



THE DAILY
Commercial Advertiser
PUBLISHED
Morning Except Sundays,
No. 46 Merchant St.
Supreme Court of the Ha-
waiian Islands.
In Banco.
In Vacation.
August, 27, 1891.
Kobakie vs. Keanini.

DR. J. C. BICKERTON AND DOLE,
(MCCULLY, J. ABSENT).

THE COURT PER JUDD, C. J.
The springs called "Kaakahi" in
the valley, originate in land of
the defendant. The water comes up in
patches of several kalo patches,
and is surrounded by banks, as
usual. These kalo patches are on
terraces and the water, after
travelling in places and also runs
down them in several small open-
ings a natural water course
runs along the bottom of
the valley. There are other
springs in the bed of this water
course and the accumulated body of
water along and is taken out
by small awais to the various
patches through the valley
and have acquired a right by pre-
scription to use the water. The
defendant's kalo patches are among
the large tracts of kalo land are
situated with water from an awai
which starts at some distance above
Kaakahi springs. The people
of the lands have acquired rights to
supply with water from the
Kaakahi springs have submitted to
the use of their use of the water
course of time said to have
been made many years ago by the
defendant or by his Chinese lessee
of which, a flume, one end of
which was placed in an outlet of the
Kaakahi kalo patches, which serve
as reservoirs for the spring water
which flows up in them. The other
end of the flume extends over and
across the natural water-course to
the kalo land on the opposite
side of the water-course from the
Kaakahi springs. Some of the
land, therefore, which formerly ran
the course to supply kalo land
was led across this water-
course and was used to irrigate kalo
land which it is not pretended is en-
titled to water. It is claimed by de-
fendant, and it is not denied, that
the defendant has other kalo land below
the Kaakahi springs, and that
the defendant contended that it was some
of this water-right that de-
fendant had run over to the kalo
land in the flume.
It was not shown, however, that
the defendant had entirely discon-
tinued the use of water on any
portion of his kalo land be-
cause he substituted his kalo land on the
opposite bank as the recipient of this
water.
Without deciding the question
whether a water right by prescrip-
tion can be used upon certain land
which is diverted to and used upon
another piece of land, we are of
opinion that to do this as defendant
has done is a manifest injury to the
plaintiff.
The evidence shows that in order
to have a flow of water in the flume
the spring patches had to be dammed
up. Now, during the time
the outlets of these patches
were stopped the surplus water from

the springs could not flow down into
the natural water course and on
down to the lower lands. It is clear
to us from a personal view of the
locus in quo that the water would not
flow in any volume into the flume
unless the spring patches were
dammed up. And even if the de-
fendant took water in the flume to
the kalo land only during the hours
that he was entitled to water for his
lower lands, it is not clear that it
would not be an injury to those
whose time for the use of water
followed his—for the disuse of the
lower awais during his hours
would tend to make them
dry and absorb more water
when it was again turned into
them. The defendant, as the owner
of the Kaakahi spring patches, is
entitled to the water originating in
them sufficient for their needs, but
the right to the surplus water has
been acquired by the lower land
owners and cannot be diverted by
means of this flume without injury
to them. We therefore affirm the
judgment of the commissioner order-
ing the removal of the flume.

It was shown before the commis-
sioner that the defendant was ac-
customed to dam the water up in his
kalo patches until it had accumu-
lated to a considerable height. He
would then let it flow off in an in-
creased volume to the lands in which
he was interested, which were en-
titled to water. During the time the
patches were thus filling, the parties
whose time for irrigation this was
would be deprived of water. These
reservoir patches then becoming
emptied the parties next entitled to
water in order of time would get no
flow of water until it had accumu-
lated sufficiently to run again
through the outlets. The commis-
sioner, in his judgment, has provided
against a repetition of this manifest
injustice by placing stones in the
beds of various outlets of the reser-
voir patches, above which the water
cannot rise. Counsel for defendant
admits that his client's act in thus
closing up the reservoir patches is
wrong, and he does not question the
decision of the commissioner in
ordering that this practice shall
cease. We therefore affirm this part
of the judgment also.
Costs to be paid by defendant.
J. A. Magoon (F. M. Hatch with
him) for plaintiff; W. R. Castle for
defendant.
Honolulu, September 28, 1891.

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