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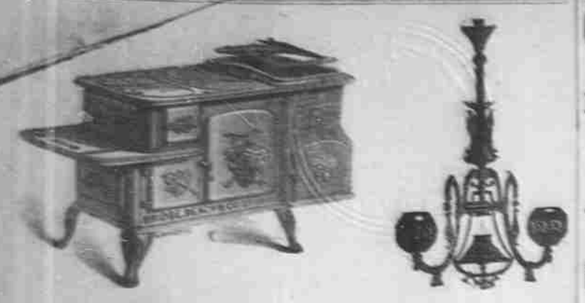

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Lift and Force Pumps, Cisterns, Pumps, Galvanized Iron, Sheet Copper, Sheet Lead, Lead Pipe, Tin Plate, Water Closets, Marble Slabs and Bowls, Enameled Wash Stands.

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A Number of SELECT *HATS*

Mrs. A. M. MELLIS HAS JUST REC'D. A LOT OF

Ladies' & Children's Hats

WHICH ARE NOW

ON EXHIBITION

AT HER

Dressmaking Establishment, No. 104 Fort St.

The Leading Millinery Store

— The Largest and —

FINEST ASSTM'T. OF MILLINERY ALWAYS ON HAND

The Latest Style of Flowers, Feathers, Laces, Ribbons, Satins, Silks, Ornaments, and All Necessary Trimmings.

Received by EVERY VESSEL DIRECT from the Manufactory

Proud to Say that

The Latest Styles of Hats can only be Produced by a First-Class Milliner,

such as Miss EMRICH,

Who has Worked only in First-Class Millinery Establishments, and in no other.

Honoluln is a Great Place

FOR FASHIONABLE HATS

LADIES will Therefore do well by Calling

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CHAS. J. FISHEL.

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J. W. ROBERTSON & Co.

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PATENT IRON STRAPPED BLOCKS
Manufactured from Hungarian Blocks. Patent Rudder Gudgeons, at Manufacturer's prices.
GILES & CO.

NOTICE.

MESSRS. BISHOP & CO. OF HONOLULU are duly appointed attorneys in fact to the undersigned for Hawaiian Kingdom, during Canada, April 7th, 1882. J. MACKAY.

NOTICE TO THE PUBLIC

THE UNDERSIGNED HEREBY notifies the public generally throughout the Hawaiian Kingdom not to buy any money any bills which belonged to the Government in fact, as the same is secured in money a bond of One Hundred Years by Kamehameha III and the Premier Kekauonohi. Notice of my claim to these bills have repeatedly been made in the proper manner to proper time. J. H. AYRES.

Honolulu, Oct. 10, 1882. Attorney for heirs of Liliha & Co.

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C. BREWER & CO.

Offer for Sale the Cargo of the

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The following Lots of Merchandise:

Card Matches.

Partners' Safes, Nos. BEST PLANTER.

FRANKLIN STOVE COAL!

Hair Mattresses.

Double and Single;

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SAFES!

In Good Order and at Extremely Low Prices.

Washington Chairs.

Frazer's Axle Grease,

A CHOICE SELECTION OF

Carriages, Phætons,

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ALSO, PER BARK

"EDWARD MAY."

Cases Yellow Bible, 27, 28, 29, 30 inches.
Bags of Competition Nails.

Grocerers' Wagons!

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ALL OF THE ABOVE

Goods are in an Excellent Condition.

And will be SOLD LOW, to Close Consignments.

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DRY REDWOOD!

Scantling, Plank, surfaced and rough

Boards, surfaced and rough; Battens, Pickets, Shingles, Lattice, Clapboards.

ALSO IN STOCK,

Fort and Whitewash Brushes,
WHITE LEAD,
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DOORS SASH BLINDS

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Of Eastern and California Make.

FOR SALE IN QUANTITIES TO SUIT AND AT

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Hawaiian Gazette.

WEDNESDAY, OCTOBER 11, 1882.

Supreme Court of the Hawaiian Islands In Equity.

Before the Chancellor.

A. J. Cartwright Trustee of the estate of J. H. Coney deceased, vs. S. C. Allen and M. F. Robinson.

This is a Bill in Equity to compel the surrender of a note in favor of plaintiff's estate for $30,000 held by defendants as collateral security.

PLAINTIFF'S BRIEF.

The bill avers:

1st. The purport of Coney's Will.

2nd. The plaintiffs receipt of $13,137 from the executor Edward Preston.

3rd. Castle and Cooke's indebtedness to the estate on their $30,000 note of which they have tendered payment, but said note is held by defendants (copartners under the firm name of Allen and Robinson) who although requested refuse to deliver it up claiming that it was pledged to them by Preston as security for $13,000 loaned to him for the use of said estate; avers that this loan was neither required by the estate nor authorized by the Will.

4th. Offer to pay defendant said loan of $13,000 (although denying its validity) on their giving up the said Castle and Cooke's note in order to divide the moneys of the estate according to the Will; defendants refuse to accept this and continue to charge the estate interest on said $13,000, and to collect and appropriate the interest on said Castle and Cooke's note and have appointed $1250 of said interest towards payment of said $13,000.

Prayers. 1. For account.
2. Delivery of Castle and Cooke's note on payment of $13,000.
3. General relief.

The Answer:

That as to said first averments, defendants "know nothing" and deny all the allegations and say that said firm has not in their possession said note of Castle and Cooke, or any other note to which said complainant is entitled.

The answer is sworn to by S. C. Allen.

EVIDENCE.

Defendant S. C. Allen under a subpoena duces tecum produced said note of Castle and Cooke, also two notes in favor of Allen and Robinson as trustees, of $3,000, and $12,000, signed by Edward Preston, Executor, and dated respectively February 19, 1881 and January 21st, 1882, but refused to produce certain Kohala stock which he was subpoenaed to produce and which he testified that he took as as collateral for Castle and Cooke's note of $30,000.

Allen testified that he and Robinson did not hold the above notes, but that the trustees of James Robinson's estate held them. That he had never read Coney's Will (although the record produced of his evidence at the probate of the will is that he read it, and the same record shows that he and Preston filed their sworn petition for probate of the Will). Allen also testified that he kept the Coney estate accounts until he resigned as executor (that is, from the filing of the petition October 22nd 1880, to the probate of the Will November 23, 1880). Also that he took Castle and Cooke's $30,000 note and the Kohala stock from Coney as collateral for notes of Mr. Coney's for $500, $1,500, which said notes were paid by the plaintiff after he took the trust. He denied that any one had offered to pay him the $15,000.

Atherton, of Castle and Cooke, testified that Preston some time last year told him he might pay the $30,000 at any time waiving the three months required by its terms, also that Castle and Cooke, if called upon, would willingly have paid from $5,000 to $10,000 on said note at any time.

Cartwright testified that he he told Allen he should be ready to take up Preston's notes but Allen said he would not take the money on them before they were due.

Hartwell testified that as attorney for Cartwright he offered Allen to pay him the money on the Preston notes, but it was refused.

Preston testified that he used the $3,000 for the estate to build Levey's house, &c., but not the $12,000, that they borrowed the $12,000 to pay the heirs but had not conferred with them about it specifically, when his attention was called to his accounts showing receipts more than enough to pay for the taxes and Levey's house before the date of his $3,000 note, he said he first borrowed one thousand of Allen and Robinson and afterwards $2,000 and then gave the $3,000 note.

Points for Plaintiff.

I

As for the formal defence that these defendants hold these securities as Trustees of James Robinson's will and not in their own right, that is a matter for a plea in abatement.

Story's Eq. Pl. § § 723, 732. And not to be raised by an answer Ibid, § 705.

II

1. The Will authorizes no borrowing of money for any purpose. It requires the shares of Mrs. Coney and the others to be paid only after payment of the debts. Preston and Allen both knew this, for they had presented the Will for Probate and must at least be presumed to have known its contents. Allen acted as executor *de son tort* until he resigned. The notes held by Allen bearing 12 and 16 per cent interest were long over due amounting to $—— in all. Both Allen and Preston knew that these notes should first have been paid. Castle and Cooke were ready at any time to pay enough to take these notes up.

Preston's accounts show that he took from Allen and Robinson: $3,000, December 22nd, 1880 for interest on Castle and Cooke's note. He could have taken the same in 1881. Those accounts show that the money for Levey's house was paid January 20th 1881, ($3113.86) before the $3,000 note was made. No one could find authority in the will or in common sense for any of these doings. The estate has been kept unsettled and put to unjust and unnecessary loss by the course that was followed.

The executors account shows receipts (including $12,000 of Robinson's Trs). $26,301.00

Charges including $1,400 commissions and $3,918.08 on account Levey's house and $964.69 for purchase of land none of which are authorized by the will. 16,329.60

$12,067.40
2,910.00

$14,979.40

This of itself shows plainly that the $12,000 loan was not required. It was not pretended to be used for the estate. Deducting the commissions, $140, and the items for the house and land which the will did not authorize and $10,185.37 would remain, showing that the $3,000 loan was not required, and that the 12 per cent notes with Allen and Robinson might have been paid.

2. The $12,000 note has a memorandum that it is given as collateral security with Castle and Cooke's note for $30,000, with shares in Kohala Sugar Company now held by the said Trustees for advances heretofore made to J. H. Coney and myself as executor aforesaid. This implies that the executors did not receive said $12,000 on that $12,000 note (it does not purport to have been for value received); but that he gave it merely for "collateral security." The inference is that after he was called on to pay over the money in his hands he got the $12,000. Certainly the defendants cannot expect the Court to say that the words above quoted mean anything but that which they purport to mean. Every thing is then referred back to the $3,000 note dated February 17th, 1881, which Mr. Preston says was for money of which a large part had been borrowed in the month of December A. D. 1880, or just after Allen resigned as executor. When it is considered that Allen kept the estate's accounts up to November 22nd 1880 which show receipts of the estate amounting at that time to $4,030, and outlays of only $596.25 giving a surplus of $3,042.75, and when he knew that $3,000 interest money was coming in December 22nd, from the Castle and Cooke note, could he have supposed that a loan of $3,000 was required for any purpose named in that Will?

He knew it was not required to pay the notes held by him of Coney, for he did not wish, and did not take the money for them.

III.

On the facts in this case the law is clear. "One who receives the assets of the estate from the executor knowing or having the means of knowing that he is thereby misapplying them will be held as Trustee for the estate." 3. Redfield on Wills, p. 226 n. 8. citing Colt vs. Lasmir 8 Cot. 326.

So where one or two executors and trustees under a power in a will sold part of the real estate and took a mortgage payable to them jointly for purchase money. Afterwards one of them without the knowledge of the other and when the money was not wanted for the purposes of the trust, sold and assigned such bond and mortgage and misapplied the proceeds and failed, being largely indebted to the estate. It was held not to be a valid sale and transfer of the legal title and that the purchaser could only claim to be protected in Equity so far as the money or securities given by him to the trustee of whom he purchased could be shown to have been applied to the use, or in aid of the purpose of the trust."

Ibid., p. 229, citing Hastell vs. Bogert 5, p. 52.

In Atkins vs. Atkins 8, Allen 15, it was held that shares held by a guardian and transferred by him in payment of a personal debt may be pursued as a trust property in the hands of a purchaser having notice.

"The occasions for creating such contracts (pledges, &c.) on behalf of the estate are so few that slight circumstances of suspicion will be regarded as sufficient to put the mortgagee upon his inquiry. And in such cases if the fact was that the money was raised for private purposes by the executor, and this upon proper inquiry would have been ascertained by the party making the advance, he will stand in no better light than if he had received a pledge or mortgage of the effects of the estate upon the private account of the personal representative and cannot enforce his security except to the extent that he can show that the money advanced by him actually went for the purposes of the estate in payment of the debts and legacies or otherwise."

3 Redfield on the law of Wills, p. 231, sec. 3.

"When the purchaser has knowledge that the sale is not within the equity of the trust under which the power was created, he thereby assumes the hazard of seeing to the application of the purchase money."

Ibid. p. 233.

"Therefore if an executor sells or mortgages personal assets for ready money or money to be advanced, the dealing *prima facie* is in due course of administration, but *prima facie* only; for if there is affirmative evidence that the purchaser or mortgagee had notice that the money was to be used for some purpose other than the settlement of the estate, the Court will regard the transaction as fraudulent, and will not allow it to stand."

2 Perry on trusts, p. 446 § 811, Ibid. p. 447 § 814, and see Pendleton vs. Fay, 2 p. 202.

The $1,250 appropriation of the estate money to a note not due, was whether by mistake or not, a misappropriation and of itself entitles plaintiff to a decree.

See also Smith vs. Ayer, 101 U. S. 327.

DEFENDANTS' BRIEF.

The evidence shows that Coney in his life time deposited with defendants a note from Castle & Cooke for $30,000 as collateral security for money loaned to him; and that Edward Preston, executor of said Coney's will, borrowed more money from defendants, stating that it was for the use of said estate, and made a further charge upon the note of Castle & Cooke, to secure the payment of the amounts advanced to him as executor.

The executor had the right to pledge the note of Castle & Cooke to secure the payment of the amounts advanced to him; and there is no equity in plaintiff's bill.

The general rule is that an executor has an absolute power of disposal over the personal estate of deceased; and the same can not be followed by creditors, much less by legatees, into the hands of an alinee.

Williams on executors, p. 796. Whale vs. Booth, 4 T. R. 625.

An executor may mortgage the assets of the estate.

Williams on executors, p. 797. Meade vs. Orrey, 3 Al. 235. Hardwick. Scott vs. Tyler, 2 Dick. 723, Thorthw. McLeod vs. Drummond, 17 Ves., 154 Eldon.

Title to personal property vests in executor. It can not be followed into the hands of a purchaser unless there is proof of collusion.

Sand vs. Hooper, 5 A. M. Decis. 601. Woods appeal, 92 Pa., 12 U. S. D. p. 247 § 5. Hamrick vs. Craven, 30 Ind. 241, 4 U. S. D. p. 202 § 33.

A power to sell for the purpose of distribution is a power belonging to an executor virtute officii, as well where the power is discretionary or absolute.

Evans vs. Chen, 71 Pa. 47, 4 U. S. D. p. 302 § 56.

A mortgage of assets by an executor is valid.

Vane vs. Riglet, L. R. 3, Ch. 663. Perry vs. Gibbons, L. R. 8, Ch. 141. Cruikshank vs. Duffin, L. R. 13, Eq. 555.

It is not incumbent on a mortgagee or alinee to see to the disposal of the purchase money, unless the trust money is special.

Williams on executors, p. 798. Andrews vs. Spearshawk 13, Pick. 393. Story Eq. Juris. § 1124 et. seq.

The late case of Carter vs. Manufac. Nat. Bank of Lewiston, 71 Maine 448, is directly in point and supports this defence. An executor pledged stock belonging to the estate and gave his own note for the money, stating that it was for the purposes of the estate. The pledge was held valid and an action brought by administrator *de bon. non* for possession of the stock dismissed.

As to the duty of a person dealing with an executor to examine as to the condition of the estate and as to whether the debts are paid.

See Field vs. Schiffelin, 7 Johns. Ch. 150, in which case Ch. Kent says that in the absence of proof or knowledge of an intended misapplication, a person dealing with an executor is not bound to enquire into the state of the trust, because he has no means to support the enquiry and he may safely repose on the general presumption that the executor is in the due execution of his trust.

BY THE COURT,

The questions before me are whether borrowing of the money and the pledging the securities of the estate of J. H. Coney by the executor, were authorized or necessary under the circumstances. I have already held in the Probate Court, that they were not. The remaining question is whether the defendants, the pledgees, had knowledge of the want of authority of the executor in making transaction so that the securities can be recovered now.

I do not find that the defendants had such a knowledge of the condition of the estate and the nature of the trust, or that the nature of the transaction should have put them upon enquiry as to whether there was a misapplication intended.

The Will authorized the payment of one quarter of the personal estate over to two of the legatees after the debts were paid, and the defendants might have supposed that this was a discounting of the assets to effect this purpose, or to pay the debts with; for there is no evidence that defendants knew that the estate owed no other debts than to them.

In the case before me there was no fraudulent misapplication of the funds borrowed; they were merely held idle by the executor and for that reason, the Probate Court charged the executor with interest upon them and declined to allow his commissions upon the same.

The last case cited by plaintiff from the Supreme Court of the U. S. 101, U. S. 327, clearly establishes that assets of an estate can be recovered from parties who deal with the executor with a knowledge of his trust and his *disregard of his obligations* or when one has reasonable grounds for believing that the executor intends to misapply the assets or is in the very transaction converting them to his private use. In the case there decided the executor raised the money, not for the estate or for the settlement of its affairs, but for the business of a commercial firm, and the Court held that persons dealing thus were bound to look into the authority of the executor.

I do not regard the endorsement upon the executors note for $12,000 of the $1,250 received as interest on the $30,000 note which was stated to be made by mistake as a misappropriation sufficient to foil for plaintiff on the bill.

The fact that the executor, with funds in hand, allowed notes held by defendants to remain long unpaid is a matter between the trustee or heirs and the executor for which defendants were not responsible.

A. S. Hartwell for plaintiff; F. M. Hatch for defendants.

A. FRANCIS JUDD,
Chief Justice and Chancellor.

Honolulu, September 15th, 1882.

JOSEPH E. WISEMAN,

10 Merchant Street, Honolulu, H. I.

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SUCH AS

Fancy Prints, Twenty-Five New Styles,

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(Woolen, Mixed, Calico, Hickory, Denim, &c.)

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Agent for the Hawaiian Islands.

General Merchandise.

FIREMAN'S FUND

INSURANCE COMPANY

OF CALIFORNIA.

Assets, : : : : : $1,250,000

Losses Paid, Over : : : : $4,500,000

THE LARGEST PACIFIC COAST CO.

Dwelling Risks a Specialty; Detached Dwellings and Contents Insured for a Period of Three Years for Two Premiums in Advance. We also write upon Merchandise, per First-Class Vessels, between this Port and the Coast Ports, covering Loss or Damage, if Amounting to Seven per Cent. or more on the Insured Value of the Whole Shipment at Port of Delivery; and are prepared to make Consignees Covering Shipments from Plantations through to San Francisco, including Fire Risk while in Honolulu awaiting Freight Shipment, upon Favorable Terms.

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BISHOP & Co., Agents.

B. F. Ehlers & Co.

Staple & Fancy Dry Goods Importers

Fort Street, Honolulu, H. I.

THE UNION FEED Co.,

A. W. BUSH, Manager.

Hay, Grain and Mixed Feed

— OF ALL KINDS, —

KEPT CONSTANTLY IN STOCK,

And Sold at a Shade Below Regular Rates. ☞ Our Manager Visits San Francisco Regularly for the Purpose of Buying as our Supplies, and as we buy in Larger Quantities than any other Dealers,

AND PAY CASH,

And at the same time SECURE FREIGHTS AT LOWER RATES, we are Prepared to Supply our Friends and Patrons

At Prices to Defy Competition

— WE HAVE NOW ON HAND —

THE LARGEST STOCK OF HAY, GRAIN AND FEED

For All Kinds of Stock,

That can be found anywhere in the City, and are Prepared to Furnish our Friends on the Other Islands

WITH CARGO LOTS,

— If Required. —

We Sell Wholesale and Retail

And Respectfully Solicit Orders from the Smaller Dealers, to whom we are prepared to make special rates for any

PURCHASES OF OVER FIVE TONS OF HAY OR GRAIN

By Prompt Attention to the Wants of our Numerous Customers, we hope for a continuance of the Patronage so Liberally Bestowed upon us in the past, and it will be our endeavor TO KEEP ON HAND, AT ALL TIMES,

Feed of the Very Best Quality.

Special Attention Given to Orders from the Other Islands, and Prompt Delivery Guaranteed. ☞ All Communications to be addressed to

A. W. BUSH, Manager Union Feed Co.

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FROM SAN FRANCISCO,

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ALSO, TO ARRIVE BY VESSELS DUE FROM ABOVE PORTS, AND

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Suitable for Plantations, Country Stores

Or FAMILIES. Orders Filled at Shortest Notice and with Satisfaction to Purchasers. Attention is Called to Our

Improved Paris PLOW

THE ONLY GENUINE PARIS PLOW, MADE OF POLISHED CAST STEEL, and Guaranteed Equal, if not Better, than any Steel Breaking Plow in the Market. Also other makes of Plows on Hand of Moline Plow Co., Jenny Dunn & Co., &c. Gang Plows.

Horse Hoes, Planet Jr. Cane Knives, made of best steel to any order; Planters' Hoes, 6, 7, 8 and 9; Stubble Mattocks, Axe and Pick Mattocks, Pick, Hoe, Adze, Grub Axe and other handles. Baldwin Feed Cutters, Leather Belting, 1 to 12 inch, best quality; India Rubber Hose, 1/2, 3/4, 1, 1 1/4 and 1 inch; Ox Yokes, Ox Bows, Axles, for horse and mule carts; Portable Forges, Rogers' Anvils, Vises, Blacksmiths' Bellows, Asbestos Steam Packing, Best Fire India Rubber Steam Packing, 1/2 to 3 inch; Babbitt Metal, Lance Lancets and Lancets, India Rubber Packing, round and square, all sizes; Asbestos Boiler Covering and Steam Pipe do., Machinery Oils; Lard, castor and cylinder; Neats Foot Oil.

DISSTON'S CELEBRATED SAWS AND FILES, ALL SIZES;

Spear & Jackson's and Nobili's Files, Hammers for Carpenters, Machinists, Blacksmiths & Horseshoers, Cut and Wrought Nails, all sizes; Horse and Mule Shoe Nails, Gale Nails, Cut Spikes, Horse & Mule Shoes

Latest Improvements in Shelf Hardware

Hubbuck's B.L. Oil, at Very Low Rates; Hubbuck's White and Red Lead, Zinc, Small Paints in Oil, Blake Steam Packing Co's Steam Pumps, Injectors and Vacuum Pumps, Worthington's Patent Centrifugals, Barbed Wire, Plain Fencing Wire, Galvanized Roofing.

STAPLE DRY GOODS!

Denims, 8 and 9 oz.; Tickings, A C A; B and D Bleached and Unbleached Cottons, Russia Sheetings, Brown and Bleached Drills, Linen Sheeting, Mosquito Lace Net, Blue and Scarlet Flannels, A Fine Assortment of White Flannels. Also,

STAPLE GROCERIES, Golden Gate, Star & Superfine Flour

Columbia River Salmon, Baya Beans. Also, California Lime, Portland and Hydraulic Cement.

For Kerosene Oil We Offer THE PALACE, and Guarantee it cannot be beat for quality or price: also, THE VULCAN, a good oil and above test:

WOODWARD & BROWN'S CELEBRATED PIANOS!

The Cheapest Good Piano; New Haven Organ Co.'s Parlor Organs.

Just Arrived!

per "Duke of Abercorn," from Liverpool.

AND FOR SALE!

ONE MILE OF

Light Portable Railway Rails,

12 lbs. per yard; and 20 lock gauge with curves, crossings,

AND 10 LIGHT SUGAR CANE WAGONS

FOR THE SAME.

N. B.—This Railway is suitable for Animal Power.

—ALSO FOR SALE—

Straight Steel Rails, 14 lbs. to the yard.

For the working of Horse, John Fowler & Co.'s cultivating and harvesting machinery, for particulars of J. D. Spreckels, Esq., of Spreckelsville, where a line is now in full operation.

For further particulars, apply to

W. L. GREEN,
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Agents for John Fowler & Co.

Steel Rails

—FOR—

PORTABLE OR PERMANENT

Railways!

15 ft. lengths; 14 lbs. to the yard.

Just received per "Duke of Abercorn," from Liverpool.

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ALL PERSONS SEEKING EMPLOYMENT

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In Want of Employees

Will please make their wants known to the undersigned, who will do his best to procure for all high orders.

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AMERICAN LEGION OF HONOR.

THE REGULAR SESSIONS OF Oceanic Council No. 777, A. L. of H. will be held in Odd Fellows' Hall, Honolulu, Hawaiian Kingdom, on the FIRST and THIRD THURSDAY of every month.

HENRY MARTIN, Dict.