In the Supreme Court of the Hawaiian Islands.

In Banco.

SPECIAL TERM, MARCH 30th, 1891.

THE KING vs. J. R. GASPAR.

Exceptions from the Third Judicial Circuit Court.

BEFORE JUDD, C. J., M'CULLY, BICKERTON AND DOLE, J. J.

The defendant being charged with the illicit sale at Hilo, Hawaii, of spirituous liquors, offered the defence that he was the servant of a licensed spirit dealer in Honolulu.

Held, that the license of such dealer not being produced in Court, he was to be considered as unlicensed, by Compiled Laws, page 699, Section 35.

Held, that the dealing of the defendant as a servant or agent of the licensed dealer in transferring or disposing of spirituous liquor is to be considered an illicit sale in view of the provisions of sections two and three of Chapter 67 of the Session Laws of 1888.

Exceptions are overruled.

OPINION OF THE COURT BY M'CULLY, J.

The defendant was tried at the November Term, 1890, of the Third Judicial Circuit Court, on his appeal from a conviction in the Police Court of Hilo, of the offense of selling liquor without a license. The liquor in question was a keg of wine sold to a Japanese, and the defense was that the defendant was merely an agent or servant of the Hawaiian Wine Company of Honolulu, or of F. Brown, the manager, receiving orders for their goods, forwarding the orders and receiving and delivering the articles ordered.

The evidence is joined to and made a part of the bill of exceptions.

The first exception is taken to the instruction to the jury that "the defendant claimed to act as the servant of F. Brown, who was a licensed dealer in liquors, but the license of said Brown is not produced in evidence. Under the statute you must find the defendant guilty." The statute referred to is Section 35 of an Act concerning the sale of spirituous liquors, found at page 699 of the Compiled Laws, viz., "In all proceedings against any persons for selling or allowing to be sold any spirituous liquor without a license such person shall be deemed to be unlicensed unless he shall at the hearing of the case produce his license." Against this positive statute prescription, the counsel for the defendant cites Act which is Chapter 28 of the Session Laws of 1890 which requires all persons holding a license for any class of business to keep it exposed to view in some prominent place on the licensed premises, under penalty of a fine. We are of opinion that it would not be a common sense construction of these laws to hold that a licensee should not take his license down from its place in his store and carry it into Court when the exhibition of it there is required in his defense upon a charge of misdemeanor in selling without such license. In the possible case of his being prosecuted under the latter statute, it would be a reasonable defense that he was at the time in question exhibiting it in Court. By no manner of construction does the latter statute repeal the former statute, which is a rule of evidence. The objects of the two statuteo are not inconsistent but concurrent, namely in both cases to shew that a party is carrying on business under a license.

This instruction of the Court was therefore correct, and upon this alone the verdict might have been sustained. But the other position taken by the defense should be discussed and settled in this case.

The counsel for the Crown requested the Court to give the following instructions which the Court gave.

1. The license granted to the Hawaiian Wine Company for Frank Brown to sell spirituous liquors at a designated store in Honolulu, does not authorize Gaspar to sell or deliver such liquors in Hilo.

2. If Gaspar delivered this keg of wine to the Japanese in Hilo and collected the money for it then, that is a sale within the meaning of the law, and any license to Mr. Frank Brown does not protect defendant. And the defendant asked for the following instruction, "If the jury find that at the time of the sale of the keg of wine to the Japanese, the defendant was the servant of a licensed dealer, having no interest in the sale and delivery except as such servant and that the defendant in the course of his employment sent an order for said wine to the licensee who forwarded the wine to the defendant to be delivered they will acquit," which requested instruction the Court refused to give.

There is some confusion of language in the latter instruction. The first part of it imports that the defendant admitted that he had sold the keg of wine. He does not admit so much. He does not claim that under a spirit dealer's license for Honolulu branch stores can be maintained or that persons can be authorized or employed by the licensee, at other places than his licensed place of business, to make sales, under the protection of his license, of goods sold, charged or consigned generally to such agent or servants. We may say that sales so made would be in plain contravention of the intent and effect of a "dealer's spirit license." These licenses are among those which are subject to special police restriction. They are issued for a designated locality. They are restricted by the high terms of a payment of five hundred dollars and of a bond in the sum of one thousand dollars. It is provided that no part of the liquor may be drank on the premises nor upon any contiguous premises in a house directly or indirectly under the control of the licensee. The penalty of the bond may be forfeited if the licensee shall be convicted of felony, perjury or other infamous offense or of any offense against or violation of the revenue laws or of any other offense under the statute concerning licenses which involves forfeiture. It is plain that the license permits the dealer to do the business for which he is licensed only at the place of business which is designated, if this police supervision is to be maintained.

May not such dealer upon the order of a customer resident in another part of the kindom sell for cash or upon credit and forward or ship the goods to him?

There is a statute especially applicable to this, and restricting it Chap. 67 of the Session Laws of 1888, which is entitled An Act to Better Prevent Illicit Traffic in Spirituous Liquors, Sections 2 and 3 whereof entirely control the particular case at bar. Section 2 provides that no licensed peddler, trader or storekeeper clerk or employee, shall forward to any other person any order for the purchase of spirituous liquors to be shipped or sent to or for the use of any other person than himself. And Section 3 provides that "it shall be unlawful for any person not being a licensed dealer in spirituous liquors or a common carrier of goods to receive into or have in his possession custody or control at any port outside the city of Honolulu, any spirituous liquor with intent to sell, transfer or dispose of such spirituous liquor or any part thereof to any other person or persons." Under this legislative construction of the intent and scope of the dealer's license under which the defendant sought to protect himself, any such agency for the extension of the business of a dealer's license has been made illegal by statute, and not only sales, but *the receipt of orders* and transfer and delivery of spirituous liquors by an agent are made illegal acts.

The instructions given were correct and the defendant's instruction was properly denied.

Exceptions overruled.

C. Creighton, Deputy Attorney-General for the Crown; P. Neumann for the defendant.

Honolulu, April 9, 1891.

Supreme Court, Hawaiian Islands.

In Banco.

SPECIAL TERM, MARCH 30, 1891.

BEFORE JUDD, C. J., M'CULLY, BICKERTON AND DOLE, J J.

NARCISSE PERRY VS. OTTO LUDLOFF AND ALBERT LUDLOFF.

Exceptions from Mr. Justice DOLE, sitting as Intermediary Court of Oahu.

OPINION OF THE COURT BY JUDD, C. J.

This is an action of assumpsit for rent of a dairy in Manoa Valley, Honolulu. The plaintiff obtained judgment for $180.00 and costs, etc., in the Police Court of Honolulu. The defendant then appealed to a Justice of this Court sitting in Chambers, and the case was heard *de novo* on the issues of fact involved. Mr. Justice Dole, who heard the case, affirmed the judgment of the Police Court. The plaintiff has no further appeal on the facts. He now excepts to the decision rendered and alleges as error that the Court sustained an objection to a "question to H. Ludloff in the course of his direct examination asked by defendants' counsel with reference to statements alleged to have been made by Perry to defendants to the effect that plaintiff offered to take the dairy back and allow Albert and Richard (Ludloff) their wages to that date—on the ground of its being a leading question."

It is impossible for us to ascertain from the form of the above exception whether the question was in fact a leading one and objectionable on that ground. The question should have been reported to us in the exact form in which it was proposed to be put to the witness. We are left to conjecture as to its nature. If it was desired by defendants' counsel to rebut by this question a denial previously given in evidence by Perry to H. Ludloff, it would not be objectionable to ask the rebutting witness the direct question if such and such statement had been made by Perry. But if the question had been allowed to be put and it was answered by H. Ludloff to the effect that Perry had made such a statement, we fail to see that it could have any substantial effect on the result of the case. It would perhaps tend to discredit Perry's testimony; but an inspection of the evidence sent up discloses that the real issue was whether a promise had been made by defendants to pay $180 for the use of the dairy for the month of December, 1890. This did not depend upon the testimony of Perry, but was proved to the satisfaction of the Court by other testimony. Where the error made (if any was made) cannot affect the result of the case the judgment will not be reversed on this ground and a new trial ordered.

The remaining exceptions are:

2d. That the existence of a partnership was not proved.

3d. That plaintiff failed to prove any agreement on the part of Otto Ludloff to pay said rent.

4th. That plaintiff failed to prove any contract for the payment of said rent.

5th. That said judgment was contrary to law and evidence.

A review of the evidence sent up shows that there was sufficient upon which to base the findings of fact made, and this being the case the exceptions are overruled.

J. M. Davidson for plaintiff; J. A. Magoon for defendant.

Honolulu, April 8, 1891.

Supreme Court—At Chambers.

BEFORE M'CULLY, J.

SATURDAY, April 11.

Ching Sing Moy vs. Lee Kau Sing. Ordered that the marriage of Ching In Keau, an alleged minor, to one Lee Kau Sing, be declared null and void.

BEFORE JUDD, C. J.

MONDAY, April 13.

R. B. Baker et al vs. Mary Buckle et al. Ordered that the report of J. F. Brown, commissioner, be approved and confirmed, and that he proceed to sell certain lands in the decree mentioned. Smith for plaintiffs; Rosa for defendants.

BEFORE DOLE, J.

Bankruptcy of Wm. H. Daniels. Ordered in petition of R. W. McChesney, creditor, that said W. H. Daniels, of Wailuku, Maui, be adjudged bankrupt, and that Thursday, April 23, inst., be appointed for proof of claims and election of assignees. Hatch for petitioning creditors.

BEFORE M'CULLY, J.

The Queen vs. Kualawa (k); larceny, first degree. Ordered by said Justice as a committing magistrate, after evidence taken for the prosecution, that defendant be released from custody. Creighton for prosecution; defendant in person.

BEFORE JUDD, C. J.

TUESDAY, April 14.

Estate W. P. Kahale. Probate of will. Ordered that the will be admitted to probate, and that letters testamentary thereon be issued to W. O. Smith, under $1,000 bond.

WEDNESDAY, April 15.

BEFORE BICKERTON, J.

In the case of R. W. Aylett et al. vs. Keaweamahi, which has occupied the Court's time for several days, a verdict was returned for the plaintiffs with damages of $30 per month for six years and twenty-eight days, with interest at the rate of nine per cent.

The King vs. Ah Sung alias Sam Hoy. Burglary. Nolle prosequi entered. Ashford for defendant.

The King vs. Young John Ying et al. Adultery. Appeal from Police Court. Defendants withdraw appeal.

The Queen vs. Ah Wai. Housebreaking. Defendant withdraws plea of not guilty; pleads guilty and is sentenced to eighteen months at hard labor.

The Queen vs. Carolina A. de Camara, Bella Camara and Joe Camara. Disorderly persons. Appeal from Police Court. Nolle prosequi entered. Magoon for defendants.

The Queen vs. E. F. Giltzy. Seduction. Tried by a foreign jury. Verdict of acquittal returned by the jury. Creighton for the Crown; Peterson for the defendant.

AT CHAMBERS.

BEFORE JUDD, C. J.

Estate Antonio J. Machado, probate of will. Ordered that the will be admitted to probate and letters testamentary thereon be issued to the widow, Isabel M. Machado, as executrix.

BEFORE DOLE, J.

THURSDAY, April 16.

S. G. Wilder, accounts. Ordered that the administrator's semi-annual account filed April 15th be approved and confirmed.

In the matter of Samuel Norris, an alleged bankrupt. Ordered that a formal warrant be issued to the Marshal, that respondent's motion for insufficiency of bond be overruled and that hearing upon the merits be continued until June next. Thurston for petitioning creditor; Hatch-Davidson for respondent.

BEFORE BICKERTON, J.

The Queen vs. Ah See, Hin Po, Ah Chung and Ephung. Maintaining and conducting a lottery. Appeal from Honolulu Police Court. Tried by a foreign jury, verdict, acquittal, three dissenting. Creighton for the Crown; Peterson for defendants.

He Was In Luck.

"A ring which its owner, one of the officers of the U. S. S. Omaha, might well have despaired of recovering, has, says the Japan Mail, found its way back to him under somewhat peculiar circumstances The ring was dropped while the Omaha was last at Yokohama in seven fathoms of water, a depth which, in view of the muddy bottom, made recovery a very problematical matter. A reward was offered, however, and on the return of the ship it now appears that the ring was recovered by a sendo, who carried it to the Yokohama Police Station, whence it has found its way back to its owner. It appears that the finder used a net or dredge of the kind known as keta, provided with iron spikes, in which the ring caught and was brought to the surface."

Yard sprinklers placed so as to sprinkle passers-by walking along the streets should be proclaimed as public nuisances. They are quite numerous in town.

Y. M. C. A.

Annual Meeting—Large Attendance—Business Transacted—Committees Appointed.

A very large number of members—perhaps the largest gathering for several months—was present at the annual meeting of the Y. M. C. A., held Thursday evening at their parlors. The fact that it was the annual meeting drew many to the meeting, and their presence undoubtedly added interest and enthusiasm, judging from their spirits, to the meeting.

Mr. G. P. Castle, the newly-elected President, occupied the chair, while retiring Recording-Secretary W. J. Forbes read both the minutes of the last meeting and the Board of Directors' report, which were adopted.

Mr. T. S. Southwick, Treasurer, submitted his report, showing receipts for the quarter amounting to $583.38, and expenditures of $558.15, leaving a cash balance on hand of $25.23, exclusive of $422.90 deposited in the savings bank. A collection was taken up which will increase the balance on hand.

General-Secretary S. D. Fuller spoke of the increased attendance at the Sunday evening meetings, but hoped the new year to inspire new life upon the members. There has been a large number of visiting strangers who have called at the building and received hearty welcome. The number of those applying for employment has been somewhat less than former years.

Mr. G. P. Castle reported of the increasing number of traveling mechanics who have called at this port from abroad, but unfortunately the demand, even for skilled laborers, falls short of the supply.

Hon. A. F. Judd gave the report of the Hawaiian Branch Committee. He said that the association started the Hawaiian Branch at Queen Emma Hall about four years ago, and that work has cost the association $900 annually. The site was good, as it is sure to attract a great number of Hawaiians, the location being favorable to that aim. The maintenance of the literary department has been found somewhat difficult, owing to the scarcity of Hawaiian literature. The boys and girls who patronize it are careless in their habits of handling the illustrated magazines, rendering them of very little value in a short while. In conclusion he said that the committee has found that the good actually from that work was hardly in comparison with the outlay, so recommended that the association discontinue the use of Queen Emma Hall at the end of June, 1891.

The recommendation seemed to be favorable to many, and the subject was fully discussed by many of those who are heartily interested with the work among Hawaiians, and especially as regards the means of elevating them to a higher standard of morality.

A motion was carried to leave the matter for a committee to consider for one month and to report again at the next meeting.

The nominating committee of officers for the ensuing year recommended the following gentlemen who were all elected:

President—G. P. Castle.
Vice-President—Chas. L. Carter.
Recording Secretary—J. Barnet.
Treasurer—A. C. Lovekin.
Board of Directors—H. Waterhouse and J. E. Bidwell.

The meeting then adjourned till next week when the anniversary meeting will take place.

Protecting His Home.

A sort of a prize fight came off between a Manila man and a Chinaman. It seems the Chinaman has been interfering with the Manila man's domestic relations, putting the latter on his watch, carrying as a defensive weapon a large knife. Wednesday afternoon as the man of family was returning home, he saw the Chinaman coming down the steps of the former's house. This was the signal for the affray, the Manila man leading off with a slash at his opponent's head, resulting in a gash along the head back of the left ear, just grazing the jugular vein, ending in a cut along the jawbone. The Chinaman thinking that discretion was the better part of valor, in this case anyway, immediately retired from the fight and ran to the Police Station for help which ended in his assailant being lodged behind the bars of the Station House.

Judging from the reports of how sugar was shipped into San Francisco, one would think all of the Hawaiian product was sent there last month; but to see the way it is taken into the Zealandia would indicate there is still more to ship.

New Advertisements.

Notice to Creditors!

Estate Rev. W. P. Kahale, Deceased.

NOTICE IS HEREBY GIVEN TO ALL persons having claims against the estate of Rev. W. P. Kahale, late of Wailuku, Maui, deceased, to present the same to the undersigned within six months of the date of publication of this notice or they will be forever barred.

WILLIAM O. SMITH,
Executor Will of Rev. W. P. Kahale.
Honolulu, April 15, 1891.
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