

In the Supreme Court of the Hawaiian Islands.

MARCH TERM, 1893.

J. S. WALKER vs. A. P. PETERSON AND OTHERS.

BEFORE JUDGE, C. L. BICKERTON AND PEAR, JJ.

It is not error to strike from the record a paper purporting to be a defendant's answer, which does not conform to the Statute—Section 1106 of the Compiled Laws. This paper having been struck off it was proper to declare the defendant in default upon the Clerk's certificate that the summons had been duly served, and that no answer complying with the Statute had been filed within the time prescribed by law.

The record of the Court cannot be impugned by the Clerk's minutes. Where two acts done appear to be dated the same day, the presumption is that they were done in their proper logical order.

OPINION OF THE COURT PER JUDGE, C. L.

Section 1106 of the Civil Code as amended (Compiled Laws, pp. 322 and 3) makes it incumbent upon a defendant served with a summons in an action on a liquidated demand to file either a demurrer or an answer denying the facts. "Provided that in all cases where the defendant is sued as the maker, drawer, acceptor or endorser of any banker's check, promissory note, bill of exchange, or other negotiable security, he shall not be allowed to file an answer unless he shall file therewith an affidavit made by himself or by some person cognizant of the facts, on his behalf, that the defendant has a good defense to the action on the merits, and stating some substantial ground of defense to the action, if such action be commenced within six months after the date of the action on which the action is brought."

In the case before us the action is on a promissory note dated October 25, 1891, for \$2500 signed by defendant Peterson and nine others, payable to the order of John F. Bowler, trustee, six months after date, with interest at one per cent per month, upon the payment of which Bowler was to assign to the makers the mortgage upon the "Elee" newspaper plant. The note was endorsed by Bowler to plaintiff. The suit was brought October 17, 1892, and all the defendants were served. On the 4th November, 1892, the defendants' attorney filed with the clerk a paper as follows: "In the Supreme Court of the Hawaiian Islands, January Term, 1893. John S. Walker vs. A. P. Peterson et al. Defendants' answer. And now come the defendants by their attorney and deny the truth of each and every allegation in plaintiff's complaint contained. (Sig.) A. P. Peterson and the names of all the defendants by their attorney A. P. Peterson. Honolulu, H. I., Nov. 4, 1892."

At the February Term, 1893, of the Circuit Court, First Circuit, to which the case came by the Act to reorganize the Judiciary Department, on the 11th day of February, counsel for plaintiff having given written notice to defendants' counsel of his intention so to do, applied to the Court for judgment by default on the ground that no answer had been filed as by the statute in such case made and provided. The motion was heard on the 25th February. The notes of proceedings by the clerk say that "the Court grants the motion on the ground that no answer had been filed in accordance with law and the purported answer is ordered stricken from the record." A certificate signed by the clerk, and dated the same day, is on file to the effect that no answer according to the statute in such case made and provided has been filed in the cause, and that it appears by the return of the Marshal that each of the defendants has been personally served with a copy of the summons, and that more than twenty days have elapsed since service and no answer complying with the statute has been filed by any of the defendants. The order declaring defendants in default, signed by Circuit Judge Whiting is dated the same day and recites that it appears by the certificate of the clerk, made and filed this day, that the defendants are in default and that no answer by one or either of them has been filed as by the statute in such case made and provided, and it appearing that plaintiff's claim is based on a promissory note made by defendants, it orders, adjudge and decrees the defendants to be in default, and refers to the clerk the assessment of the amount of the plaintiff's claim—principal, damages and interest—and to enter judgment thereupon with costs.

To this the defendants took exceptions. It is urged upon us in support of the exceptions that the proceedings were irregular and should be set aside, because an answer was filed with in twenty days and the clerk's certificate is defective and untrue in stating that no answer was filed. It should have said that the answer filed was not accompanied by an affidavit setting out some substantial ground of defense. Moreover, that the order declaring defendants in default was made before the so-called answer was ordered to be stricken from the file.

We do not regard this position as sound. If the clerk's minutes would indicate that the motion for default was granted before the answer was ordered stricken from the file, this cannot impugn the record itself which consists of the certificate of the clerk that no answer as required by statute was filed and the order for

judgment by default which recites the certificate. The legal presumption is that where the date is the same of several acts, they must be considered to have been done in their proper logical order, and we must presume that the certificate was filed before the order. We notice that the clerk's minutes state the granting of the default and the striking off of the answer in one and the same sentence.

The statute, Section 1108, Compiled Laws, entitles a plaintiff to receive from the Court an order declaring the defendant in default, "in case the defendant does not put in an answer to the petition as hereinbefore required," the plaintiff to prove service of the summons and default in answering, "by the clerk's certificate." The so-called answer was not the answer required by statute in the case at bar. It was not for the clerk to refuse to file it, it being labelled "Defendants' answer." The statute says "he shall not be allowed" to file an answer of the description under consideration. This does not give the clerk the judicial function to decide whether or not the paper complies with the statute. It means that in law such a paper cannot be considered by the Court as an answer, and the course pursued was the proper one—to treat it as a nullity and order it off the record.

No effort was made by defendants before the time for answer had expired to amend the so called answer so as to comply with the law, and no leave was asked of the Court to do this before motion to declare defendants in default, nor was there a motion made to open the default. The defendants rely on the record as showing error. We find none. Exceptions overruled.

C. Brown for plaintiff; C. Creighton for defendants. Honolulu, April 6th, 1893.

BOUND FOR CHICAGO.

Nineteen Natives En Route to the World's Fair.

Mr. H. J. Moors, a merchant of Samoa, is taking nineteen Samoans to the World's Fair to give exhibitions. The men gave a performance Thursday night at the Opera House before a small-sized audience. They went through their national dances in a manner that was satisfactory to the audience.

Mr. Moors has 23 tons of material on board of the Mariposa, which will form the Samoan exhibit at Chicago. Six women will come up on the next steamer to join the party. A Sydney paper has this to say about Mr. Moors' enterprise:

There is in Apia an enterprising gentleman named Mr. H. J. Moors, whose latest project was to take to the Chicago Exhibition a representative body of Samoans, with their native huts, mats and other necessities of daily life. They were, when in Chicago, to give dances, sing songs and in every way treat visitors to a faithful representation of Samoan manners, customs and mode of living. The government were invited to do this by the United States government, but the finances would not permit, and Mr. Moors valiantly sprang into the breach. Rather than Samoa should be unrepresented he would undertake the Herculean task himself, and he applied to the government for its moral countenance and support. But the government did not see it that way, and intimated that they would oppose the project. This meant that no Samoan would be allowed to leave the country, the king's permission being always necessary before a native can leave for foreign parts. But Mr. Moors is not to be defeated. He has gathered around him a large and varied assortment of kanakas, Tongans, Wallis Islanders and others, and by changing the title of his exhibit to "Polynesian" instead of "Samoan," he is still determined to carry his project out. This interesting side-show to the Exposition may therefore yet be an accomplished fact.

A Well-Known Artist.

The following refers to an artist who is well known in this city.

"Many will learn with regret that Mr. J. D. Strong, the well known artist, is about to leave Apia, and will take his departure about a fortnight hence. To Mr. Strong's facile brush we owe many charming reproductions of Samoan scenery and subjects, all of them works of art and strikingly faithful in their representation of local life and color. Mr. Strong will take with him the best wishes of a large circle of friends."—Samoan Times.

Death of an Old Resident.

William Duncan, an old resident of this city, died at San Francisco on the 27th ult., of pneumonia, aged 65 years. A sister, Mrs. Charles T. Gulick, two daughters, Mrs. Rose, of Lahaina, Mrs. S. A. Greene, of Honolulu, and four sons survive him. Mr. Duncan lived here about twenty years.

Mr. W. C. Weedon has been appointed Deputy Tax Assessor and Collector for the Island.

KOHALA NEWS.

The Makapala School Concert a Big Success.

The Makapala School concert on the evening of April 1st was a great success. It was held in the commodious skating rink, and hall and platform were liberally embellished with foliage of fern and leaf, and brightened with coloring of flower, and festooned with trailing drapery of vine.

The large public school which under the competent tuition of the principal, Miss Hoppin, and her co-workers, Miss Powers and Mrs. Hussey, has attained such a high degree of excellence, were seated in orderly lines to the right, their faces bright with intelligence and their eyes sparkle with excitement.

The school choruses, conducted by Miss Hoppin and Miss Powers, showed careful training. The movements of the soloists were all to the sound of music from the skilled fingers of Miss Lampman, of the Seminary, the marching to and from the stage being quite a feature of the exercises.

There were kindergarten movements by the little ones, of which the most delightful was perhaps that called "The Fishes." There was a charming glee by the boys' Glee Club with warble accompaniment that took the audience by storm. And there were many beautiful choruses by the higher classes, of which the very best was "Liko pua Lehua." This was the best thing of the evening, the compass of the voices, the careful modulation, the sweet, full harmonies being really remarkable. Curiously enough, it was the only event not applauded.

Mr. Hussey with his violin accompanied many of the choruses and other selections. Miss Powers, Mrs. Hussey and Mrs. Shaw appeared in several duets, trios and quartets, and their cultivated voices had full scope to exhibit their varied charms. They were encored again and again. Messrs. Naipo, Hussey, Smith and Nahale appeared in male quartettes as well as in selections for mixed voices. They sang in a most satisfactory manner throughout. In the humorous quartette, entitled "Who Did?" they brought down the house.

A beautiful quintette, "Maikai Waipio," written by the talented Hawaiian composer ex-Queen Liliuokalani, formed a delightful close to a varied entertainment whose memory will linger long with those fortunate enough to be there.

The whole affair reflects the highest credit on all connected with it, and it gives the public some opportunity of judging of the splendid work done by Miss Hoppin, Miss Powers and Mrs. Hussey in the Makapala school. The Hawaiian Railway as also Allen & Robinson's schooners are quite busy these days carrying sugar from the various mills on the way to the marts of the world. Niuli Mill is not grinding at present. Their new process for making white sugar is not working quite as effectually just yet as it will no doubt after a little experience has been gained in manipulation. Before long we hope to hear of its product comparing favorably with similar sugars from any part of the world.

All Kohala is glad to hear that Mr. George Benton is to be the new manager of Kohala Sugar Co. He is a young man with all the energy of youth and a thorough experience of plantation life, both on his father's plantation and at Kukai, where he has been for some time mill manager. He comes with bright prospects and the good wishes of all to the control of one of the very best equipped plantations in the Islands.

On Easter Sunday in this land of flowers, the churches were lavishly decorated with foliage and bloom, and audiences were treated to exceptionally good sermons, rich with learning and radiant with hope.

This is the pleasant springtime when the flowers bloom and the birds build their nests and all nature is filled with the promise of fruition, and the hearts of youth are turned to wards the harvesting of their fancies, and already there is in the air the distant chiming of the golden wedding bells. The weather is unsettled. High trades are blowing, and there are frequent dashes of rain.

The J. G. North arrived on Monday at Mahukona with a mixed cargo. She will load with sugar for the Coast. Mr. Nottley, of Hamakua, spent a few days in the district with his daughter, Mrs. Hughes. Kohala, Hawaii, April 3, 1893.

"August Flower"

I had been troubled five months with Dyspepsia. The doctors told me it was chronic. I had a fullness after eating and a heavy load in the pit of my stomach. I suffered frequently from a Water Brash of clear matter. Sometimes a deadly sickness at the Stomach would overtake me. Then again I would have the terrible pains of Wind Colic. At such times I would try to belch and could not. I was working then for Thomas McHenry, Druggist, Cor. Irwin and Western Ave., Allegheny City, Pa., in whose employ I had been for seven years. Finally I used August Flower, and after using just one bottle for two weeks, was entirely relieved of all the trouble. I can now eat things I dared not touch before. I would like to refer you to Mr. McHenry, for whom I worked, who knows all about my condition, and from whom I bought the medicine. I live with my wife and family at 333 James St., Allegheny City, Pa. JOHN D. COX.

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