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THE WOMAN IN THE CASE

Her Evidence Was Not Improperly Admitted.

Forty-Four Fishery Suits Go Over to Another Term of Court.

Nakuina vs. Thrum Pending on Motion for Nonsuit—Three Jury Trials on.

The Supreme Court rendered a unanimous opinion, written by Justice Galbraith, yesterday in the case of Territory of Hawaii vs. Cheong Kwai. It is interesting in the story it contains illustrative of the difficulties of dispensing justice to Orientals by Occidental courts when the customs of the Orient are involved. Judge De Bolt tried the case in the Circuit Court and the Supreme Court sustains his ruling on which the appeal was taken. Following is the syllabus of the decision:

LAW OF THE CASE.

An objection to the competency of a witness offered by the Territory, in a criminal prosecution, on the ground that she was the wife of defendant, being referred to the trial judge for decision as a "question of fact" was, after hearing testimony, overruled. Held, that the ruling being supported by the evidence, afforded the defendant no ground of exception.

THE OFFENSE CHARGED.

The defendant was charged by indictment with assault with intent to murder and on trial was found guilty. It was proved that for more than a year prior to June 11, 1902, the prosecuting witness, Fong Quin, had been living in a rooming house in Vineyard street with a Chinese woman as his mistress; that this woman had formerly been supported by and had lived with the defendant; that defendant claimed the woman was his wife and that she denied a marriage with defendant; that on the said June 11 Fong Quin returned to his rooms to take the woman to the horse races; that defendant was in one of the rooms with the woman, but immediately walked out on hearing Fong Quin enter, and in about fifteen minutes returned with a revolver and without speaking a word pointed it toward Fong Quin and fired; that Fong Quin ran out of the house, pursued by defendant, who fired four or five times, striking Fong Quin twice, but that neither of the wounds proved fatal.

The defendant was the only witness offered in behalf of the defense and no attempt was made, other than by cross examination of the witnesses for the prosecution, to overcome or contradict the testimony in support of the charge.

The following extracts from the opinion of the court will show the question it decides, as well as give a glimpse into Chinese social customs:

QUESTION AT ISSUE.

During the presentation of the evidence for the Territory the Chinese woman who was in the room when the shooting commenced was offered as a witness. An objection was made to her competency on the ground that she was the wife of the defendant, and, under our statute (Sec. 1416 C. L.) an incompetent witness. By agreement of counsel the jury was sent out and the question of the competency of the witness was submitted to the judge "as a question of fact." The exceptions relied on in this court were taken during the trial of this question and are: (1) To the ruling of the judge finding that the woman was not the wife of the defendant and was a competent witness; (2) To the ruling admitting certain testimony.

The burden was clearly on the defendant to prove that the witness was his wife. Apparently this burden was assumed at the trial although it is denied in his brief. An attempt was made to prove a marriage at Hongkong according to Chinese custom followed by cohabitation there and in Honolulu. Evidence at length was given to show what was essential to constitute a marriage under custom in China. The judge found that there was a failure to show a compliance with the essentials of marriage under this custom and that a marriage had not been proved and that the witness was competent.

MARRIAGE AS CLAIMED.

The defendant testified to the marriage at Hongkong and another witness swore that he attended the marriage feast. The woman testified that she had never been married to the defendant and that the first time she saw him was the day after she arrived at Honolulu, about 12 years ago, when he was presented to her as her protector by the steward of a sailing vessel in whose care she came to the islands; that the defendant paid this steward \$250 for bringing her and that she then went to live with the defendant and continued to live with him for five years thereafter and as long as he would support her; that when the defendant refused her support she took up with another Chinaman and lived with him for a year and until he returned to China, when she became intimate with a Chinese actor and after he deserted her she was taken up by Fong Quin and had lived

with him more than a year prior to the shooting.

MARRIAGE NOT PROVED.

The evidence sustains the finding of the trial judge that there was a failure of proof of a marriage between the woman and the defendant according to Chinese custom.

The evidence would not warrant a finding that there was a common law marriage between the parties or support a presumption of marriage from cohabitation and general reputation recognized by some of the reported cases. The witness under the evidence in the record was entirely too promiscuous in cohabiting for this presumption to avail the defendant.

EXPERT CONTRADICTION.

It does not appear that the defendant was prejudiced by the other rulings of the trial judge excepted to at the hearing of this question, for instance, the defendant was asked on cross-examination if he knew anything "about a custom in China by which a man gives to another man money and receives in return a woman." This question was objected to as "immaterial." The objection being overruled the witness answered, "I don't know any such custom." The evidence given by the expert produced by the defendant showed that according to Chinese custom a "go-between" was usually employed to find out the age of the girl and to arrange the details of the marriage, one of which was the transfer of a sum of money from the prospective bridegroom to the parents of the bride elect. It is said that the money was to be used in the purchase of a pig and "wine and cake" for the marriage feast, an essential element of every marriage according to Chinese custom.

WITNESS WAS COMPETENT.

The court seems to have given the defendant rather wide latitude in his attempt to prove the Chinese custom of marriage and his compliance therewith. We are convinced that the witness was competent and that there was no error in receiving her testimony.

The exceptions are overruled. Kinney & McClanahan for the prosecution; Frank Andrade for the defendant.

FISHERY CASES CONTINUED.

Forty-four suits to establish fishery rights, under a provision of the Organic Act relating to the ancient proprietorships in sea fisheries, were continued for the term by Judge De Bolt yesterday. This continuance is owing to the fact that a test case in the same category is pending in the United States Supreme Court. Following are the sections of the Organic Act in question, the suits relative thereto being for establishing vested rights therein mentioned:

"Sec. 95. That all laws of the Republic of Hawaii which confer exclusive fishing rights upon any person or persons are hereby repealed, and all fisheries in the sea waters of the Territory of Hawaii not included in any fish pond or artificial enclosure shall be free to all citizens of the United States, subject, however, to vested rights; but no such vested right shall be valid after three years from the taking effect of this Act unless established as hereinafter provided.

"Sec. 96. That any person who claims a private right to any such fishery shall, within two years after the taking effect of this Act, file his petition in a circuit court of the Territory of Hawaii, setting forth his claim to such fishing right, service of which petition shall be made upon the Attorney General, who shall conduct the case for the Territory, and such case shall be conducted as an ordinary action at law.

"That if such fishing right be established, the Attorney General of the Territory of Hawaii may proceed, in such manner as may be provided by law for the condemnation of property for public use, to condemn such private right of fishing to the use of the citizens of the United States upon making just compensation, which compensation, when lawfully ascertained, shall be paid out of any money in the treasury of the Territory of Hawaii not otherwise appropriated."

Thus it will be seen that the outcome of these cases may cause a serious drain on the Territorial treasury.

The proprietary sea fisheries were a grievance of the poorer native Hawaiians always up to annexation. For a long period antedating the Provisional Government, there was not a session of the Legislature at which bills and petitions "to abolish konohiki fisheries" failed to be presented, but they never carried.

On the trial of one of the earlier fishery right cases, it developed that some of such rights long exercised and passed from hand to hand rested upon a dubious foundation of legality. Old land grants were brought from musty archives which, though the reliance of title to the sea fisheries joining the land granted, failed to show that the fisheries were thereby conveyed.

THE SLANDER SUIT.

The slander suit of Moses K. Nakuina vs. Thomas G. Thrum continued on trial throughout yesterday before Judge Robinson. Besides the plaintiff, the reporter who obtained the offensive interview and the acting editor of the Honolulu Republican at the time were called. When Mr. Andrews rested the case of the plaintiff, Mr. Lewis moved for a nonsuit and Judge Robinson, to enable counsel time for research of authorities, continued the trial until this morning. Mr. Nakuina testified he was prevented, by the influence of the article, from obtaining employment after his dismissal by defendant from the position of deputy registrar of conveyances. H. E. Cooper gave evidence that, when Secretary of the Territory after Nakuina's leaving the registry office, he employed him in work upon the archives.

OTHER JURY TRIALS.

Watanabe, a Japanese, was on trial before Judge Gear yesterday for embezzlement. He is charged with appropriating to his own use money entrusted to him for safe keeping by Korean laborers. W. S. Fleming appears for the Territory, and S. F. Chillingworth for the defendant. Following is the jury: Wm. Bush, F. J. Robello, J. H. Davis, Theo. Wolf, J. L. Aholo, J. D. Cockett, C. B. Lemon, D. F. Thrum, W. A. Hall, J. F. C. Abel, E. H. Paris and J. S. Low. Late in the day a verdict of not guilty was returned. Judge De Bolt was engaged yesterday

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Great Reduction In Prices

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Beautifies the Complexion DELIGHTFUL AFTER BATHING. A LUXURY AFTER SHAVING.

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Toilet Powder for Infants and Adults.

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Famous the World Over—Fully Matured, SOLD EVERYWHERE.

day with the trespass suit of Fredericke Nolte vs. J. A. Magoon on trial by a jury from the previous day.

Obit: Hospital Reception.

The ladies' committee of the Chinese Hospital, on Robello lane, Palama, will hold a reception at the hospital today from 10 a. m. to 5 p. m. The hospital has recently undergone a complete renovation and is now in charge of a non-Asiatic staff, Dr. Waterhouse being the surgeon and Miss Warland the nurse in charge.

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Why not starve the germs to death? Scott's Emulsion will do it.

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Germs cannot live on healthy tissue. Scott's Emulsion and good fresh air drive out the germs of consumption.

We'll send you a sample free upon request.

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JUST RECEIVED

Rose Bushes of rare variety; also Carnation Plants from California.

Mrs. E. M. Taylor,
FLORIST.

Exercise for Obesity



It is not necessary to go into details what fatty tissue is, its formation, etc. What is really necessary to know is how best to avoid getting stout, the thing to do is to learn in a few words as

possible what to do, and if being practical, why not do it? Scarcely a day goes by but what we see some article in the paper that is really of interest to the man who is in search of health and strength. The great trouble is, the articles are read and with a remark, "That just fits my case to perfection;" but the fact is just this: After you have read the article it passes entirely out of your mind and is soon forgotten.

Nearly every day I am asked this question: What can I do to reduce my weight, as you see I am becoming corpulent? The real answer to this is, not to be so lazy, for laziness in many instances is the real cause of people growing stout, and the stouter they grow the more lazy they become. Laziness causes fat and fat causes one to be lazy. Now the best thing to do is to go to work, first find the kind of work you require and then make it a business. Call on R. A. Woods of the Woods Institute and he will give you the proper kind of work and with his bath treatment will make as good a man of you as ever. Phone Main 155.

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