Now therefore, if during the continuance of this license the said ....shall not be convicted of felony, perjury or other infamous offence, or of any offence against or violation of the revenue laws, or of any other offence under the said statute involving a forfeiture of the said license, a copy of which is hereto annexed, then this obligation shall be void. Otherwise upon proof being made to the satisfaction of a District or Police Magistrate, without the intervention of a jury, the penalty mentioned in the bond shall be forfeited, and the license of the said ....this day granted shall be void.

"Given under our hands and seals the day and year above written.

"In the presence of ...."

SEC. 20. Upon the violation of any of the conditions of his bond by any licensed dealer in spirituous liquors, it shall be the duty of the Minister of the Interior to pass said bond to His Majesty's Attorney General of the Kingdom for enforcement against the parties thereto, both principal and surety, with such information as has come to his knowledge in regard to any violation.

SEC. 21. The Minister of the Interior shall keep in a book of licenses, the names of all licensed vendors of spirituous liquors throughout the Kingdom, their respective places of abode, the character of the licenses granted to them, and the amount of license money paid by each, together with the date of such license.

SEC. 22. It shall not be lawful to issue a license for the retailing of Spirituous Liquors for any house or premises where any other business except that of a victualing house keeper under a license to such retailer is carried on, or that has any communication with any other house or premises where any business (except as aforesaid) is carried on.

SEC. 23. If any person shall (except as the agent or servant of a licensed person) sell or dispose of within this Kingdom any spirituous liquors, or shall permit or suffer any spirituous liquor to be sold or disposed of by any other person within this Kingdom, without having first obtained in manner and form hereinbefore mentioned, a license authorizing such sale or disposal at the time and place and in quantity and manner in which such licensee is by such license authorized to sell and dispose of such liquor; every such person shall forfeit and pay for a first offence any sum not less than one hundred dollars nor more than five hundred dollars, and for every subsequent offence shall be imprisoned at hard labor for not less than three months nor more than six months, and shall also be subject to a penalty of five hundred dollars. Provided that every offence shall be deemed a first offence within the meaning of this Section, unless it shall have been committed subsequent to previous conviction and within twelve months hereafter.

SEC. 24. If any holder of a license shall suffer any person to play any unlawful game or sport within the said licensed premises or appurtenances thereto, or suffer any one to play at billiards or any other game in his house or premises on a Sunday, or permit prostitutes or drunken or disorderly persons to be on his premises, he shall forfeit and pay for every such offence any sum not exceeding one hundred dollars.

SEC. 25. Any holder of a license who shall sell or retail any spirituous liquor or permit or suffer the same to be drunk in his house or premises on Sundays, shall be liable to a penalty not exceeding two hundred dollars. But this Section shall not apply to the ordinary supplies furnished to *bona fide* boarders and lodgers in the house or premises.

SEC. 26. If any person holding a license under this Act shall be convicted twice within a period of twelve consecutive months of any offence against the provisions of this Act, the Justice before whom such person has been convicted, shall by an order under his hand in the form in the second schedule declare such license to be forfeited, and the same shall thereupon be void, and it shall be the duty of the Attorney General to sue for and enforce the penalty of the bond given by such licensee, and such licensee shall be and be deemed incapable of ever again holding a license under this Act.

SEC. 27. No holder of a license shall either in his house or any of the appurtenances thereto, supply any spirituous liquor to any person in a state of intoxication, under a penalty for each offence of any sum not less than fifty nor more than two hundred and fifty dollars. And if any such intoxicated person remain more than three hours on such premises the holder of such license shall in each such case be liable to the same penalty.

SEC. 28. No holder of a retail license shall recover any debt or demand on account of any spirituous liquor supplied by him to any person for consumption on the premises, but the holder of such license may sue for and recover the value of any spirituous liquor supplied with meals to any person *bona fide* lodging or boarding in the house.

SEC. 29. If any holder of a retail license shall receive in payment or ask a pledge for any spirituous liquor or entertainment supplied in or from such licensed house anything except current money or checks on bankers, or orders for payment of money, he shall for each such offence pay a penalty not exceeding fifty dollars.

SEC. 30. If any holder of a license shall be convicted of felony, perjury or any infamous offence or of any offence against the revenue laws, or if holding a retail license, he shall permit any person to manage, superintend or conduct the business of such during his absence for a longer period than forty-two consecutive days in any one year without the previous consent in writing of the Minister of the Interior, or shall whether present in such house or not, permit any unlicensed person to be in effect the keeper thereof or shall allow such house to become ruinous or dilapidated, then upon complaint thereof and proof of any of the facts aforesaid to the satisfaction of any District or Police Justice, such Justice shall by an order under his hand in the form of the second schedule declare such license to be forfeited, and the same shall thereupon cease. But if such house shall have become ruinous or dilapidated by reason of fire, tempest or other cause beyond the control of the licensee, the license shall not be forfeited until a reasonable time has elapsed for the reinstation of such house.

SEC. 31. If any licensed person shall sell or offer for sale any adulterated spirituous liquor, he shall forfeit and pay for every such offence any sum not less than one hundred dollars, nor more than five hundred dollars. And in order to analyze such spirituous liquor, any Justice may on complaint on oath made to him that any such spirituous liquor is or is believed by such complainant to be adulterated, and on the deposit by such complainant of the sum of five dollars to defray the expense of such analysis authorize the seizure of such suspected spirituous liquor, and cause the same to be analyzed by some competent person, and the expenses of such analysis shall be a portion of the costs which such justice shall order to be paid by the person convicted.

SEC. 32. Any District Justice, the Marshal, his Deputy or any Sheriff, Deputy Sheriff or Constable may seize and take, or cause to be seized and taken away, all such spirituous liquor as he or they shall have reasonable cause to suspect to be carried about, for, or exposed to sale in any highway or footpath, in any booth, tent, store or shed, or in any boat or vessel, or in any place whatsoever by any person not licensed to sell the same, and all the vessels and utensils used for containing, drinking or measuring the same, and any cart, dray or other carriage, and any horse or other animal used in draying or carrying the same, and any boat or other vessel used in the conveyance thereof. And such Justice on his own view or on proof of such offence by oath, may convict any person so offending, and on conviction he shall pay any sum not exceeding two hundred and fifty dollars, and be imprisoned at hard labor for any period not exceeding three months, and such Justice may adjudge such spirituous liquor, vessels and utensils containing the same, and any cart, dray or carriage, horse or other animal, and any boat or vessel used in conveying the same to be forfeited, and may direct the same to be sold, and the proceeds thereof after deducting the expenses of sale, to be appropriated in like manner as fines are by law directed to be appropriated. Provided that in all cases where liquor shall be carried or be in course of being carried, or be on the way from one place to another, the burthen of proving that such liquor was not so carried or being carried or exposed for sale shall be on the party so carrying the same.

SEC. 33. Any person not the holder of a license keeping up any sign, writing, painting, or other mark in or near his house or premises, or having his house or any part thereof fitted up with a bar, or other place containing bottles or casks displayed so as to induce a reasonable belief that spirituous liquor is sold or served in such house or premises, or there being on such premises more spirituous liquor than is reasonably required for the use of the persons residing therein, shall be deemed *prima facie* evidence of the unlawful sale of spirituous liquor by such person.

SEC. 34. Upon information on oath before any Police or District Justice by any person, that he believes that spirituous liquor is sold by any person without a license, or contrary to the provisions of this Act, in any house or place, such Justice shall grant his warrant to any Constable to enter and search such house or other place and seize all such spirituous liquor as aforesaid as he shall then and there find, and any vessel or vessels containing such spirituous liquor, and detain the same until the owner thereof shall appear before such Justice to claim such spirituous liquor or vessels, and shall satisfy such Justice how and wherefore such owner became possessed of the same, or if such person after being summoned shall not appear, and if it shall appear to the said Justice after due inquiry that such spirituous liquor was in the said house or place for the purpose of being illegally sold or disposed of, then he shall adjudge such spirituous liquor and vessels to be forfeited and sold, and the proceeds after paying the expenses of such sale shall be appropriated in like manner as penalties under this Act.

SEC. 35. In all proceedings against any person for selling or allowing to be sold any spirituous liquor without a license, such person shall be deemed to be unlicensed, unless he shall at the hearing of the case produce his license.

SEC. 36. The delivery of any spirituous liquor either by the owner or occupier, or by his or her servant or other person in the house or place, shall be deemed to be sufficient *prima facie* evidence of money or other consideration being given for such spirituous liquor, so as to support a conviction, unless proof to the contrary be given to the satisfaction of such justice.

SEC. 37. Every husband, wife, child, parent, guardian, employer or other person who shall be injured in person or property or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, or who being himself or herself intoxicated, shall be thus injured in consequence of such intoxication, shall have a right of action in his or her own name, severally or jointly, against any licensed dealer in spirituous and intoxicating liquors, who shall by selling or giving spirituous or intoxicating liquors, have caused the intoxication in whole or in part of such person or persons, for all damages sustained and for exemplary damages. And a married woman shall have the same right to bring suits under this Act, and to control the same and the amount recovered as a *femme sole*. And all damages recovered by a minor under this Act shall be paid either to such minor or to his or her parent, guardian or next friend as the court shall direct.

SEC. 38. All suits for damages under the last preceding section may be by any appropriate action in any of the courts of the Kingdom having competent jurisdiction.

SEC. 39. No spirituous liquor shall be sold by auction upon any house or premises not licensed for the sale of spirituous liquors under this Act. Any auctioneer or other person violating the provisions of this section shall be subject to the penalty hereinbefore prescribed for selling spirituous liquors without a license. Provided that nothing herein contained shall apply to the sale by auction of spirituous liquors in bond by sample, if the owner thereof shall be duly licensed for the sale of such spirituous liquors, and provided also that the Minister of the Interior may in his discretion authorize any licensed auctioneer to sell any such spirituous liquors by auction, when he shall be satisfied that the said liquors are the property of a private person, and are not sold for profit or by way of trade.

SEC. 40. Every person who being intoxicated shall enter any premises licensed for the sale of spirituous liquors, or being intoxicated upon said premises, shall not leave the same when requested by the licensee or by any person in his employ, may be arrested by any constable and shall on conviction pay a fine of ten dollars.

SEC. 41. Every person who shall be found drinking on any licensed premises during prohibited hours or on Sundays, shall be liable to the same penalty as the licensee is subject to for keeping open his licensed house at times not allowed by his license, and such persons may be arrested by any constable or peace officer.

SEC. 42. Any person who shall import into this Kingdom any spirituous liquors unless holding a license under this Act, or unless the same is for his own private use, shall on conviction before any police or district justice be subject to a fine of five hundred dollars, and in default of payment may be imprisoned at hard labor for any term not exceeding two years.

SEC. 43. This Act shall take effect and become a law on the first day of October next, and shall remain and continue in force up to and until the first day of January, which will be in the year one thousand eight hundred and eighty-five.

THE FIRST SCHEDULE.

Chapter 41 of the Penal Code.

The Act approved on the 29th day of July A. D. 1872, entitled "An Act to make all persons retailing spirituous and intoxicating liquors liable in damages for injuries done or received by those becoming intoxicated on such liquors and as the result of such intoxication."

An Act approved on the 25th day of September A. D. 1876, entitled "An Act to amend Section 17 of Chapter 41 of the Penal Code."

THE SECOND SCHEDULE.

Be it remembered that on the .. day of ......A. D. ...complaint was made before .... (District or Police Justice) of .... A. B. being the holder of a ...... license, for that (here set out the acts which have caused the forfeiture) or proof was made to me that A. B. being the holder of a ...... license, was twice within a period of twelve consecutive months convicted under the provisions of an Act entitled "An Act to regulate the sale of spirituous liquors," (that is to say) on the ...day of.... A. D.....under the .... section of the said Act, and on the....day of ..... under the ... section of the said Act. Now I do therefore adjudge that the said license of the said........shall be forfeited

Given under my hand this ... day of .... A. D. ...

Approved this 7th day of August A. D 1882.

KALAKAUA REX.

AN ACT.

TO PROVIDE FOR LICENSING DAIRIES, AND THE SALE OF MILK; AND FOR THE INSPECTION OF MILK IN THE CITY OF HONOLULU.

BE IT ENACTED by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1.—The Minister of the Interior is hereby authorized to issue a license to carry on the business of dairying, and for the sale of milk in Honolulu to any person applying therefor, for the term of one year, on receiving from such applicant the sum of twenty-five dollars for the use of the Hawaiian Treasury.

SECTION 2.—Any person who shall sell milk or offer the same for sale in Honolulu without having obtained a license as prescribed in Section 1 of this Act shall, on conviction before a police justice, be fined not less than five dollars, nor more than twenty-five dollars.

SECTION 3.—Any person who shall sell or offer for sale in Honolulu milk which has been adulterated by the addition of water, or any other substance, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than five dollars, nor more than twenty-five dollars.

SECTION 4.—The Agent of the Board of Health shall appoint one of its agents for the city of Honolulu to be inspector of milk. It shall be the duty of such inspector to inspect from time to time milk sold or offered for sale in Honolulu. Said inspector is hereby empowered, when he shall find milk which has been adulterated, to take and confiscate the same forthwith; and it shall be his duty to institute prosecutions therefor.

SECTION 5.—The provisions of this Act shall not be held to apply to persons keeping a cow or cows for private use, who may dispose of surplus milk to neighbors not offering the same at public sale.

SECTION 6.—This Act shall go into operation thirty days after publication.

Approved this fifth day of August, A. D. 1882.

921 KALAKAUA REX.

AN ACT.

TO REGULATE THE LICENSING OF COMMERCIAL TRAVELING AGENTS FROM FOREIGN COUNTRIES DOING BUSINESS IN THIS COUNTRY.

BE IT ENACTED by the King, and by the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled:

SECTION 1.—From and after the passage of this Act no person, agent or representative of any foreign commercial or manufacturing house, company or corporation, shall be licensed or permitted to sell goods wares, or merchandise in the Hawaiian Islands without first filing with the Minister of the Interior a statement, giving the name of such foreign house, company, or corporation; also stating the place of domicile of such foreign house, company, or corporation, and the line of trade or manufactures in which it is engaged. Upon filing such statement duly verified, the Minister of the Interior shall upon application of such person or agent, and upon the payment of five hundred ($500) dollars grant a license to the applicant for a period of one (1) year to sell goods, wares, and merchandise in Honolulu, Island of Oahu. And upon any such person or agent of any foreign house, company, or corporation filing a statement with the Minister of the Interior, duly verified, as by this Act hereinbefore provided, and upon payment of two hundred and fifty ($250) dollars, the Minister of Interior shall issue a license to such applicant for a period of one (1) year to sell goods, wares, and merchandise in any other city, town, or district in the Hawaiian Islands, Honolulu excepted. Provided, that no license granted under the provisions of this act shall permit any person, agent, or representative to sell the goods, wares, or merchandise of more than one house, company or corporation; and no license so granted shall be transferable.

SECTION 2.—Any person, agent, or representative selling goods, wares, and merchandise of any foreign house, company, or corporation in the Hawaiian Islands without first obtaining a license as herein provided shall be subject to arrest and prosecution, and, upon conviction, be fined five hundred ($500) dollars. Any person, agent, or representative who shall make a verified false statement to the Minister of the Interior as to the name of the domicile, or character of trade, merchandise, or manufactures of the house, company, or corporation that he represents, shall be deemed guilty of perjury, and, upon conviction thereof, be punished for the offence of perjury, as now provided by law.

SECTION 3.—All laws, or parts of laws, inconsistent herewith are hereby and herewith repealed.

Approved this seventh day of August, A. D. 1882.

921 KALAKAUA REX.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO REGULATE THE CARRYING OF PASSENGERS AND FREIGHT, AND THE LETTING TO HIRE OF CARRIAGES, WAGONS, CARTS, DRAYS, AND OTHER VEHICLES IN THE DISTRICT OF HONOLULU."

BE IT ENACTED by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom Assembled:

SECTION 1.—That the said Act shall be and the same is hereby amended by adding thereto the following words that is to say:

SECTION 12.—No person shall act as driver of or drive any licensed vehicle unless he shall hold a license for that purpose; and the owner of any such vehicle who shall allow any unlicensed person to drive the same and any unlicensed person who shall drive any such vehicle shall severally, on conviction, forfeit and pay for every such offence a fine of not less than five dollars nor more than twenty-five dollars.

SECTION 13.—Any person who may be desirous of obtaining a license as a driver shall apply to the Marshal or his deputy, who, being satisfied that the applicant is a competent driver, shall grant to him a certificate to that effect, and upon presentation thereof to the Minister of the Interior, shall receive a license accordingly; the fee for which shall be the sum of one dollar, and which license shall remain in force for one year.

SECTION 14.—Any licensed owner or driver who shall violate any of the regulations made by the Minister of the Interior under the authority of Section 3 of the said Act shall, upon the conviction, forfeit and pay for every such offense a fine not exceeding twenty-five dollars.

Approved this fifth day of August, A. D. 1882.

821 KALAKAUA REX.

AN ACT.

TO AMEND SECTION 1419 OF THE CIVIL CODE.

BE IT ENACTED by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom Assembled:

SECTION 1.—That section 1419 of the Civil Code be and the same is hereby amended by striking out all words after the words "compelled to serve" in the seventh line, and inserting in place thereof the words "the remainder of the time for which he contracted," so that the section shall read as follows:

"Section 1419. If any person lawfully bound to service shall willfully absent himself from such service without the leave of his master, any District or Police Justice of the Kingdom, upon complaint made under oath by the master, or any one on his behalf, may issue a warrant to apprehend such person and bring him before the said Justice; and if the complaint shall be maintained, the Justice shall order such offender to be restored to his master, and he shall be compelled to serve the remainder of the time for which he originally contracted."

SECTION 2.—This Act shall become a law from and after the date of it approval.

Approved this 5th day of August, A. D. 1882.

921 KALAKAUA REX.

JOINT RESOLUTION

FOR THE RELIEF OF THE BOARD OF GENEALOGY OF HAWAIIAN CHIEFS.

Whereas there is no appropriation made to meet the expenses of the Board of Genealogy of Hawaiian Chiefs as provided in an Act to amend Section 2 of Chapter 7 of Session Laws of 1880 approved August 3, 1882, therefore

BE IT ENACTED by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

That the Minister of Finance be and he is hereby empowered and instructed to pay out of moneys that may be in the Treasury, to the order of the Minister of the Interior on the requisition of the President of the Board of Genealogy such sums as may be required from time to time during this biennial period not exceeding in all the sum of ten thousand dollars.

Approved this 7th day of August A. D. 1882.

921 KALAKAUA REX.

AN ACT

To provide for more efficient protection of Female Boarding Schools.

Whereas, much annoyance has been caused to various female boarding schools, and evil results have occurred in many instances to the inmates thereof from the unauthorized intrusion of lawless persons, for which no adequate punishment is provided by law, and more complete protection is needed for girls placed in such schools; therefore,

Be it enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

Any person or persons intruding without proper authority upon the premises of any female boarding school, may be arrested by any constable without any warrant, and on the complaint of the principal or other person in charge of such school or of any trustee of the same, upon conviction thereof before any police or district magistrate may be punished by fine not to exceed two hundred dollars, or by imprisonment at hard labor not to exceed six months, or both, at the discretion of the magistrate. Nothing herein shall be construed to preclude the punishment of the offender for any other offence committed on such premises, nor of the right of action for civil damages,

Approved this 7th day of August, A. D. 1882. 920 KALAKAUA REX.

AN ACT.

To amend Sections 913 and 922 of the Civil Code.

Be it enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. That Section 913 of the Civil Code be and the same is hereby amended by striking out the words "by and with the advice of the Justices of the Supreme Court," so that the said section shall read as follows:

Section 913. The respective Governors shall appoint one or more District Justices not exceeding two for each of the districts in their respective jurisdiction.

Section 2. That Section 922 of the Civil Code be and the same is hereby amended by striking out the words "with the approval of the Justices of the Supreme Court," so that the said Section shall read as follows:

Section 922. The several District Justices shall receive for their services such compensation as the Legislature shall from time to time determine and appropriate; provided, however, that hereafter upon the appointment of any District Justice it shall be lawful for the Governor appointing him to provide that such Justice shall receive as compensation in lieu of a fixed salary all the costs accruing and collected from cases tried before him.

Section 3. This Act shall become law from and after the date of its approval.

Approved this 5th day of August A. D. 1882. 920 KALAKAUA REX.

AN ACT.

Relating to minors who are inmates of Industrial and Reformatory Schools.

BE IT ENACTED by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. Whenever it shall be found that the continued detention or custody of any inmate of any industrial and reformatory school at such school shall be subversive of the order and discipline of the school, or injurious in any way to the other inmates of the institution, it shall be lawful for any Police or District Justice, on representation to that effect being made by any member of the Board of Education, its authorized agents or the principal teacher of any such school, to hear and determine any such case, and if proved to his satisfaction, said Justice is hereby authorized, in the place of further detention or custody at such school, to order that such minor be imprisoned, with or without hard labor, at some public gaol for any term not exceeding the unexpired residue of the time for which such inmate shall have been last committed to such industrial and reformatory school.

Section 2. If at any time after the commitment or transfer, as in the foregoing Section of this Act authorized, of any inmate of an industrial and reformatory school to a public goal, it shall be found that such minor by his conduct gives reasonable proof of his reformation, or for other good reason that shall be made to appear, it shall be lawful for any Police or District Justice, after receiving satisfactory evidence thereof, to order the discharge of such minor from goal or to return him to the custody of the Board of Education at some industrial and reformatory school whenever requested so to do by a member of the Board of Education or by its authorized agents.

Section 3. All costs incurred under the provisions of this Act shall be paid by the Board of Education out of any funds appropriated for industrial and reformatory schools.

SECTION 3. This Act shall become law and take effect from and after the date of its approval.

Approved this 5th day of August, A. D. 1882. 920 KALAKAUA REX.

AN ACT.

To authorise a National Loan and to define to what uses such loan shall be devoted.

BE IT ENACTED by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

Section 1. The Minister of Finance, under the direction of the King in Cabinet Council, is hereby authorized to borrow on the credit of the Hawaiian Government from time to time during the period of three years after the passage of this Act such sums not exceeding in the whole the sum of Two Million Dollars, for the purposes in this Act hereinafter set forth, for which sums the Minister of Finance may cause coupon bonds to be issued from time to time for such amounts each as he may deem advisable, such bonds to be issued at not less than par, and to bear interest not exceeding six per cent. per annum, payable semi-annually, and said bonds to be exempt from any Government tax whatsoever, and to be redeemable in not less than five nor more than twenty-five years, the principal and interest being payable in United States gold coin or its equivalent.

Section 2. The loan so authorized shall be used and expended for the following purposes, that is to say:

Immigration for re-population	$ 500,000
Government Buildings, including Hospitals	200,000
Filling in and reclaiming water lots in Waikahalulu	50,000
Landings and Buoys	50,000
Making and building new roads and bridges	300,000
Sanitation of Honolulu	100,000
Marine Railway, Honolulu	40,000
Deepening Honolulu harbor and entrance	150,000
Telephonic and telegraphic communication	100,000
Encouragement of Railways	150,000
Encouragement of Agriculture	300,000
	$2,000,000

Section 3. All sums borrowed or authorized to be applied under this Act shall be paid to the Minister of Finance, and shall be by him placed to a separate credit to be called "The Loan Fund," and no part of the money shall on any pretence be paid, used or applied, directly or indirectly, either temporarily or otherwise, to or for any public use or purpose other than the purposes respectively to which the same is hereby directed to be applied.

Section 4. The Minister of Finance is hereby authorized from time to time to pay out of any money in the treasury not otherwise appropriated, the expense of preparing the bonds to be issued under the authority of this Act, and the interest from time to time accruing on said bonds.

Section 5. The several items in the Appropriation Bill of this session of the Legislative Assembly, amounting in the whole to one million and twenty-five thousand dollars, and appropriated for the following purposes, that is to say:

Roads, Bridges, and Pali Road	$ 300,000
Custom House and Stores, Kahului	15,000
Custom House and Stores, Mahukona	15,000
Custom House and Stores, Hilo	15,000
Police Court, Public Works, Water Works, Tax Assessor, &c., buildings for	25,000
Fireproof Building for Supreme Court and other Records	15,000
Building and repairs of Court Houses and Lockups	30,000
Marine Railway, Honolulu	50,000
The several items of Landings up to the amount of	60,000
Encouragement of Immigration	500,000
	$1,025,000

Shall be charged upon and paid out of any moneys which may be borrowed under the authority of this Act, and any moneys which shall be paid by the Minister of Finance for any of the said purposes before the receipt of any moneys under this Act shall be repaid to the Minister of Finance when such moneys shall be borrowed.

Section 6. This Act shall come into operation and take effect from and after the date of its publication.

Approved this 5th day of August, A. D. 1882. 920 KALAKAUA REX.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO REGULATE THE CARRYING OF PASSENGERS AND FREIGHT AND THE LETTING TO HIRE OF CARRIAGES, WAGONS, CARTS, DRAYS, AND OTHER VEHICLES IN THE DISTRICT OF HONOLULU."

BE IT ENACTED by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom Assembled:

SECTION 1.—That the said Act shall be and the same is hereby amended by adding thereto the following words that is to say

SECTION 12.—No person shall act as driver of or drive any licensed Vehicle unless he shall hold a license for that purpose and the owner of any such vehicle who shall allow any unlicensed person to drive the same and any unlicensed person who shall drive and such vehicle shall severally on conviction forfeit and pay for every such offense a fine of not less than Five Dollars nor more than Twenty-five dollars.

SECTION 13.—Any person who may be desirous of obtaining a license as a driver shall apply to the Marshal or his Deputy who on being satisfied that the applicant is a competent driver shall grant to him a Certificate to that effect upon presentation whereof to the Minister of the Interior and shall receive a license accordingly.

The fee for which shall be the sum of One Dollar and which license shall remain in force for one year.

SECTION 14.—Any licensed owner or driver who shall violate any of the regulations made by the Minister of the Interior under the authority of Section 3 of the said Act shall upon the conviction forfeit and pay for every such offense a fine not exceeding Twenty-five Dollars.

Approved this 5th day of August A. D. 1882. (919) KALAKAUA REX.

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103 Fort St., Honolulu.

Supreme Court of the Hawaiian Islands. July Term, 1882—In Banco.

Judd C.J., McCully and Austin J.J.—Opinion by McCully J.

THE KING VS. ALII, ABO AND AWA.

On the following Bill of Exceptions: Circuit Court of the 3d Judicial Circuit, May Term, Hilo, 1882. Rex vs. Alii, Abo, Achu and Aki. Charge: Having opium in possession.

Appeal to the Circuit Court, May Term 1882, from a conviction before the Magistrate for the District of Kau, Island of Hawaii.

Be it known that the above entitled cause coming on to be heard before a jury of foreigners duly empanneled to try the case, at the May Term in Hilo, on the 8th day of May A. D. 1882, Austin J., presiding; Edward Preston, Esq., acting for the Attorney-General and William R. Castle, Attorney for the defendants; the said defendants were charged with having opium in their possession at Pahala, Kau, Island of Hawaii, on the 3d day of December, 1881, contrary to the form of the Statute in such case made and provided, in accordance with the return of the District Magistrate hereto attached, and were jointly tried for said offences.

Kamalilikane, Kiaaina and Waihopu were called as witnesses for the prosecution, and testified, that they were present and witnessed a search for opium on the premises of Chung Peu and company at Pahala, on the evening of the 3d day of December 1881, in the house occupied by the defendants Alii, Abo and Achu and there found three parcels containing opium or preparations thereof, one in or upon the personal effects of Alii, separate from the others, one in or upon the personal effects of Abo, separate from the others, and one in or upon the personal effects of Achu separate from the others; and also that in the house occupied by Aki and another person, a parcel containing opium or some preparation thereof was found on a staff or beam of the house. Whereupon the prosecution rested.

And the said defendants by their counsel thereupon moved that the complaint be dismissed and a verdict of acquittal be ordered in favor of the said defendants. Because, the defendants having been jointly charged a several and separate offense against each if anything had been proved.

The Court were of opinion that the offences as charged might be properly tried together and without confusion or prejudice to the rights of the defendants, and so decided and charged and overruled the motion, and the defendants excepted.

Evidence was then adduced on the part of the said defendants, whereupon the jury retired after due instructions, and returned a verdict of guilty as to the first three of said defendants, and not guilty as to said Aki.

By the Court. In considering the question here raised it is to be borne in mind that this offense is within the jurisdiction of the District Justice, and was brought in a District Court. Sec. 919 of the Civil Code prescribes: "He shall not be confined to forms nor shall he be compelled in any case to preserve any other record of his proceedings than the mere conclusion, determination or judgment at which he may arrive."

The accusation is not made by indictment. If arrested on a warrant the substantial offense is stated therein, but the charge is made more explicit as to the time and place, and the special statute or statutes which have been violated, verbally by the Sheriff or other prosecuting officer. The warrant of arrest and the magistrates certificate of appeal sent up with the record in this case are an example of the above. The warrant charges "the offense of having in possession opium or a preparation of opium." The charge on the Magistrate record is "charged with the offense of having opium on their persons, on the 3d day of December 1881 at Pahala, Kau, Hawaii, prosecuted under Chapter 56 of the Laws of 1874 with the amendments of 1876 and 1880." The warrant does not charge the offense as either joint or several. The charge made in Court implies a several offense by the phrase "opium on their persons," each person is therefore charged with having the possession of opium. The parties severally plead guilty. The testimony all relating to the same time and place and to the same transaction although touching several persons, these persons were tried at the same time. They were severally convicted and severally took appeals to the Circuit Court.

If there had been an indictment there would have been apt words to describe the offense as the prosecution presented it by the testimony but without an indictment it is left to appear by the testimony as well as by the nature of the act charged, whether, there being several persons accused, they are charged with a joint act or several acts. It is always within the power of the defendant or defendants on going to trial to call for an explicit charge in any respect. It appears very clearly in this case that the several defendants were found at the same time in one house, each in possession of a separate parcel of opium. As the testimony was the same story, it was given but once as to all the defendants. But the circumstance of all the defendants being at once before the jury does not make an offense which was several a joint offense. It is easy to suppose a case when a lot of opium might be in the joint possession of sundry attendants, but that is not the case at bar. Four defendants were put on trial. The jury found that three of them were severally guilty of the offense of having the possession of opium. If these defendants before the trial had moved for a separate trial and shown that the justice of the case required it, it would have been granted them, but not then asking it, it is not afterwards a ground of exception.

The arguments made by counsel and the precedents cited relate to indictments. These are necessarily more formal than the *viva voce* charge made before a magistrate. They expressly include all that is necessary to make the offense, and they exclude proof of whatever is not charged by their terms. Nothing is taken by intendment. But in the case at bar it is rather claimed as we understand, that the offense was treated as a joint offense, while the proofs showed that it was several. The only ground for this view is that the trial was united. This is not making the offense joint. The charging words imply severalty, and the form of trial does not affect this. When several are jointly indicted for an offense which may be committed by one person or by several, the indictment is considered by law as a several indictment against each, and one may be convicted and the rest acquitted. Arch. Crim. Plead. and Prac. vol. 1 p. 667 and note. Exceptions overruled.

C. Brown, Deputy Attorney General, W. R. Castle for Defendant.

HONOLULU, August 15th, 1882.

In the Supreme Court of Hawaiian Islands. April Term—In Equity.

Judd C.J., McCully and Austin J.J.—Opinion of the Court by McCully J.

MANU ET AL. VS. NEIL CAMPBELL, GUARDIAN.

The Bill alleges: That the grantor Inaina at the date of the deed was and had been of unsound weak and infirm mind as well as body and unable from mental weakness, to transact business understandingly.

That the plaintiffs living on Inaina's land had supported him, to the time of his death, at 75 years of age.

That the deed was procured from him by undue influence and false representations, and that he did not execute the same understandingly or knowing the contents thereof, but was induced to believe and did believe that the same was in the nature of a will devising the land to all his heirs at law. It is also averred in the bill that the grantee of the deed was absent from the Kingdom when the deed was made.

And prays: That the deed may be ordered to be cancelled, and for general relief. Upon examination of the testimony, we are of the opinion expressed by the Chief Justice in the first instance, in these words "that Kamaka was present when the deed of Inaina to him was signed, also that the proofs do not show that undue influence was used over Inaina or that he was imbecile or insane when he executed the deed."

D. K. Naiapaakai, at that time one of the Circuit Judges of Hawaii, who drew the deed and took the acknowledgment was produced as a witness by the defendants. He testifies that he lived five miles from the place where Inaina and Kamaka lived, and that on the day of the date of the deed these two came to his house. Inaina stated the object of the visit, he said he wanted to sell his land, and witnesses recollection is that Kamaka said the consideration was thirty dollars.

Witness then drew the deed, the parties having with them the Royal Patent, and took Inaina's acknowledgment of execution and delivered the deed to Kamaka. And the deed, dated February 1866, was placed of record in June 1867. After that Inaina asked him to return with them, and the witness having some business that way, rode with them. Some lawyers and the members of witness family were present at the writing and execution of the deed, and "quite a party" rode back with Inaina. Kamaka and others stopped at Makapala on the way. Witness and a lawyer named Lohiau, went to Inaina's house, "When we got to his house, he said he was old and had no children of his own. He pointed to an old woman, who he said was his sister, and also all those children, and said that plaintiffs and Kamaka were children of his sister. He said in order that Kekuanaoa's children may not have the land he deeded it to Kamaka. I told him, the deed was made to Kamaka and he ought to have told on this before."

Kalaaukane was a witness who was present at Naiapaakai's house and remembers that Inaina wanted to make a deed to his *keiki* (Kamaka).

Esalia the widow of Kamaka testifies that they were married in 1870, her husband then living on this land cultivating a part of it, and Zebedaio and Manu, also living on and cultivating other portions. She had seen the deed and patent, when Kamaka borrowed money on them of Dr. Wight and afterwards deposited them with Judge Hart as security on his crop.

Zebedaio, one of the plaintiffs, testifies to declarations of Inaina before making the deed that he intended his *keiki's* who were then living on his land, Kamaka not then residing there, should have his land and that it should pass to their children.

We have to consider in the first place, whether under the allegations of the bill and the proofs thereon any decree can be made in favor of the plaintiffs.

The bill prays specifically for a writ of Injunction against the defendants, taking possession under a judgment previously obtained, and that the deed be delivered up and cancelled, but the ground of fraud having failed of proof these prayers are denied and were abandoned on the appeal by the plaintiff's counsel. There is no doubt that when the plaintiff, in the view of the Court, mistakes his relief, the Court may under the prayer for general relief grant him some other than the specific relief prayed for, but it must be founded on averments in his bill which have been sustained. If the proofs have not supported the allegations to a substantial extent, and he is therefore denied what he specifically prayed for, there is no principle on which he can be awarded something under the prayer for general relief based on no averment in the bill. Story Eq., Pleadings 42.

In this case the plaintiffs allege incompetency, fraud and misrepresentation, which they do not prove, and ask for an injunction and cancellation of the deed. These prayers having been properly denied, there is in our view nothing else to be afforded them in accordance with the supposition that this was a deed competently and fairly made but intended to be a trust deed, this matter not having been laid on the bill.

The bill must therefore be dismissed with leave however to bring a new bill framed on another theory of the case.

A. S. Hartwell for plaintiff, E. Preston and C. Brown for defendants.

HONOLULU, August 16th, 1882.

Supreme Court of the Hawaiian Islands. July Term, 1882—In Banco.

Judd, C. J., McCully and Austin, J. J.—Opinion of the Court by Austin, J.

KAPELA AND OTHERS VS. HOOHOKU.

Upon the trial of this action before Mr. Justice Austin and a jury on the thirteenth day of July, 1882, a question of law was reserved for the consideration of the full court under Section 834 of the Civil Code as follows:

The plaintiffs claim an undivided half of certain rents amounting to $1,163, received by defendant in July, 1881 for lands rented to the Hawaiian Agricultural Company, at Kau. It is admitted that the plaintiffs may recover the amount they claim unless a certain paper executed by Nahala is a will and properly executed, and legally proved as such before Judge Lyman, Circuit Judge; or a deed; which entitles the defendant to the whole property so rented. The proceedings before Judge Lyman in probate of the will, and also as to the administration of the estate of Nahala deceased are presented to the court.

The defendant is the widow of Nahala. The paper to be construed is in the form of a deed, for the nominal consideration of one dollar, and on account of natural love and affection, bearing date June 23d, 1879, and duly acknowledged July 1st, 1879 from Nahala to the defendant, his wife, of the land rented.

The paper was witnessed by three subscribing witnesses, and was proved by Kamai, one of the witnesses, to have been properly executed under Section 1465 of the Civil Code relative to the executions of wills.

It was executed by a husband to his wife, and so under our statute would be void as a deed at law. The legal maxim is that an instrument shall be so construed *ut res magis valeat quam pereat*.

The testimony shows clearly that the paper was intended as a will, and not as a deed. Nahala was old and feeble, and died within three months after the execution of the paper. He declared it to be a will, and that it should take effect after his death. By many authorities under the English Ecclesiastical law, and under the laws of many of the States, it was a valid will. *See Redfield on Wills Vol. 1 pp. 169-70 and n. 21.* Upon the facts as they now appear, in the record presented to us, we shall hold that it was a valid will.

It was limited in its operation to a part only of the testator's estate. In such a case general administration of the remainder will be granted as of an intestate estate, see *Redfield on Wills Vol. 3 ps. 44-45.* Such administration had already been granted.

The decrees in probate of the will, and as to the administration of the residue of the estate, do not conflict, and can stand together.

On examination of the record returned by the Circuit Judge, it appears that all the plaintiffs were present at the probate of the will, and the plaintiffs Kapela and Rebecca contested the probate.

Kapela alone appealed, but afterwards withdrew his appeal. The ordinary notice by publication in case of application for probate of a will, was however not given, and its proof is therefore informal.

Judgment will be entered in favor of the defendant whenever it shall be made to appear to this Court that the defendant or some one on her behalf has made formal application for proof fo the will of Nahala deceased, before Circuit Judge Lyman, and that the said will has been duly and regularly admitted to probate after the publication of this notice of hearing as required by the Statute and Rules of Court provided that if this be not done before the close of the January Term 1883, or good cause shown why it is not done, judgment will be entered for the Plaintiffs.

E. Preston for plaintiffs; J. Nawahi for defendant.

HONOLULU, August 16, 1882.

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