

Supreme Court of the Hawaiian Islands. THOMAS K. NATHANIEL vs. SAMUEL K. PUA AND THOMAS P. SPENCER. IN CHAMBERS BEFORE JUDGE J. BILL FOR INJUNCTION AND ACCOUNT. DECISION.

The plaintiff shows that he is the author and owner of a pamphlet entitled, "Ka Duke Moololo o Hon. Robert William Wilkoki" (The History of Hon. Robert William Wilcox) and that the same has been duly copyrighted and published in this country; that he began to offer the work for sale about two months ago at two dollars a copy; that about a month thereafter the defendants published and placed on the market a pamphlet which the plaintiff claims to be an infringement of his copyright and to have caused him great damage in diminishing the sale of his work.

The plaintiff sold some three hundred copies of his pamphlet up to the time the defendants' work appeared, which was sold for seventy-five cents a copy, after which time, in consequence of the competition thereby created, he was compelled to put down the price of his book to one dollar a copy, and even at that price has been able only to dispose of about fifty copies.

The plaintiff pointed out thirteen or fourteen passages in the defendants' book which he claimed were borrowed from his work and illegally used in the preparation of theirs. At the close of the plaintiff's evidence, the defendants' counsel moved that the bill be dismissed on the ground that a prima facie case had not been made out. He also made the point that the copyright notice in plaintiff's book was not according to law and did not protect him.

Several of the alleged piracies purport to be translations of public documents, such as His Majesty's letter to the Minister of Finance and the Marshal's proclamation to government employees to report for duty during the insurrection of July 30th, 1889. It is admitted that these documents were published in the newspapers of Honolulu immediately after the insurrection; the plaintiff therefore cannot claim the exclusive right to the use of them in their original form, though he might to his own translations of them; a comparison of the translations, however, in the two works shows conclusively that those in the defendants' books are not transcripts of those published by the plaintiff, but are original translations. A third document claimed by the plaintiff to have been copied from his work is a letter written by R. W. Wilcox to the King on the morning of the 30th of July, 1889, but as the plaintiff's book shows that the contents of this letter were given in evidence in the trial of Loomans for treason, by R. W. Wilcox, who was a witness in that case, it does not appear how it became the exclusive property of the plaintiff after having been thus given, in a certain sense, to the public.

Of the remainder of the alleged piracies, the greater number are mere brief statements of well known dates, facts and proper names which have a necessary similarity to the statement of the same matters in the plaintiff's book simply because they refer to the same matters; they are all things of public notoriety in which an exclusive right cannot be claimed without a showing of some circumstances in collecting and arranging them, which might be the basis of a title, but no such circumstances are shown. There is, however, a passage in defendants' book which is claimed by the plaintiff to be a piracy which tends perhaps more to support the complaint than any of the other passages which have been pointed out. This extract from the Duke Hao, the defendants' book, is as follows:

"O na Kuhina o ka Moi, ua malama ae lakou i ka halawai Ahu Kuhina maloko o ka Hale Hoookoloko Hoomala o Honolulu nei me na Elele Kanikela o na Anupuni. Ua hooholo ia ma ia halawai ana, o ke Kuhina Waiwai S. M. Damon ka mea nana e lawe aku i ka olelo kaouha o ia halawai, e noi aku ia Wilkoki ma ka inoa o ke Anupuni Hawaii no ka malama ana i ka maluhia-e haawi pio mai oia a me kona mau koai ke Anupuni mamua o ka lawelawe ia ana o kekahi hana."

The passage in plaintiff's book of which the foregoing extract is claimed to be a piracy is as follows: "Ua halawai iho la ka Aha Kuhina o ke Anupuni, na Kuhina Noho o na Aina E, na Kanikela a me ke Kapena o ka moku kana Adamu, ua hooholo iho la lakou e hoouna aku ia S. M. Damon e hele a noi aku ia Wilkoki e haawi pio mai iaia a me kona poe."

The translations of these two extracts are as follows: From the Duke Hao o Hawaii. "The Ministers of the King held a Cabinet meeting in the Police Court House of Honolulu, with the diplomatic representatives of foreign governments. It was agreed at the meeting that S. M. Damon, the Minister of Finance, should be the one to convey the command of the meeting and ask Wilcox in the name of the Hawaiian Government that he would, for the preservation of order, give himself and his soldiers up to the government as prisoners before other measures should be employed." From Duke Moololo o Hon. Robert William Wilkoki. "The Cabinet Council of the Gov-

ernment met the resident Ministers of foreign lands, the Consuls and the Captain of the war-ship Adams, and they decided to send S. M. Damon to go and ask Wilcox to give himself and his men up as prisoners."

We find in these extracts two descriptions of the same event, which was one of public notoriety. The defendants had as much right to prepare and publish an account of it as the plaintiff. Their description contains no intrinsic evidence of being a copy of the similar description in the other book. True, it may have been borrowed from the plaintiff's work and so changed as to destroy the evidences of its origin, but there is no evidence of this and no particular necessity for it on the part of the defendants, as the information could in all probability have been obtained from newspapers and persons present on the occasion referred to. Moreover, the passage, standing alone, is not of sufficient importance even if it is a piracy, to support the plaintiff's contention as to his damage in consequence of it, as well as of the other alleged piracies, which, as I have already remarked do not support the bill of complaint.

"Where the extracts are trifling, the Court will not interfere." (Bell v. Whitehead, 17 L. J., 141, and Curtis on Copyright, 324.) I have compared the two books in other particulars than those pointed out by the plaintiff, and do not find anything in the arrangement of the defendants' book, which is suggestive of the arrangement of the other, nor have I come across any features besides those already referred to which appear to have been borrowed from it. The defendants certainly have committed no greater piracy than the obvious theft of the popular title of the great Englishman, involved in the name they have given to their work.

Judge Story, in Emerson vs. Davies, 3 Story's R. 768, says: "It is not sufficient to show that it (defendants' book) may have been suggested by Emerson's, or that some parts and pages of it have resemblance in methods and details and illustrations to Emerson's. It must be further shown that the resemblances in those parts and pages are so close, so full, so uniform, so striking as fairly to lead to the conclusion that the one is a substantial copy of the other or mainly borrowed from it. In short, that there is substantial identity between them. A copy is one thing, an imitation or resemblance another." By this test I do not find that the plaintiff has made such a showing as to call for a further defence on the part of the defendants.

I therefore allow the defendants' motion and will sign an order for the dismissal of the bill of complaint. As this disposes of the case I need not consider the other point. September 23, 1890. W. C. Achi for plaintiff; A. Rosa for defendant.

WARSHIPS ON TRIAL. The new steel cruiser Philadelphia, bearing the blue pennant of Rear Admiral Kimberly, President of the Naval Board of Inspection, returned from a forty-eight hours' trial at sea. The tests were satisfactory, although the Board finds room for improvement in some minor details. Owing to the foul condition of the cruiser's bottom, no trial of speed was made. The gun divisions were called to quarters, and two rounds at a high elevation and extreme train forward and aft were fired from each gun of the main battery. The blast shattered the class in the skylights and damaged the cutters. The deck and the gun platforms stood the severe strain well, but defects were developed in the carriages of three of the six-inch rifles, which will probably disable them. On Friday the speed and turning trials were made with 123 pounds of steam, and making ninety-five revolutions to the minute, the cruiser described a circle with the starboard helm in six minutes three seconds. Under the same conditions with the port helm she heeled three degrees, and took eight minutes. The reason for this remarkable performance has yet to be explained. The severest test to which the cruiser was subjected was reversing the engines while running at full speed. The peculiar type of her engines enabled the vessel to perform the test safely and successfully. The time from going at full speed ahead until headway was checked was one minute and fifty seconds. The cruiser's tactical diameter, which is the diameter of the circle in which she can turn, is 2400 feet; with one propeller backing the diameter is much less.

The Newark has returned from her trial trip. Chief Engineer Able reports that her engines greatly exceed the contract requirement of 8500 horse power. The vessel attained a speed of twenty knots and over, and is fully equal to the Baltimore and Philadelphia.

A careful estimate made by the Maine Central Railroad says that 100,000 pleasure-seekers have entered the State this season. Lord Queensberry writes that he is not an atheist, but an "agnostic." He believes in religion that comes under the Marquis of Queensberry rules, probably.

Advertisements. WILDER'S Steamship Company (LIMITED). STMR. KINAU LORENZEN : : Commander. Will leave Honolulu at 2 o'clock p. m., touching at Lahaina, Maalaea Bay and Makena the same day; Mahukoua, Kawaihae, and Laupahoehoe the following day, arriving at Hilo at midnight.

STMR. KINAU LORENZEN : : Commander. LEAVES HONOLULU: ARRIVES AT HILO. Tuesday, Oct. 7 Wednesday, Oct. 8 Friday, Oct. 17 Saturday, Oct. 18 Friday, Oct. 26 Saturday, Oct. 27 Tuesday, Nov. 5 Wednesday, Nov. 6 Friday, Nov. 15 Saturday, Nov. 16 Tuesday, Nov. 24 Wednesday, Nov. 25 Friday, Nov. 29 Saturday, Nov. 30 Tuesday, Dec. 3 Wednesday, Dec. 4 Friday, Dec. 13 Saturday, Dec. 14

STMR. LIKELIKE DAVIES : : Commander. Leaves Honolulu each week for Kaunakakai, Kihului, Huelo, Keanae, Hana, Hamoa and Kihului. STMR. HAWAII CAMERON : : Commander. Leaves Honolulu regularly for Hamakoa. STMR. KILAUEA HOU NYE : : Commander. Leaves Honolulu each week for Paauhau, Kohala, and Oahu.

STMR. LEHUA CLARKE : : Commander. Leaves Honolulu each week for Hakalan, and Omea. STMR. MOKOLII MCGREGOR : : Commander. Leaves Honolulu each week for Kaunakakai, Kamalo, Pukou, Labaina, Olowalu, Lanai, Moanui, Halawa, Wailua, Pelekann and Kalaupapa.

TICKETS per S. S. KINAU for the VOLCANO : : \$50 W. C. WILDER, President. S. B. ROSE, Secretary. Capt. J. A. KING, Port Superintendent. OFFICE—Corner Fort and Queen Streets, Honolulu. 1329-17

FRANK GERTZ, Fort Street, Honolulu. Importer and Manufacturer of Ladies', Misses', Gents' and Youths' — FINE — BOOTS & SHOES Of the Best and Latest Make. 1329-3m

FAIRVIEW HOTEL, Restaurant and General Store. Famous Summer Resort and Sea Bathing. LIHUE, KAUAI. Conducted upon First-Class Principles. COOL AND PLEASANT ROOMS. MEALS AT ALL HOURS. The Table is Supplied with the Best the Market Affords. BILLIARD ROOM HORSES AND CARRIAGES Will be furnished at Special Rates for Tourists and Excursionists, and every facility is offered to parties wishing to visit points of interest, the many waterfalls and cascades in the immediate neighborhood. Carriage and Baggage Wagons will meet Every Steamer. 1329-3m C. W. SPITZ, Prop.

W. H. RICE, STOCK RAISER and DEALER BREEDER OF Fine Horses and Cattle From the Thoroughbred Arabian Stallion... ALF Norman Stallion... SYDNEY Norman Stallion... ROYER ALSO A CHOICE LOT OF Bulls, Cows and Calves From the Celebrated Bulls Sussex, Hereford, Ayrshire & Durham A LOT OF Fine Saddle and Carriage Horses FOR SALE. 2 PURE BRED HEREFORD BULLS FOR SALE Tourists and Excursion Parties desiring Single, Double or Four-in-hand Teams or Saddle Horses can be accommodated at W. H. Rice's Livery Stables. All communications to be addressed to 1319-17 W. H. RICE, Lihue, Kauai. READ THE DAILY ADVERTISER if you want the latest news.

General Advertisements. Boston Board of Underwriters. AGENTS for the Hawaiian Islands. 1372-17 C. BREWER & CO. Philadelphia Board of Underwriters. AGENTS for the Hawaiian Islands. 1372-17 C. BREWER & CO. HAMBURG... BEEMEN Fire Insurance Company. The undersigned having been appointed Agents of the above Company, are prepared to insure Risks against Fire on Steam and Brick Buildings, and on Merchandise stored therein, or the most favorable terms. For particulars apply at the office of F. A. SCHAEFER & CO. 1304-17

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. 1376 by F. A. SCHAEFER & CO., General Agts.

NORTH BRITISH AND MERCANTILE Insurance Company. TOTAL ASSETS AT 31ST JANUARY, 1890. £10,075,212 17s. 3d. 1—Authorized Capital—£2,000,000 £ s. d. Subscribed... 2,750,000 0 0 Paid-up Capital... 87,500 0 0 2—Fire Funds... 2,894,285 19 10 3—Life and Annuity Funds... 6,963,426 17 4 £10,075,212 17s. 3d. Revenue Fire Branch... 1,361,356 9 6 Revenue Life and Annuity... 806,998 14 2 Branches... 506,868 14 2 £2,175,222 3s. 8

ED. HOPFSCHLAEGER & CO., 1389-17 Agents for the Hawaiian Islands. GENERAL INSURANCE COMPANY, For Sea, River & 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. 1304-17 Agent for the Hawaiian Islands.

Mutual Life Insurance Company, —OF NEW YORK— ASSETS DEC. 31, 1889, - - - - \$136,401,328.02 Reliable, Profitable, Prompt and Certain. Those who desire safe Life Insurance are invited to apply to S. B. ROSE, 1388-17 General Agent Hawaiian Islands.

PRUSSIAN NATIONAL INSURANCE COMPANY, —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, 1388-17 At Wilder & Co.

Northern Assurance Company. [ESTABLISHED 1836.] Accumulated Funds: - - - - £3,000,000 The agent of this Company in Honolulu has received instructions to Reduce the Rates of Life Insurance In this country to a minimum rate, without any extra premium for residence in the Hawaiian Islands. Among the principal advantages attaching to a Life Policy in the "NORTHERN," attention is specially drawn to the following: SURRENDER VALUES of Lapsed Policies are held at the disposal of the Assured for Six Years. IMMEDIATE PAYMENT of Claims, without deduction of discount. ABOLITION of restrictions on Foreign Travel and Residence. THEO. H. DAVIES, 1279-9m AGENT.

TRANS - - ATLANTIC Fire Insurance Company, —OF HAMBURG— Capital of the Co. and Reserve, Reichsmarks 8,300,000 Capital their Re-Insurance Companies 35,000,000 Total... Reichsmarks 43,300,000 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 vessels in the harbor, against loss or damage by fire, on the most favorable terms. H. HACKFELD & CO. 1384-17

Wing Wo Tai & Co. Importers and Wholesale Dealers in Chinese, Japanese, American and EUROPEAN GOODS. Per Bark VELOCITY, from China, RATTAN CHAIRS, And a full Line of Japanese Crockery, Camphor Trunks, White Silks, Pongee Silks, Silk Handkerchiefs, Manilla Cigars, best quality, etc. 1328-3m

General Advertisements. 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 steamer. THEO. H. DAVIES, 1388-17 Agent Brit. For. Mar. Ins. Co., Limited. FIRE INSURANCE. Royal Insurance Co LIVERPOOL, Capital and Funds, - \$ 29,000,000 UNION—New Zealand, Capital, - - - - \$ 10,000,000 — TAKE RISKS ON — BUILDINGS, MERCHANDISE, MACHINERY, FURNITURE, And all other Insurable Property at Current Rates. JOHN S. WALKER, 1322-17 Agent for Hawaiian Islands.

MARINE INSURANCE. The undersigned is authorized to take Marine Risks on HULLS, CARGOES, FREIGHTS and COMMISSIONS, At Current Rates in the following Companies, viz: Union Fire and Marine, of New Zealand, Madgeburg General Ins. Co., Sun Insurance Co., San Francisco. JOHN S. WALKER, 1322-17 Agent for Hawaiian Islands.

THE BABCOCK & WILCOX Water Tube Boiler. The undersigned is authorized to take Marine Risks on HULLS, CARGOES, FREIGHTS and COMMISSIONS, At Current Rates in the following Companies, viz: Union Fire and Marine, of New Zealand, Madgeburg General Ins. Co., Sun Insurance Co., San Francisco. JOHN S. WALKER, 1322-17 Agent for Hawaiian Islands.

BEAVER SALOON H. J. NGATE, Proprietor. Begs to announce to his friends and the public in general That he has opened the above Saloon where first-class Refreshments will be served from 3 a. m. till 10 p. m. under the immediate supervision of a Competent Chef de Cuisine — THE FINEST GRADES OF — Tobaccos, Cigars, Pipes and Smoker's Sundries Chosen by a personal selection from first-class manufacturers, has been obtained, and will be added to from time to time. —One of Brunswick & Balke's— Celebrated Billiard Tables Is connected with the establishment, where lovers of the cue can participate. 1304-3m BENSON SMITH & CO. JOBBING AND MANUFACTURING PHARMACISTS A FULL LINE OF Pure Drugs. CHEMICALS, AND Medicinal Preparations, AT THE LOWEST PRICES. 1320 115 and 115 Fort Street. 3m

Metropolitan Market King Street. Choicest Meats —FROM— Finest Herds. G. J. WALLER, Prop. FAMILIES AND SHIPPING SUPPLIED ON SHORT NOTICE — AND AT THE — Lowest Market Prices. All Meats delivered from this Market are thoroughly chilled immediately after killing by means of a Bell-Coleman Patent Dry Air Refrigerator. Meat so treated retains all its juicy properties, and is guaranteed to keep longer after delivery than freshly-killed meat. 1329-3m

Executors Notice. THE UNDERSIGNED HAVING been duly appointed Executor of the Will of ANTOINE G. CUNHA, late of Honolulu, deceased, notice is hereby given to all persons having claims against said Estate to present the same duly authenticated with proper vouchers, to the undersigned within ten months from the date hereof or they will be forever barred, and all persons indebted to said Estate are requested to make immediate payment to the undersigned. ANTOINE G. CUNHA, Jr., Executor of Will of ANTOINE G. CUNHA, late of Honolulu, October 21st, 1890. 1327-3m

Foreign Advertisements. WILLIAMS, DIBOND & CO., Shipping & Commission Merchants. 202 Market and 3 Pine street, San Francisco. 1381 W. H. CROSSMAN & BRO., COMMISSION MERCHANTS. 77 and 79 Broad Street, New York. Reference—Castle & Cooke, and J. T. Waterhouse. 1384-17

THEO. H. DAVIES, HAMBURG JARVIS. THEO. H. DAVIES & CO., COMMISSION MERCHANTS, 12 & 13 The Alban, LIVERPOOL. 1381-17 Only "Pebble" Establishment Muller's Optical Depot 135 Montgomery St., near Bush, S. F., Cal. Specialty 35 Years. The most complicated cases of defective vision thoroughly diagnosed. FREE OF CHARGE. Orders by mail or express promptly attended to. Compound Astigmatic Lenses Mounted in order at two hours' notice. 1381-17

DR. J. COLLIS BROWNE'S CHLORODYNE. THE ORIGINAL AND ONLY GENUINE. Advice to Invalids.—If you wish to obtain quiet refreshing sleep, free from headache, relief from pain and anguish, to calm and assuage the weary aching of protracted disease, to vivify the nervous system, and regulate the circulating system of the body, you will provide yourself with that marvellous remedy discovered by Dr. J. Collis Browne (late Army Medical Staff), to which he gave the name of CHLORODYNE, and which is admitted by the profession to be the most wonderful and valuable remedy ever discovered. CHLORODYNE is the best remedy known for Coughs, Consumption, Asthma, Bronchitis, Croup, Cholera, and all the ailments of the Indian home, and is the only specific in Cholera and Dysentery. CHLORODYNE effectually cuts short all attacks of Epilepsy, Hysteria, Palsy, and Spasms. CHLORODYNE is the only palliative in Neuralgia, Rheumatism, Gout, Cancer, Toothache, Menstrual, &c.

From Symes & Co., Pharmaceutical Chemists, Medical Hall, 51m, January 5, 1889. J. T. Davenport, Esq., 33, Great Russell Street, Bloomsbury, London. Dear Sir,—We embrace this opportunity of congratulating you upon the wide-spread reputation this justly esteemed medicine, Dr. J. Collis Browne's Chlorodyne, has earned for itself, not only in Hindostan, but all over the East. As a remedy for general utility, we must question whether a better is imported into the country, and we shall be glad to hear of its finding a place in every Anglo-Indian home. The other brands, we are sorry to say, are now relegated to the native bazaar, and, judging from their sale, we fancy their sellers there will be but evanescent. We could multiply instances of the efficacy of the extraordinary efficacy of Dr. Collis Browne's Chlorodyne in Diarrhoea and Dysentery, Spasms, Cramps, Neuralgia, the Vomiting of Pregnancy, and as a general sedative, that have occurred under our personal observation during many years. In Choleraic Diarrhoea, and even in the more terrible forms of Cholera itself, we have witnessed its surprisingly controlling power. We have never used any other form of medicine than Collis Browne's from a firm conviction that it is decidedly the best, and also from a sense of duty we owe to the profession and the public, as we are of opinion that the substitution of any other than Collis Browne's is a deliberate breach of faith on the part of the chemist or pharmacist and PATENT CO. Members of the Pharm. Society of Great Britain. His Excellency the Viceroy's Chamberlains.

CAUTION.—Vice-Chancellor Sir W. Page Wood stated that Dr. J. Collis Browne was, undoubtedly, the inventor of Chlorodyne; that the story of the defendant Symes & Co. liberally untrue, which, he regretted to say, had been a wrong to—See "The Times," July 13, 1884. Sold in bottles at 1s. 1½d., 3s. 6d., 6s. 6d., and 12s. each. None is genuine unless the words "Dr. J. Collis Browne's Chlorodyne" on the Government stamp. Overwhelming medical testimony accompanies each bottle. Caution.—Beware of Piracy and Imitations. Sole Manufacturer—J. T. DAVENPORT, 33 Great Russell Street, Bloomsbury, London. 1384-6m

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