

In the Supreme Court of the Hawaiian Islands.

DECEMBER TERM, 1894.

BEFORE JUDD, C. J., BICKERTON, J. AND CIRCUIT JUDGE WHITING, WHO SAT IN PLACE OF MR. JUSTICE FEAR, ABSENT FROM ILLNESS.

STATIRA A. NEWELL, EFFIE J. NEWELL, CAROLYN A. NEWELL, BLANCHE E. NEWELL, PLAINTIFFS, VS. JOHN M. HORNOR, DEFENDANT.

A declaration in an action on a judgment in favor of one who thereafter died, is demurrable when brought by the legatee and not by the executor—it not appearing why the executor has not brought suit.

OPINION OF THE COURT BY JUDD, C.J.

The complaint in this case is as follows: "Statira A. Newell, Effie J. Newell, Carolyn A. Newell and Blanche E. Newell, the plaintiffs above named complain of John M. Horner, the defendant above named and aver the facts following constituting their cause of action.

I. "That at the time herein stated the District Court of the Fourth Judicial District of the State of California in and for the City and County of San Francisco was a Court of general jurisdiction created by the laws of the State of California.

II. "That on the 9th day of January, A. D. 1878, one Thomas Newell commenced his action in said Court against defendant John M. Horner, and one E. L. Beard, by filing his complaint therein and causing summons to be issued, which summons was personally served on this defendant.

III. "That on the 23d day of April, A. D. 1879, the said Thomas Newell recovered judgment against the defendant for the sum of two thousand five hundred and forty seven and 57-100 (\$2547 57-100) dollars in Gold Coin of the United States with interest thereon at the rate of seven per cent. per annum from the date thereof until paid together with costs and disbursements incurred in said action amounting to the sum of twenty-six and 25-100 (\$26 25 100) dollars.

IV. "That said judgment has never been paid in full, but the following payments were made thereon by the defendant, viz: The sum of four hundred (\$400.00) dollars, on the 8th day of August, 1882, and the further sum of five hundred (\$500.00) dollars, on the 15th day of January, 1890, and the further sum of five hundred (\$500.00) dollars, on the 28th day of September, 1890, leaving unpaid a part of said judgment amounting inclusive of interest to the sum of four thousand eight and 17-100 (\$4008 17-100) dollars.

V. "That thereafter the said Thomas Newell died, on or about the year 1883, leaving a will wherein and whereby said deceased among other property gave and bequeathed said judgment to the plaintiffs.

VI. "That the plaintiffs by their certain deed of assignment dated the 21st day of February, 1893, sold and assigned and set over the said judgment and the moneys due thereunder to Mr. James A. Low, who is now the owner thereof and entitled to receive the proceeds collected thereunder, and that this action is prosecuted by these plaintiffs for the benefit of their said assignee James A. Low.

VII. "That the defendant left the State of California on or about the 5th day of December, 1879, and that he has remained absent from the said State ever since said date.

VIII. "That though thereto requested the defendant has failed and neglected and still neglects and refuses to pay said sum due upon said judgment as aforesaid and that there is now due and owing from defendant to plaintiff the said sum of (\$4008.17 100) four thousand eight and 17-100 dollars.

"Wherefore plaintiff demands judgment against the defendant for said sum of (\$4008.17-100) four thousand eight and 17-100 dollars with interest thereon until paid and for his costs of suit and that process issue in accordance with law."

A demurrer was interposed in the Circuit Court First Circuit on three grounds as follows: "First: That said declaration shows no privity of contract or of obligation between said plaintiffs and said defendant.

"Second: That plaintiffs have no right, as the legatees of the judgment mentioned in said declaration, to maintain an action thereon in their own names.

"Third: That it appears by said declaration that the judgment mentioned therein is barred and outlawed by the statutes of limitations of the State of California, and of the Hawaiian Kingdom, and that no action can now be maintained thereon."

The demurrer was sustained by the Court, to which the plaintiffs excepted.

We were not favored with an argument on the various points, plaintiffs' counsel conceding that the complaint was demurrable in some respects, but we were asked to determine whether administration could be granted in this country upon an

estate whose only assets were a judgment.

As this question is not raised by the pleadings our opinion upon it would be *obiter dictum* and we would not be authorized to express it.

In order to make our record complete and meet the issues presented we sustain the demurrer upon the first and second grounds. As to the third point we do not feel called upon to decide so important a matter without further argument.

Demurrer sustained. P. Neumann, E.-q., for plaintiffs; C. W. Ashford for defendant. Honolulu, March 15, 1895, as of December Term, 1894.

DOMINIS, A DELMATIAN SAILOR.

Glasgow Daily Tells a Wonderful Story of His Exploits.

His Lawful Wife on the Warpath—Determined to Set Out for Honolulu.

To the people who knew John Dominis as a lad, and also have knowledge that he came from Utica, N. Y., the following yarn from a Glasgow paper will be read with interest:

Several years ago a Dalmatian sailor named J.-r-k Dominis found his way to the Hawaiian Islands, after innumerable hair breadth escapes and feats of valor by the way. In due time he married Liliuokalani, the daughter of a native chief, who afterward became Queen, making him partaker of the honors of royalty. As King he bore the name of Hermann I. For twenty years he governed his subjects satisfactorily, and toward the end of 1891 he died; his son, Hermaun II, is only 6 years old and his widow is the Regent.

Now this lady, knowing that her late spouse was a European, has been making strenuous efforts to discover his relations, and whenever a ship touched at the port she always made it a point to go on board and question the captain as to whether he knew any Dominis of Dalmatia. For a long time the widowed Queen's endeavors to find King Hermaun's relatives were unsuccessful, but lately the Imperial Austrian Corvette, Fasana, touched at the Hawaiian Islands. The Dowager Queen went on board and asked the Admiral whether he could tell her anything about the Dominis family at Dalmatia. He answered in the negative, but, noticing the lady's desire to learn something about them, promised to make inquiries of the Marine Department of the War Ministry.

The matter was then referred to the Foreign Office, which published an advertisement calling upon all the Dominis of Dalmatia to come forward, whereupon there was a repetition of what occurred when the American Spiritualistic medium called for the spirit of "John Smith." Thousands of Dominis are said to have reported themselves, personally or by letter, for the name was a very common one in those parts. King Hermaun's sister was, however, discovered, as was also his lawful wife; for it appears that the late King married in Dalmatia when only a sailor.

This woman now demands that the Hungarian Government should help her to her rights. She does not seek to become Queen of the Hawaiian Islands, but she asks to be declared the legitimate heir to her husband's property. Should the Hungarian Government refuse its help, the energetic widow is determined to set out for Honolulu and appeal directly to her successful rival, Queen Liliuokalani, the widow of her own husband.

VOLCANO OF KILAUEA.

Concession Granted for its Reproduction at Georgia Exposition.

Mr. E. W. McConnell has secured from the Cotton States and International Exposition Company, to be held at Atlanta, Georgia, from September 18th to December 31st, 1895, a concession for a reproduction of the burning volcano of Kilauea, the largest active volcano in the world, says the advance sheet of the Exposition Department of Publicity. It is situated on the side of Mauna Loa, 4000 feet above sea level, and ten miles from the Pacific. According to Hawaiian mythology, the god of the sea fell in love with Pele, the goddess of fire, and pursued her to Mauna Loa. There she took refuge in the burning volcano of Kilauea. When it is in eruption, Pele is supposed to be angry, and the kahuna or priest offers prayer, with sacrifices of animals or children. The goddess Pele will be represented as rising from the flames when called forth by the incantation of kahuna. She will be personated by a beautiful Hawaiian girl. The court singers of King Kalakaua will sing the religious songs of the Hawaiians.

Bounty for Beet Sugar.

OMAHA, Neb., March 1.—The Nebraska legislature has decided to revive the beet sugar bounty by paying the producers \$5 per ton for all their production. The last legislature suspended this law. The house has a great fight over the affair. The bill was opposed by the solid democratic and independent vote.

The HAWAIIAN GAZETTE COMPANY manufacture rubber stamps of all descriptions.

Ladies' Column.

LOOK BEFORE YOU LEAP.
When you go out shopping, consider; think of the money in your pocket, and take account of the many stores whose various attractions are laid before you.

There is X, with temptations in the form of a pretty show; there is Y, whose wiles are innumerable; and Z, who says he is the man for your money.

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And remember your pocket is concerned.

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