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Supreme Court of the Hawaiian Islands--In Banco April Term 1885.

KALIHILIHI AND KEONEKANI HER HUSBAND VS. KAINA,

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

This is an action of ejectment tried at the November Term, 1884, of the Circuit Court of the Third Judicial Circuit—to recover possession of land at Hilo, Hawaii, granted to one Kaulua by Royal Patent number 2489.

The bill of exceptions shows that plaintiffs put in evidence the Royal Patent and proof that the patentee died intestate and that plaintiffs were his heirs at law and rested—defendant's possession and demand and refusal being admitted.

Defendant put in evidence of twenty years adverse possession, also introduced in evidence an instrument whereby said patentee Kaulua and defendant were parties—a translation of which is as follows:

(Stamp.)

Know all men by these presents, that I, Kaulua of the island of Hawaii, Hawaiian Islands, concerning my Kuleana in the Ahupuaa of Poauhawaii, Hilo, Hawaii, make known by these presents, that I have given, upon consideration, have devised (hoolilua) and by these presents I do devise (hoolilua) and firmly bind over (hoopaa loa) to Kaina and his heirs and grantees, all my rights, foundation rights, right of property in, residence and right of residence, entering upon and right of entering upon, boundaries and right to the boundaries, in this piece of land described as follows: On the north is Naliwahine's premises, on the east is Hauna pond, on the south Hioma's premises, on the west the government road. Together with everything appertaining or that may hereafter belong to it; the houses and everything else that may be built upon it, and all things necessary to it, the water the trees, the stones, highways, the paths of ingress and of egress, roads from it and all the appurtenances. To have and to hold this Kuleana piece of land of mine mentioned above to Kaina and to his heirs and grantees.

And in testimony of the above I hereby sign my name and seal this 30th day of July in the year of the Lord one thousand eight hundred fifty-one. (L. S.)

his
KAULUA X
mark.

Poauhawai, Hilo, Hawaii. To Kaina.

Eye witnesses:
WILLIAM MOHONA,
PUAA,
KALAKUAIHOU,
PELETULA.

Defendant claimed that the same was a deed of the land in question from the patentee to the defendant. Evidence was offered to prove the signatures of witnesses thereto and defendants' counsel requested leave to read the paper to the jury. The Court ruled that said instrument was a deed and admitted evidence as to its genuineness and allowed it to be put in evidence and read to the jury. Plaintiffs excepted to said ruling, claiming that said instrument was a will.

The Court charged the jury that said paper was a deed and not a will and that defendant was entitled to a verdict if the jury found from the evidence that the same was genuine, followed by possession under it. The jury returned a verdict for the defendant.

The question raised is whether the instrument is a deed or a will. Washburn, following Lord Coke, defines a deed to be "a writing containing a contract sealed and delivered by the party thereto." 2 Wash. R. P. p. 553. "A deed takes effect from delivery." id. 578. "A will is a disposition of real and personal property to take effect after the death of the testator." 4 Kent. Com. 500.

We find no words in the instrument indicating that it should take effect and vest in the alienee only after the death of the signer.

It is a peculiarly worded instrument, drafted over 34 years ago by a Hawaiian and contains in the description of the estate to be conveyed many particulars which are redundant and unnecessary, but many of these particulars show decidedly that the estate was to vest immediately. The grantee is to have the "right of residence" upon the land, ingress to it and egress from it. These rights which vested on the delivery of the instrument are inconsistent with the idea of a testament which has no effect until after the death of the testator, he having the use of his property meanwhile.

But it is contended that the use of the word "hoolilua" which ordinarily means, when used as a verb, "to devise," is appropriate to a will, as a "hoolilua" means a "devisee," i. e. one to whom something has been left, as anciently among the Hawaiians property passed to the heir by oral wills. The word also means an "heir." From its etymology and received usage it also means when a verb to "put upon" or "pass over to" and in its connection may not mean to devise in the sense to pass to one after the death of the devisor.

But the word "give" (haawi) is also used in the instrument in connection with the word "hoolilua." Here again Lord Coke says, "If one by deed give lands to another and to his heirs, without saying anything more and put his seal to it and make delivery where it is necessary it is good." 2 Wash. R. P. p. 611.

We should not be willing to hold that this paper was a will solely because the word "devise" is used when the whole tenor and effect of it shows the intention of the grantor to pass the land to the grantee immediately. The deed was delivered and was followed by possession for over twenty years.

We overrule the Exceptions.

Kinney & Peterson for plaintiffs; E. Preston for defendant.

Honolulu, April 27, 1885.

Supreme Court of the Hawaiian Islands--In Equity.

WM. MUTCH AND MIKAHALA MAAU, HIS WIFE, VS. HOLAU (W) AND MAKANUI HER HUSBAND.

Bill to cancel conveyance of land. Opinion of Chancellor Judd.

In December, 1882, the plaintiff Wm. Mutch was introduced to a Hawaiian girl, Mikahala Maau, then about 19 years old, with a view to marriage.

Holau, defendant had been appointed the guardian of this girl when she was eleven years old, and continued to act as such guardian collecting rents &c. until sometime in 1883, when the guardian's accounts were presented to the Probate Court, but no satisfactory settlement was arrived at.

Meanwhile, Mr. Mutch called upon Mikahala at Ewa, Oahu, where she was living with the defendants, her relatives. Makanui, defendant, said he wished the girl to marry a white man and they preferred a carpenter as the girl had a piece of land in Honolulu and the houses upon it needed repair. There was a house adjoining which he wished Mr. Mutch to buy and move on to this lot and live upon it. Mr. Mutch was a carpenter. This land is situated in the rear of the Government Dispensary on Maunakea street, and had been left to Mikahala by will of one Kamaka her grandfather. It is worth from $2500 to $3000 and was then renting for from $200 to $250 per annum. Mikahala also told Mr. Mutch that she had this property.

After a short acquaintance the parties agreed to marry. Mikahala says that Makanui after her engagement told her that she ought to make a deed of this land to her brother W. K. Polikua in order to keep it from her intended husband and that she finally consented to thus dispose of it and copied a deed prepared for her, signed it and acknowledged it before J. S. Kanauna, agent to take acknowledgments, who is now dead. The deed is dated 1st September 1882. Mikahala says it was actually prepared, signed and acknowledged in January 1883 about a week before her marriage which took place on the 18th January. The deed was signed in the chapel away from the house, and kept secret from Mr. Mutch. It was delivered by Mikahala to defendants. It was taken by Makanui to the registrar's office for record on the 20th of January. It is signed by Mikahala by the name of "Myrtel K. Polikua." It seems that she bore also the foreign name of "Michael" but on Mr. Mutch's saying during the courtship (December 1882) that it was not a proper name for a woman and that he would prefer to call her "Myrtle," she consented to adopt this name and Mr. Mutch wrote it for her on a slip of paper. There is no evidence that she had ever used this name previous to this time. But as she signed this name to the deed it is conclusive evidence to my mind that the deed was made, as she says it was, subsequent to her engagement with Mr. Mutch and not as testified by defendants witnesses on September 1st 1882. Mr. Mutch says that Mikahala also told him of her property and that he never knew or heard of the conveyance until some time after his marriage.

Here then is a conveyance, of a woman, in contemplation of marriage, of all her property, without the knowledge of her intended husband and with intent to defraud him.

By all the authorities it must be held void as against the husband, as being in contravention of his marital rights and in disappointment of his just expectations.

To establish the Equity in favor of the husband there must have been an engagement of marriage between them at the time of the conveyance of the wife's property. The conveyance must be made in contemplation of the particular marriage. It is essential also that the husband should, up to the moment of marriage have been kept in ignorance of the transaction. Some authorities contend that he should have known that his intended wife possessed the property. All these ingredients exist in this case.

See Kerr on Fraud p. 217.
1 Bright H. and W. p. 221.
1 Story Eq. Jur. s. 273
Countess of Strathmore Bowes vs. Brown ch. c. 277.
Tucker vs. Andrews 13 Maine 125.
Ball vs. Montgomery 2 Vesey 194.

There are other facts in this case which I now comment on.

The grantee of the deed W. K. Polikua was Mikahala's brother, but he was then as he had been for a long time a leper, and died of this disease April 26th 1884.

He was living under the roof of the defendants who were supporting and caring for him. The consideration named in the deed is $100, but Mikahala says she was never paid this sum or any part of it. It is not likely that a leper hidden away from observation, supported by his friends, could have such a sum as $100. That Mikahala, who had some revenue from teaching school, also contributed to her brother's support and comfort is proven by several letters from him to her.

While thus situated Polikua signed a deed of this property to Holau, defendant. It is dated September 12th 1883, but was not acknowledged until 21st April 1884, five days before he died. The acknowledging officer Anakalea Kauhi says that he questioned Polikua very carefully three times before he took the acknowment and was satisfied that the deed was in accordance with his wish.

The consideration stated is Ten Dollars. Defendants say they paid it by a bag of rice worth $5 and some other articles of food. But they were supporting this leper all this time and would have in all likelihood furnished him with these if the deed had not been executed.

Mr. Mutch says that when he first heard of the deed to Polikua he asked Makanui to let him see it but he refused and then he ascertained at the Registrar's office that it was recorded 20th January 1883, after his marriage: That he went to see Polikua about it and Polikua said he would deed the land back again to his wife as it was hers and at Polikua's request he went again to Ewa (two weeks before he died) with a deed for him to sign. When he got there he found the Defendants at the door. He handed Polikua the deed and he put it aside and wrote a letter to Mikahala, and afterwards told Mr. Mutch that he did not sign the deed as he was afraid he would be turned out of the house. The letter is dated 15th April and Polikua says to his sister that in reference to her wish that he leave the property to her child, not to disturb herself but that when he was dead she was to take the Patent and that she was his only heir and that no one else had any right to the property.

Mr. Armstrong says that Polikua told him he was afraid that Makanui would kill him if he deeded the property back to his sister.

The Defendants say that he changed his purpose of conveying the land to Mikahala's daughter because the parents had had the child baptized in the Roman Church, whereas he was a Protestant. But it is evidently false as the deed is dated the 12th September 1883 and the child was not born until the 28th October.

It is clear from the testimony that both these deeds were procured by the defendants. They used the influence of Holau as Guardian over Mikahala to persuade her to defraud her husband and they used their power over a dying leper in their custody to make him sign a deed of a property worth $2,500 for a $10 consideration which was not paid.

The Defendants were throughout the active perpetrators of these frauds and can in no sense be protected as bona fide purchasers.

The relief prayed for must be granted.

Decree accordingly.

S. B. Dole for plaintiff; R. F. Bickerton for defendant.

Honolulu, October 23, 1885.

Supreme Court of the Hawaiian Islands.--In Banco April Term. 1885.

WILLIAM MUTCH AND WIFE VS. HOLAU AND HUSBAND.

Judd C.J. McCully J. Austin J. Opinion of the Court by McCully J.

For the statement of the case and evidence we refer to the opinion of the Chancellor. In the argument made before the Court in banco, it was said by the learned counsel for the defendants that if the matters of fact alleged in the plaintiffs' bill were established there was no doubt but that the principles of equity would award the claim made. We have no doubt that the law as set forth by the Chancellor in his opinion above is well sustained upon reason and by the authorities cited. In our view the evidence does support the bill conclusively.

The defendants' version of the facts is entirely at variance with probability and reasonable conduct. According to the defence, this young woman (plaintiff) of 19 years, in good health, of good education, a school teacher, with fair prospects in life, being the owner of a piece of real estate in Honolulu, yielding $250 or $300 per yer, and worth $3,000, makes a voluntary deed of this property for the nominal consideration of $100, which was never paid, to her brother, he being a leper far advanced in the disease, living out the remnant of his unhappy existence in concealment in the house of the girl's guardians, the defendants in this case. And for what motive? In order to assist her brother, say the defence. As if it were not as easy to assist him by contributing a part of or all the income, and as if that would not be obviously better than to vest the property in one who was confined to his house or premises, who could not go abroad to make leases or collect rents or make improvements. He was living in expectation of near death. And the same parties who set up this motive for the conveyance inconsistently procured a conveyance, for the paltry consideration of ten dollars, from him to themselves, whereby they expected to defeat the descent by inheritance to the first grantor—who should equitably have her own again after it had served the alleged purpose of better supporting her brother.

Now the plaintiff, Wm. Mutch's interest depends entirely upon the date of the lease. A strong circumstance to show that the deed was made after her betrothal is that she signs herself Myrtle, although misspelling it "Myrtel," a name adopted by her at the suggestion of her intended husband after their engagement to marry. There is no satisfactory evidence to show that she had ever used or been known by this name previously, and there is direct, credible and circumstantially probable testimony that the name was assumed only after the engagement had given him equitable rights against surreptitious conveyance of her property. If we take it as a fact that she never had that name until December, it is conclusive that the deed was not made in December. The acknowledging officer, J. S. Kanauna, is dead. It is sufficient to say that we have to believe that he lent himself to the fraud of antedating the conveyance. It is merely consistent with his making the date in the certificate of acknowledgement Sept. 5th, that he should cancel the stamp with the same date. There may have been made to him statements and reasons to induce him which did not imply a fraud on the part of any one.

Coming to the second deed we find the same fraudulent defence. The motive advanced for Polikua's refusal to rectify the mischief by a conveyance back to his sister is that he was angry because she had had her infant baptised in the Roman Catholic Church. It is proved that the baby was not born until a month and a half later.

We need only to touch upon these salient points in the case. The marks of fraud are broad and deep. The plaintiffs are entitled to the relief they ask for.

The decree is affirmed.

S. B. Dole for plaintiffs; E. Preston for defendants.

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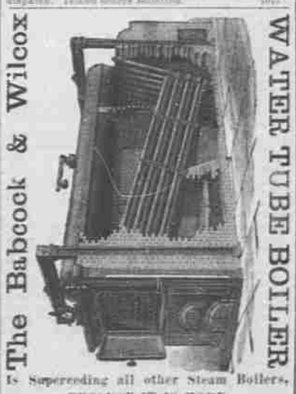
Honolulu, May 2, 1884. 1041 1yr

J. D. LANE'S

MARBLE WORKS,
110 FORT STREET, NEAR HOTEL ST.
MANUFACTURER OF MONUMENTS
Headstones, Tombs,
Tablets, Marble Mantels,
Washstand Tops, and
Tiling in Black and White Marble.
MARBLE WORK OF EVERY DESCRIPTION
MADE TO ORDER
AT THE LOWEST POSSIBLE RATES.
Monuments and Headstones Cleaned and Reset.
Orders from the other Islands promptly attended to. 1050

MRS. THOMAS LACK
No. 79 Fort St., Honolulu.
IMPORTER and DEALER
—IN—
Sewing Machines, and Genuine Parts, Attachments, Oil and Accessories.
AGENT FOR THE
White, New Home,
Davis, Crown, Howe, and
Florence Machines.
Howard's Machine Needles,
all kinds & sizes;
Corticalli Silk,
in all colors;
CLARKS' MILE END, MACHINE COTTON.
AGENT FOR
Madame Demorest's Reliable Cut Paper Patterns, and Publications. Dealer in
Rifles, Pistols, Guns, and Sporting Goods,
Shot, Powder, Caps, & Metallic Cartridges.

KEROSENE STOVES!
In all Sizes.
Having secured the services of a First-Class Gun and Locksmith and thorough Mechanic, I am now prepared to do work in that line, with promptness and dispatch. Island orders solicited. 1057

The Babcock & Wilcox WATER TUBE BOILER

Is Superseding all other Steam Boilers,
BECAUSE IT IS MORE
Economical of Fuel,
Less Liable to Explode,
Easier of Transportation
AND COSTS NO MORE!
Full description and prices can be obtained by application to
W. E. ROWELL, Honolulu.
1041 1y Sole Agent Hawaiian Islands.

TELEPHONE No. 65.
ISAAC MOORE,
114 NUUANU STREET, HONOLULU,
OLD LIGHT HOUSE STORE
CHOICEST SELECTION OF
FANCY CANDIES OF ALL DESCRIPTIONS:
Cream, Opera Caramels, Marshmallows, Sugared Almonds, A. B. Bon-bons, Citron Jelly Ice, Sugared Nuts, Rose and Lemon Gum Drops, C. C. Sugarplums and Brilliant Compositions Lozenges, Mint Lozenges, Spiced Chocolate, Chocolate Cream and
Fancy and Plain Mixed Candies,
Also—NUTS: Pecans, S. S. Almonds, Brazils, Filberts, &c., Lundos, "Adams" Gum, Spruce Gum, Fruit Boxes.
The above Candies Retailed at 50c per lb.
CALL AND TRY THEM.
Cigars, Cigarettes, Tobacco, Hostetter & Co.'s Soda Water & Ginger Ale on Ice, and a full line of
FAMILY GROCERIES.

Mr. L. B. KERR
HAS
JUST RETURNED
From Great Britain
And will soon open with a
SELECTION of GOODS
SUITABLE FOR
GENTLEMEN'S WEAR!
EMBRACING THE
Latest Styles
And Purchased by Himself in Person.
KNOWLES'
STEAM AND VACUUM PUMPS
THE UNDERSIGNED HAVE JUST received per Amy Turner, from Boston, a full assortment of their celebrated Pumps, which are guaranteed to be cheaper and better than any other style of pump imported. We call the attention of planters particularly to the Vacuum Pump, which is now completed and more serviceable than other pumps.
C. BREWER & CO.

Insurance Notices.

Boston Board of Underwriters.
AGENTS for the Hawaiian Islands.
1030 1y C. BREWER & CO.

Philadelphia Board of Underwriters.
AGENTS for the Hawaiian Islands,
1030 1y C. BREWER & CO.

F. A. SCHAEFER,
AGENT of Bremen Board of Underwriters,
Agent of Dresden Board of Underwriters,
Agent of Vienna Board of Underwriters.
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. 1049 1y

Insurance Notice.
THE AGENT FOR THE BRITISH Foreign Marine Insurance Company (Limited) has received instructions to Reduce the Rates of Insurance between Honolulu and Ports in the Pacific, and is now prepared to issue Policies at the lowest rates, with a special reduction on freight per steamers.
THEO. H. DAVIES,
1051 3ly Agent Brit. For. Mar. Ins. Co., Limited

HAMBURGH-BREMEN
FIRE INSURANCE COMPANY.
THE UNDERSIGNED HAVING BEEN APpointed Agents of the above Company, are prepared to insure risks against fire on Stone and Brick Buildings, and on Merchandise stored therein, on the most favorable terms. For particulars apply at the office of F. A. SCHAEFER & CO.
1031 1y

HAMBURG-MACDEBURG
FIRE INSURANCE COMPANY,
OF HAMBURG.
BUILDINGS, MERCHANDISE, FURNITURE and Machinery Insured against Fire on the most favorable terms.
A. JAEGER, Agent for the Hawaiian Islands.
1043 1y

ORIENT
Insurance Company
OF HARTFORD, CONNECTICUT.
CASH ASSETS JANUARY 1ST, 1884 : : $1,411,894.41.
Takes risks against Loss or Damage by Fire on Buildings, Merchandise, Machinery and Furniture on favorable terms. A. JAEGER,
1038 Agent for Hawaiian Islands.

WASHINGTON
FIRE AND MARINE INSURANCE COMPANY
OF BOSTON, MASSACHUSETTS.
Cash Assets January 1st, 1884. - - $1,305,550.34.
Takes Risks against Loss or Damage by Fire on Buildings, Merchandise, Machinery and Furniture on favorable terms. A. JAEGER,
1038 Agent for Hawaiian Islands.

The City of London Fire Insurance Co., Limited.
CAPITAL, : : : : : : $10,000,000
HAVING ESTABLISHED AN AGENCY AT Honolulu for the Hawaiian Islands, the undersigned is prepared to accept risks against Fire on Buildings, Merchandise, Furniture, Machinery, on the most favorable terms.
Losses Promptly Adjusted and Payable Here.
C. O. BERGER,
1035 1y Agent for the Hawaiian Islands.

1020 A. JAEGER, Agent for the Haw'n Is

THE
LIVERPOOL and LONDON and GLOBE
INSURANCE CO.
Assets, - - - - - - $31,161,000
Claims Paid, $88,714,000
HAVE ESTABLISHED AN AGENCY IN Honolulu, for the Hawaiian Islands, and the undersigned are prepared to write risks against
FIRE ON BUILDINGS, MERCHANDISE & DWELLINGS
On favorable terms. Dwelling Risks a Specialty. Detached dwellings and contents insured for a period of three years, for one premium in advance. Losses promptly adjusted and payable here.
1047 6m BISHOP & CO.

GERMAN LLOYD
Marine Insurance Company of Berlin.
FORTUNA
General Insurance Company of Berlin.
THE ABOVE INSURANCE COMPANIES have established a General Agency here, and the undersigned, General Agents, are authorized to take
Risks against the Dangers of the Seas at the Most Reasonable Rates, and on the Most Favorable Terms.
1030 1y F. A. SCHAEFER & CO., General Agents.

PRUSSIAN NATIONAL
Insurance Comp'ny
OF STETTIN
ESTABLISHED 1845.
Capital : : Reichsmarks 9,000,000.
THE UNDERSIGNED HAVING been appointed agent of the above Company for the Hawaiian Islands is prepared to accept risks against Fire on Buildings, Furniture, Merchandise, Produce, Sugar Mills, &c., on the most favorable terms.
LOSSES PROMPTLY ADJUSTED AND PAYABLE HERE.
H. RIEMENSCHNEIDER,
1042 1yr At Wilder & Co.'s.

General Insurance Com'py.
For Sea, River and Land Transport
of DRESDEN.
HAVING ESTABLISHED AN Agency at Honolulu for the Hawaiian Islands, the undersigned General Agents are authorized to take
Risks against the Danger of the Seas at the Most Reasonable Rates, and on the Most Favorable Terms.
F. A. SCHAEFER & CO.
1049 1y Agent for the Hawaiian Islands.

WILDER & CO.,
Honolulu, Hawaiian Islands, General Agents of the
Mutual Life Insurance Comp'y
OF NEW YORK,
Largest, Safest and Most
ECONOMICAL LIFE INS. CO
IN THE WORLD!
Cash Assets, over $90,000,000!
For information concerning the Company, and for Rates of Insurance, apply to WILDER & CO., Gen'l Agents, or J. B. WISEMAN, Soliciting Agent.
1050 1m

SOUTH BRITISH AND NATIONAL
FIRE AND MARINE INSURANCE
COMPANIES OF NEW ZEALAND.
CAPITAL - - - $20,000,000
Unlimited Liability of Shareholders, Issuing Joint Policy.
Having established an Agency at Honolulu, for the Hawaiian Islands, the undersigned is prepared to accept risks against Fire on Buildings, Merchandise, Furniture, Machinery, &c., on the most favorable terms.
Losses Promptly Adjusted and Payable Here!
Marine Risks on Merchandise, Freights and Treasure, at Current Rates.
C. O. BERGER,
1050 Agent for Hawaiian Islands.

TRANS-ATLANTIC
FIRE INSURANCE COMPANY,
OF HAMBURG.
Capital of the Company & Reserve...Reichsmarks 6,300,000
Their Re-Insurance Companies " 105,000,000
Total.....Reichsmarks 107,500,000

NORTH GERMAN
FIRE INSURANCE COMPANY,
OF HAMBURG.
Capital of the Company & Reserve...Reichsmarks 3,000,000
Their Re-Insurance Companies " 2,000,000
Total.....Reichsmarks 5,000,000

THE UNDERSIGNED, GENERAL AGENTS of the above three companies for the Hawaiian Islands, are prepared to insure Buildings, Furniture, Merchandise and Produce, Machinery, &c., also Sugar and Rice Mills, and streams in the interior, against loss or damage by fire on the most favorable terms.
1042 1y H. HACKFELD