By Authority.

By order that there may be no delay in closing the accounts of the Hawaiian Treasury for the fiscal period ending March 31, 1886, all persons having claims against the Government are requested to make in claims promptly, and all employees of the Government, or other persons to whom money may be due, are also requested to present vouchers for the same to the undersigned before the 31st of March, 1886.

R. P. PLANT,
Minister of Finance.

1189 Finance Office, March 1, 1886.

Hawaiian Gazette.

SAT MODO IN REBUS.

TUESDAY, MARCH 10, 1886.

A LETTER from the pen of the Hon. W. L. Green, which appears in to-day's issue shows what are the opinions of that gentleman on the subject of the future of our volcano. We think there need be no fear that the fires of Kilauea have gone out forever; next week will very likely bring us back an account that it is as active as ever.

THE labor question is one which is now agitating the United States from the Pacific to the Atlantic seaboard. It may only realized how much injury they did to themselves, directly, besides the enormous amount of indirect damage inflicted upon the community at large, they would think twice before they strick. The worst of it is, it is not the men themselves who are discommoned, it is a few non workers and gilt talkers who make their own hay while the moon of mob valor. No reasoning, however, seems to have effect upon the working man, and he will insist on listening to the voice of the charmer, claiming he never so foolishly.

AS enquiry should be made into the conduct of the men who refused to allow the sailors of the stray boat from the Rory and Sonia, whether to land. According to the statement the man was an officer, if so, it ought to be an easy matter to bring him to a sense of what his duties are under such circumstances. We are surprised at the statement because Hawaiians have always been so hospitable, and this is the first case in which the "hospitality of the strand" has been refused. The matter should be followed up and the reasons for what has been done clearly stated. If the Government has appointed a blundering idiot to a responsible position, it ought at once to remove him.

IN SENATOR BELLES who died suddenly at Washington on March 8th, not only do the United States lose a good citizen, California a whole social representative, but Hawaii loses a good friend. The late Senator's record was a fine one. He was born in Indiana, but was educated in Virginia, and graduated from the New York Law School in 1852. During the war he distinguished himself, rising to the rank of General. In 1865 General Miller came to California, where he soon became prominent, occupying several official positions until for 1885 he was elected Senator. Before he had taken his seat in the Senate he had an offer to become a member of Garfield's Cabinet, but this offer he declined. In the Senate General Miller has been a consistent supporter of our treaty, and has taken pains to inform himself thoroughly as to what its workings were. A few years ago he visited these Islands. Hawaii cannot afford to lose many friends—she deeply regrets the loss of this one.

In spite of the capture of Chee Hook, the Chinese burglar, the native sneak thief continues to prowl around. He "hooks" clothes and wearing apparel of all kinds. His latest scene of operations has been in Nuuanu Valley. As the residents in that direction are entirely without police protection, they have formed up their selves and sent guns in order to do what they can to help themselves. A policeman well would, however, be far more effective.

It is evident that the thieving was not confined to Mr. Chee Hook, but that several people are engaged in it. Of these few as yet have his boldness, but content themselves with snatching articles from verandas or outside rooms that may have been left open. Another thing that is evident, is that there is some means of disposing of the miscellaneous lot of goods stolen. They must be turned into cash by some means. That place must be sought in Chinatown, where we hear that some thing in the pawning line is now being carried on. A look through the shops which have commenced an unlicensed pawnbroking business might lead to some strange revelations.

In another column will be found an account of the tree plantation on the slopes behind the Lunalilo House. This effort to clothe our hillsides with useful timber is certainly not appreciated as it should be. There is no doubt that excellent work is being done, and that success has crowned the efforts of Mr. Jaeger and the Forrester Mr. Lyons. It is evident from our reporter's account that in a few years the hillsides will be covered with a dense forest, and that the timber procured from merely thinning out, will yield a good income on the original investment. Putting public money to such a purpose is of the greatest advantage. It is just such work as this which is invaluable. The greatest credit is due Mr. Jaeger for his untiring efforts. Fifteen years ago he brought this subject before public attention, and he was then regarded as merely a visionary. Had his advice been then followed our bare hillsides would now have been clothed with valuable timber. However, the effort has at last been made, and it is to be hoped that it will be kept up. The Legislature should vote a liberal appropriation toward this object, and the Executive should see that the whole of it is paid and that it is not put aside with merely a small portion of the voted money. A Ministerial visit to the grounds might also be worth while in order to judge intelligently.

So you old friend the "Doc." better known as Celso Caesar Moreno, has turned up in Washington as a strong opponent of the treaty. Truly this is a case of chickens coming home to roost. The man came to these Islands a needy adventurer. He was evidently a man of ability without a particle of principle. He worming himself into the confidence of those in power here, and burst forth suddenly as Foreign Minister. It was a position he was only less fitted to fill with dignity and to the advantage of the country than the present incumbent. However, he did fill it for three days. Moreno's appointment, which had been brought about by every effort that Italian intrigue could compass, by the use of outrageous flattery, by dangling a "will o' the wisp" before dazzled eyes, created such a feeling here that it was impossible to retain him. The whole town seethed, and revolution was imminent; the slightest spark would have set the heap in a blaze, and Moreno was, to use a slang expression, "fired." Not even in leaving his been head locked round for some peg to hang a claim upon this Government, and he succeeded in that design by getting charge of some Hawaiian youths whom he got, at Government expense, to school in Italy. He has been working those boys for all they are worth ever since, and has not only furnished a bill for their maintenance before the official authorities here, but has been hawking the precious documents about Washington, as witness, which we know personal, informs us.

The danger with such a man as Moreno lies in his plausibility, his utter lack of principle and the fact that he can state that he was actually Minister of Foreign Affairs here. It is no matter that he was only Minister for three days, and that he was absolutely driven out of the country—that he talks bald-faced, and lies outrageously. People disposed to listen to him, and Hawaii has many enemies to her progress, will insist on looking at the bare fact that he was a Minister and that he was the head of his Cabinet. This fact has weight on their biased minds. Verily, as we have said, the chickens are coming home to roost; but the roosting time is not a pleasant one. We had enough to struggle against without having an extra weight added.

As THE Mariposa reached the wharf, the foremost question in nearly every one's mind was the tariff. Had the Committee on Ways and Means reported favorably on sugar. Papers and letters were eagerly scanned and at first there were disposed to be very glum, but they gradually lightened up when it was found that just before the steamer sailed a telegram was received from Mr. H. A. P. Carter stating that prospects were brighter and that he had every hope of a favorable report.

We say and our Government has injured the chances of obtaining renewal of the treaty, but the main cause that the treaty given to us remains as potent to-day as it was in 1876. The attack made on the treaty has this session mainly rested on political grounds. The overthrow of missionary influence, which the Government organ so prides itself on, the large introduction of Asiatics, the influence wielded by Mr. Spreckels upon our Cabinet, the large borrowing which has taken place and which it is proposed to increase, and the passage of the liquor law have all formed a portion of the charges brought against us. Of course, Mr. Carter has made a gallant fight and has explained what is explainable. It surely must have been a reporter's error which makes Mr. Carter say that Claus Spreckels wields no influence over the Hawaiian Cabinet. He wields and has wielded a very powerful influence, and it is not possible to deny the fact.

Our treaty will be in danger as long as the present men are in power. Yearly the question will come up and be argued. We have avowed and powerful enemies and we have just lost a powerful friend in Senator Miller. Unless our Government is thoroughly reformed the number of our enemies will steadily increase and a little drop, however small, will beat admission into the hardest rock, so our foes will by persistence overcome our friends. But they will not be able to do so if our Government does not itself supply the weapons of destruction. The case is plain. The United States desire to see American interests grow, they wish to bind this country to the great Republic by the strongest bonds. It is the plain duty of the Hawaiian Government to do all in its power to strengthen those bonds. If the Hawaiian Government does not do so, if it supports what the Washington Government dislikes and overthrows what it approves, why, it is simply doing its best to ruin the country by losing the treaty.

THE art of borrowing is being carefully taught by the Government organ. It is a beautiful art—for a time. There was no need however, for the P. C. A. to expend so much talent upon explaining "how to do it." The lesson had been learned here long ago. And moreover, the lesson had been well learned. Public borrowing in this country means a very different thing from public borrowing even in such a colony as New Zealand. We have already a large public debt and at the next Legislature it is proposed to increase it enormously. For what has the money already borrowed been spent? Echo will have to answer. Our Government has wasted its money, frittered away the means put into its hands. What public works have not been fairly starved under this administration? What can this administration point to as an assured success? Everything that has been undertaken is but in the embryo stage. We were to have great things done in the matter of water works for the city, and no doubt a portion of the borrowed money, which we are being taught to so easy to get and so helpful when gone, has been paid for those empty pipes which adorn the sides of Nuuanu Avenue for a couple of miles. The public would like to know exactly how many thousand dollars are there lying idle; the original sum must be largely increased by the interest due. Consider again the handsome salary which Major Bender has from time to time drawn, that all goes to the same noble object, the unfinished water works. Then it might be as well to take into consideration the Genealogy Board. That is certainly worth borrowing money for. Researches of this kind must eventually bring a magnificent return to the country.

As far as our citizens can see now, the art of borrowing is very thoroughly taught, short in its worst sense. The mortgage borrowed has been used for everything that but the brains of a very old foolish man could invest. For apparently sake a small pecuniary has totally been spent for what was needed. With the money which the Government has had at its command, we might have had good roads, our lands might have been developed, and the country, instead of being depressed might have been in a flourishing condition.

Borrowing wisely will, under certain circumstances, do well. But what the Government proposes to do for Hawaii is to go in the poll-tail plan. It is *rough* to gather with them. Let us pull at the purse as much as we can; let us have a gay time, let us pay our friends high salaries; and let us draw upon futurity.

Borrowing in the present state of the country is absurd. What the country needs is economy; not extravagance. We have a failing, not an increasing purse, and nothing but the most careful management will pull us through. To borrow money in the position we are now, will be simply to put an old mortgage upon our own shoulders and a heavier burden on those who come after us. Of course, the Government may look at the matter in the light of the Irishman who wanted to know what posterity had done for him. The whole action of the present people in office tends to manage for self darker with the present. Statesmanship there is none. Not a line has been laid down for the future, save where it has been fairly forced down their throats by some strong will. There are truly some three or four plans which will be of benefit for the future, but the Cabinet has done its best to shave them off.

If the Cabinet came forward with a comprehensive scheme for the improvement of our little kingdom, and if they chose a time when commercial conditions were favorable, there might be no objection to reasonably borrowing. But what the Hawaiian Government proposes to do is to borrow for the mere sake of spending; like the spendthrift it would pawn the family jewels, spent the plate and auction off the family portraits to get money—to buy its champagne. The example of New Zealand, which has been quoted is by no means one to follow. Property holders in New Zealand can teach a very different lesson on borrowing from what the Government organ has been mentioning.

NOTES.

THE Independent, of New York city, says "In New Zealand there is a Congress named Hi-Yung Fuk-Yung, which has taken the name of the Chinese, and quite a trade is springing up with it for China. No less than 60 tons has been sent to the Colonies in one year, amounting to a money Government receipts on the value of which is great at $100,000. Women and children collect the fungus for which when dried, they get about twenty cents a pound. It is sent from New Zealand to San Francisco, and from there is shipped to China."

ANOTHER one Baron of Sulifer has before the city council a scheme of the working of the various departments, and among other matters insisted on at the report were some interesting tables of comparison with other cities as to the rates of taxation, the debt and collection, mortality and police statistics. The rate of taxation in various cities per thousand dollars of valuation is given as follows: Boston, $15.00; New York, $20.30; Philadelphia, $19.30; Chicago, $24.30; Baltimore, $20.30; Providence, $24.30; Montreal, $22; Toronto, $21; Quebec, $9.40; Hamilton, $19.30; St. John, $21; Halifax, $22.30; Ottawa, $22.30. By this showing Quebec bears the lightest rate of taxation of the leading cities named, with St. John and Montreal next in order, and closely followed by Halifax. In the statistics of the death rate, which are for the year 1885, the ratio of deaths for 1,000 of population are given as follows: Montreal, 32.65; Toronto, 20.65; Quebec, 30.65; Hamilton, 19.65; Halifax, 19.65; Ottawa, 18.65; St. John, 22.65; Winnipeg, 20.79.

The State of the Sugar Market.

Producers' in a recent review of the sugar market, gives the following information:

"The sugar market during the past two very large months is no doubt, but that they will keep up at the present rate is doubtful. At the same time it is a difficult matter to see what really will be the outcome of the sugar situation. There are several contingencies which are bound to influence the market, for the best beet crop that is expected to be produced in Germany, the change in the condition of the French industry which may be expected in consequence of the increased bounty upon exports. The new bounty is expected to result from 12 to 15 francs, according to the current of the cards. Some estimate that the production of beet sugar in France next year will amount to 500,000 tons, which is about double the production of this year. This new bounty was especially designed against Germany, because through many favorable bounties the Germans had been able to undersell the French differential.

"An important feature of the present moment is the large amount of sugar afloat, and which approximates about 1,000,000 tons, and probably might reach 200,000 tons. The substitution of beet for cane in carrying sugar will bring the steam colliers vessels, which produce the single article largely so near that the crops will be marketed much earlier than formerly.

The Planters' Monthly

Came out in good time on Saturday, and contains the usual amount of good matter. The Essay from the brother of the editorials, and Mr. Thurston very ably argues that the Louisiana planters are in no way injured by our Treaty. If the Islands were to disappear bodily, such a drop in the function of our Legislature would not affect the Louisiana planters. There is also a strong article upon the Spreckels monopoly, pointing out the discrimination against Hawaiian shipping. The information as to the distribution of immigrant laborers is of the utmost value. The communications—Hawaiian Culture, Irrigation, Sugar Beet in Silk and Sorghum, and Notes from Islands, are of interest. The number has good one, and will be read with interest by others besides planters.

Supreme Court of the Hawaiian Islands—In Equity. In Banco.

THE OTOMEA SUGAR COMPANY VS. HERBERT C. AUSTIN AND FRANKLIN H. AUSTIN.

BENSON, JUDD, C.J., McCULLY AND PRESTON, J.J.

Opinion by McCULLY J.

The bill prays for an injunction. It is brought by J. O. Carter as President of the plaintiff company. The injunction was issued by Mr. Justice Preston, to whom the bill was addressed in the first instance.

The real issues involved in this suit and another in which the several parties in interest herein, are likewise concerned, are stated in the following stipulation entered by their counsel. Matters of fact or evidence, and points of argument necessary to be stated in addition to those set forth in the stipulation will be stated in their place in the opinion.

"STIPULATION."

"It is stipulated and agreed by counsel for complainant and respondents that at the meeting of the appeal from the order of Mr. Justice Preston refusing to dissolve the injunction issued in this cause, before the Full Court in banco, that the following questions of law shall be passed upon by the Court:"

"1. Is there any such corporation as the Otomea Sugar Co. duly and legally organized and existing?"

"2. Had C. Brewer & Co. or any person on its behalf any right to attend meetings of the stockholders of the Otomea Sugar Co. and to vote at such meetings by virtue of the transfer of shares made to them by S. L. Austin on the 14th day of October, 1884?"

"For the purpose of enabling the Court to make a decision upon the above points, the following documents may be produced and considered as in evidence and the following facts are agreed upon:

1. The Charter of the Otomea Sugar Company.
2. All books of the Otomea Sugar Company.
3. The certificates of shares issued to S. L. Austin and the endorsements and the certificate issued to C. Brewer & Co.
4. The conveyance from S. L. Austin to defendants of his right to redeem the shares transferred to C. Brewer & Co.
5. Deed from S. L. Austin et al. to the Otomea Sugar Company.
6. Charter of C. Brewer & Co.

"It is agreed that Herbert C. Austin and Franklin H. Austin were not present at the meeting held to organize the Otomea Sugar Co. in person, but that H. C. Austin was represented at said meeting by Jonathan Austin, his proxy; that the officers named in the minutes of said meeting of December 1st, 1880, were regularly elected, provided and company was regularly and formally organized; that the transfer of shares by S. L. Austin to C. Brewer & Co. was recorded on the books of the Otomea Sugar Co. before the election of officers claimed to have been held on November 17th, 1884, but without knowledge or assent of said Brewer & Co.; that officers as such record and the right to make the same was authorized by said transfer to C. Brewer & Co.; that all notices required by law or the charter of said company relating to said meeting of November 17th, 1884, were duly given and a list of the officers claimed to have been elected at said meeting was duly published in the *Honolulu Press* for four weeks.

"The decision of the above questions shall be binding also upon the parties to the suit of S. L. Austin and others vs. C. Brewer and Co., but the right of complainants in the last mentioned suit to redeem said shares shall not be finally decided upon this submission, and the Court shall go in the nature of the transaction upon the transfer of said stock only so far as is necessary to determine who had the right to vote the shares on November 17th, 1884, and to that extent only shall the decision of the Court be binding upon the parties in the suit of S. L. Austin et al. vs. C. Brewer & Co. et al.

The first question of the legal existence of the plaintiff as a corporation, was not raised before the Court below.

The defendants' contention is that the charter was never legally accepted by the petitioning corporators.

Upon examining the charter before us we find the preamble to state that

"Whereas Stafford L. Austin, Herbert C. Austin and Frank H. Austin of Hilo, etc., have duly applied, but the granting petition the "humble subscribers and said Stafford L. Austin, Herbert C. Austin and their associates and successors a body corporate." It must then be considered that the original corporate members were the only two individuals named in the grant.

By the record book of the corporation it appears that October 11, 1880, the day following the date of the charter, there was the first meeting of our subscribers to the stock of the company, at which were present S. L. Austin in person and H. C. Austin and F. H. Austin by proxy to Jonathan Austin. The stipulation admits only the presence of H. C. Austin by proxy. F. H. Austin not being himself a shareholder, the phrase of the incorporators was passed. It is probable that the defendants claim that a proxy sufficient to authorize a representation for an absent stockholder to vote at subsequent meetings would not authorize him to act for his principal at the first meeting of the incorporators. But this proxy was given for the purpose of action in the first meeting of the company when the stockholders met, and was the first business and a necessary preliminary to organization. The provisions of Sections 1629 and 1630 of the Civil Code authorize the action by proxy without any restriction. But, say defendants' counsel, no stock had then or since been issued to H. C. Austin or F. H. Austin. The record of the meeting however shows that a subscriber for 2400 out of the 24,000 shares.

Next it appears that H. C. Austin, having been a partner in our north with S. L. Austin, joins in the deed conveying the real and personal property of the plantation to the corporation. Following this, we find the defendants throughout this answer allude to the existence of the corporation, only denying the validity of the charter and the election of officers. And until subsequent to the election of October, 1884, the defendants have been holding engagements in the plantation under the appointment of S. L. Austin as President of the corporation. They claim in this answer to be "members of the land through artificial entity of the Otomea Sugar Co."

Under these facts it might be sufficient to hold that these defendants are estopped from denying the existence of this corporation. But we go further than estoppel as to these parties. It is established as to every one, and for all purposes, that the charter members of the original company duly accepted their charter, and thereupon organized by the election of officers and adoption of bylaws, and so acquired the privileges, and incurred the responsibilities of a corporation. Force is to be given to continued action and to acts of assumption and recognition.

Angell & Ames on Corp., Ch. 2, Sec. 6.
Bank of U. S. vs. Dandridge, 12 Wheat. 71.
The King vs. Amery, 2 Term. R. 515.

The second question is of the right of C. Brewer & Co., or any person on its behalf, to vote on stock transferred to them by S. L. Austin.

It appears that the entire stock, consisting of 24,000 shares, had been issued to S. L. Austin, and on October 14th, 1880, he transferred this to the corporation of C. Brewer & Co., to cancel the indebtedness existing and necessary to be presently discussed, by writing on the back of each of the two certificates which represented these shares, the words, "Sold to C. Brewer & Co. as of October 1st, 1880," signing the endorsement and delivering the certificates.

C. Brewer & Co. then executed and delivered to S. L. Austin the following instrument:

"HONOLULU, October 14, 1884.

S. L. Austin Esq., Present.

Dear Sir:—As you sold and transferred to us the entire amount of stock in the Otomea Sugar Co. for amount of its debts as of October 1st, 1884, estimated to be as follows, viz:

Book acct. General acct. Oct. 1	$ 43,328 92
Interest	4,359 08
Bonds due May, 1886	20,000 00
" 1887	22,000 00
	$89,688 00
Less estimate value of sugar in hand	39,738 00
Estimated total debt Oct. 1, 1884	$49,950 00

In settlement of which you have sold us all of the stock in the Otomea Sugar Co., thereby cancelling all agreements now outstanding on account of Otomea Sugar Co., so far as we are personally concerned. Nos. 2 certificates No. 2 for 21,600 shares and No. 3, for 2400 shares, making a total of 24,000 shares of stock.

We agree to sell back to you all the stock of the Otomea Sugar Co. in our possession at any time up to October 1st, 1885, for the amount that the amount stands in it at the time of the sale to you (charging interest at the rate of ten per cent (10 per cent.) per annum) all debts and the same rate of interest on all credits from sales of stock or dividends. We to have the privilege during the time of selling stock up to a fourth less than one half of the whole stock, applying the sales of stock made by us and the dividends on our part of the stock in reducing the amount.

"We also agree to pay you the sum of two thousand dollars ($2,000) from October 1st, 1885 to October 1st, 1886, payable in monthly instalments of $166.66, the same to be paid on the 1st day of each month and to be charged by us as part of the expenses of the Otomea Sugar Co."

Yours, &c.,
C. Brewer & Company,
by its President, F. C. Jones, Jr.
C. Brewer & Company,
by its Treasurer, F. O. Carter."

The privilege of buying back was assigned to these defendants by the following endorsement on the above agreement:

"For and in consideration of the sum of one dollar ($1.00) to me in hand paid and in consideration of the fact that a considerable amount of the stock conveyed to C. Brewer & Co. as per the within agreement of agreement has been assigned to them, I hereby grant, make over and sell all my right to redeem and buy back the controlling interest in Otomea Sugar Company to my sons Franklin Hale Austin and Herbert Clark Austin." Another assignment of later date was also introduced in evidence. It is fairly in the record, but does not appear that this was intended to pioneer, and we do not think it need be cited, as relating to a transaction between other parties than those before the Court. The instrument from Brewer & Co. to S. L. Austin, cannot be interpreted by any construction given it by S. L. Austin in assigning his rights.

"OTOMEA, December 15, 1884.

(Signed) S. L. AUSTIN."

The stock was transferred on the stock book and new certificate issued to C. Brewer & Co. November 12th, 1884, the certificate being signed by the officers elected by their voting on this stock at the meeting of that date.

The contention of the defendants is that this transaction were times a mortgage or if it be proved to be a mere pledge of stock, and that the right of voting remains in the mortgagor or pledgor, citing:

Jones on Ch. Mort., Sec. 1-20.
Fullerton vs. Emmet, 20 Cal., 495.
Bether vs. Wells Mun. Co., 1 McCrary, 42.
Brewster vs. Hartley, 37 Cal., 15.
Farrell vs. Hibernian, 51 Cal., 274.
Esparto Wheat, 7 Comm., 402.
Esparto Partner, 4 Wend., 380.
Jones on Pledges, Sec. 442.
Strong vs. Smith, 99 N. Y., 427.
Wonde Fond vs. Coe, 38.
1 Hilton's Digest Corp., p. 320.
Angell & Ames on Corp., Sec. 320.
Morrowitz on Cor., 266.

For the plaintiff is it claimed that the character of the holding of the stock by C. Brewer & Co. gave them the right to vote it, citing:

Bank vs. Case, 29 C. S., 492.
Burgess vs. Seligman, 107 U. S., 20.
Pullman vs. Upton, 96 U. S., 328.
Nat. Bank vs. Waterstown Bank, 102 U. S., 27.
Cruse vs. Hallowell, 10 Kan., 340.
Bassett Brown, 55 N. Y., 240.
Trust Co. vs. Iron Co., 18 N. J., 139.
Rail vs. Hamilton, 6 N. J., 401.
R. R. Co. vs. Stewart, 9 Pa. St., 54.
Supplee vs. Buffum, 9 R. I., 321.
Bank vs. Hingham M. Co., 127 Mass. 502.

In the great variety of cases involved in the foregoing citations, we believe there is no conflict of authority in respect to the proposition that a stockholding which carries with it a liability is the extent of unpaid balances on shares, goes with it a right to vote.

In Burgess vs. Seligman, 107 U. S., 20, it appears that by force of a Missouri statute exempting the holders of such as collateral security from liability for the debts of a corporation, there might be a right to vote, although there is no liability corresponding, this right existing even on stock issued by the corporation as collateral security.

In National Bank vs. Case, 29 U. S., 611, the court say, "It is thoroughly established that one to whom stock has been transferred in pledge or as collateral security for money loaned and who appears on the books of the corporation as the owner of the stock is liable as a stockholder for the benefit of the creditors. Having taken the legal title to his released the former owner—he has taken the apparent ownership and thus become entitled to receive dividends, vote at elections, etc." In this case the responsibility was enforced on the defendant stockholders although it had transferred colorably to one of its clerks. The circumstances of the following case, much relied on by defendant's counsel are substantially unlike the case before us.

Powell vs. Thompson, 3 Cranch, 428, was a bill in equity to compel the defendant to give the plaintiff a power of attorney or proxy to vote at an election of directors upon 300 shares of stock transferred by the plaintiff in trust as a collateral security for a debt, the plaintiff being in default and the stock not forfeited, held that until foreclosure or sale under the mortgage the mortgagor is entitled to vote, and the court will compel the mortgagee to give him a power.

In our case it is to be observed that the limited right to receive dividends by crediting the amount to the vendors debit account was reserved by express agreement to the defendants, but there is no stipulation reserving the right to vote.

We may ask for how long could it be considered that the right to vote remained with the vendor here. The terms of the sale were unconditional. The defendants' agreement, after reciting that the stock is sold and transferred in settlement of the debt of the company as to his personal liability, agrees to sell back within a year all stock which may remain in the hands of C. Brewer & Co. at cost and interest, but with nothing in it that within the year a fraction less than one half the shares. What interest remained in S. L. Austin? Clearly no legal interest. He had only a right up to the first of October, 1885, to purchase an interest on certain terms, and he had not purchased. The question is not affected by the stock being paid up in full. Either kind of stock may be mortgaged, pledged or conditionally sold.

In case of a sale of partially paid stock made in the terms and with the conditions of this it is clear that the purchaser and holder would be held liable for corporation assessments and debts and that the vendor would not be looked to. Reason and authority agree that the responsible party has the vote, and has it from the date of the transfer. The only age of repurchase may not be exercised. Nothing remained to be done to vest the title of the stock in C. Brewer & Co.

Experts Willcocks, 7 Cowen, 411, is relied on by defendant's counsel as a leading case in support of his position. In our view it is directly adverse to it. The court say, "Hypothecation is conventional and implies the power of rendering the subject available by way of sale to satisfy the debt on default of payment. The stock stood on the transfer book in the name of the voters. This is generally conclusive upon the inspectors and we consider it so in this case. But we do not hesitate to say that in a clear case of hypothecation the pledgee may vote. The possession may well continue with him consistently with the nature of the contract and the stock remain in his name. Till enforcement and the title made absolute in the pledgee he should be received to vote."

Barker's case, 2 Wendell, 351, follows the same line, holding that hypothecated stock standing in the pledgee's name may be voted by him. To the same effect is Jones on Pledges, Sec. 441, and in all the authorities cited we find no support for the proposition that stock sold and transferred on the books can be voted by the vendor.

The legal title had passed. The legal time for repurchase had elapsed. Shares sold by Brewer & Co. would undoubtedly have carried the right to vote. The whole shares in the hands of Brewer & Co. must be considered to have the same right. Upon no other ground can the defendants claim the right; the second, when the present officers were elected, was held after the lapse of the year during which it was agreed that S. L. Austin might buy back unsold shares in the hands of Brewer & Co. at cost and interest. In our opinion the right to vote was complete.

Upon the argument before us Mr. Ashford of the defendant's counsel made a third proposition, viz: that as it appears that Monge, Jones and Carter are officers of the corporation of C. Brewer & Co., whose interests are hostile to those of the Otomea Sugar Co., they were and are still disqualified from holding office in the Otomea Sugar Co.

In regard to the law bearing upon the above second point, we have the following decisions on this point. If Brewer & Co. be considered the shareholders of all the stock in the company how can they be considered as hostile to themselves. The ground of hostility or adverse interest must be taken to be that they were creditors of the company, and the sole creditors. Now it must be conceded that there could be no conflict of interest between the Otomea and Brewer & Co. being prosperous and valuable. Neither would this be an interest hostile to the vendor of the stock, for however valuable it might become, he had the privilege of buying it back at cost, and of the management of C. Brewer & Co. made it worth less he was under no obligation to take it. The cases cited in support are distinguishable in that they are not cases where the alleged hostile or adverse interest is the owner of the whole stock which might be affected by the dealings. We agree with the language of the Ohio case cited in Morawitz sec. 265: "A director whose personal interests are adverse to those of the corporation, but who does not own a majority of the stock, so he finds that he has personal interests which are conflict with those of the company he ought to resign." These directors had no interests hostile to the Otomea Company, and we think none hostile to the former holder of the stock.

Following the argument of Mr. Ashford, Mr. Thurston, counsel for defendants, submitted arguments, chiefly based on opinions of the defendants were in possession of the plantation claiming right of possession and should not be ejected by an ex parte injunction. An examination of the whole record does not sustain the premises of this argument. It is in proof in the case of Stafford L. Austin vs. C. Brewer & Co. and in this case that S. L. Austin was the manager of the plantation by the Directors of the Otomea Sugar Co., November 17th, 1884. He has held to manage, drawn his drafts and exercised all the functions of a manager. He is not now and never has been the holder of stock in the company. In no view can he be considered as an adverse holder under claim of right and possession. The case below had before it as we now have it in review, the whole pleadings and proofs in the several cases concerning these parties, and it was found to consider them as affecting this particular case.

The petitioners made a sufficient showing that the defendants being servants of the plaintiff company were asserting claims and exercising acts in consonance therewith which the plaintiff was entitled to have restrained by injunction.

We confirm the judgment of the court below.

F. M. Hatch for Plaintiffs.
Ashford & Ashford and L. A. Thurston for defendants.

Honolulu, March 12th, 1887.

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Honolulu Agricultural Co.	$ 100	100
Walker's Steamship Co.	$ 100	100
C. Brewer & Co.	100	100
Kahuku	100	100
Waialua Sugar	100	100
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New Advertisements.

Mortgagees' Notice of Foreclosure & of Sale.

IN ACCORDANCE WITH A POWER of sale contained in a certain mortgage made by Kaanana and Pukahui his wife to Samuel Savidge, dated the 29th day of March, 1884, recorded in Libre 86, page 407. Notice is hereby given that said mortgagees intends to foreclose said mortgage, for condition broken, and upon said foreclosure will sell at public auction, at the salesroom of E F Adams & Co., in Honolulu, on MONDAY, the 12th day of April, 1886, at 12 M. of said day, the premises described in said mortgage as below specified.

Further particulars can be had of W R Castle, Attorney-at-Law.

SAMUEL SAVIDGE,
Mortgagee.

Premises to be sold are: 1st—All those premises described in R P 1868, L C A 1042 to Kaanana, 8 65-100 acres at Nukawa, Kalihi, Oahu.

2nd—All that certain parcel of land situate at Kaimakapil, conveyed to Pukahui by Kaanana by deed recorded in Libre 81, page 412, and also conveyed to Kaanana by deed of J Wahinana, recorded in Libre 71, page 31.

3rd—All those premises described in R P 5891, L C A 2086, to Hiwa, 3 acres at Kaimakapil, Kaneohe, Oahu.

[1189 4t]

Mortgagee's Notice of Foreclosure & of Sale.

IN ACCORDANCE WITH A POWER of sale contained in a certain mortgage made by J M Poepoe to Paulo K Nina dated the 2nd day of October, 1882, recorded in Libre 76, page 430. Notice is hereby given that said mortgagee intends to foreclose said mortgage, for condition broken; and upon said foreclosure will sell at public auction at the salesroom of E F Adams & Co. in Honolulu, on MONDAY, the 12th day of April, 1886, at 12 M. of said day, the premises described in said mortgage as below specified.

Further particulars can be had of W R Castle, Attorney-at-Law.

FRANCIS MOSS,
Mortgagee.

Premises to be sold are situated in Honolulu, Oahu: All those premises described in deed of Nian to J W Kaiiolo, father of said J M Poepoe, recorded in Libre 30, page 466; and being leased to Yee Nam at the annual rental of $120 per year. 1188 4t

Mortgagee's Notice of Foreclosure & of Sale.

IN ACCORDANCE WITH A POWER of sale contained in a certain mortgage made by David Oleole to Nina E K Bingham, dated the 14th day of November, 1882, recorded in Libre 78, page 1. Notice is hereby given that said mortgagee intends to foreclose said mortgage, for condition broken, and upon said foreclosure will sell at public auction at the salesroom of E F Adams & Co. in Honolulu, on MONDAY, the 12th day of April, 1886, at 12 M. of said day, the premises described in said mortgage as below specified.

Further particulars can be had of W R Castle, Attorney-at-Law.

E. K. BINGHAM,
Mortgagee.

Premises to be sold are situated in Waianae, Oahu: All the undivided ½ of said David Oleole in the premises described in R P 5891, L C A 6294 to Kaiwale, containing an area of 41.00 of an acre. Also his share in the undivided one-half of the Ahupuaa of Waianae, Oahu. 1188 4t

Mortgagee's Notice of Foreclosure & of Sale.

IN ACCORDANCE WITH A POWER of sale contained in a certain mortgage made by John Kalilikaia to J C Lowery, dated the 3rd day of December, 1882, recorded in Libre 78, page 87. Notice is hereby given that said mortgagee intends to foreclose said mortgage, for condition broken, and upon said foreclosure will sell at public auction at the salesroom of E F Adams & Co. in Honolulu, on MONDAY, the 12th day of April, 1886, at 12 M. of said day, the premises described in said mortgage as below specified.

Further particulars can be had of W R Castle, Attorney-at-Law.

FRED. C. LOWERY,
Mortgagee.

Premises to be sold are: All those premises situated at Kalihi, Kaalaea, Oahu, more particularly described in R P 5892, L C A 5972, leased to Kalilikaia, father of said mortgagor, containing an area of 2 30-100 acres. 1188 4t

Mortgagee's Notice of Foreclosure & of Sale.

IN ACCORDANCE WITH A POWER of sale contained in a certain mortgage made by J B Kekauonohi to Mo B Johnson, dated the 30th day of December, 1882, recorded in Libre 78, page 220. Notice is hereby given that said mortgagee intends to foreclose said mortgage, for condition broken, and upon said foreclosure will sell at public auction at the salesroom of E F Adams & Co. in Honolulu, on MONDAY, the 12th day of April, 1886, at 12 M. of said day, the premises described in said mortgage as below specified.

Further particulars can be had of W R Castle, Attorney-at-Law.

MRS. B. JOHNSON,
Mortgagee.

Premises to be sold are: All those premises situated at