

KUNST SOLD LIQUOR WITHOUT A LICENSE

Sleuths Ferreted Out His Bottles of Grape Juice.

NO INSTRUCTION UNDER SEC. 457

JUDGE HUMPHREYS DECLINES TO ACT IN ACCORDANCE WITH A MOTION.

Deputy Attorney General Cathcart Asked That Jury Be Instructed Under Section 457, Penal Laws of 1897.

The case of the Territory against August Rickard alias Richard Kunst, who was charged with selling liquor without a license, was called in Judge Humphreys' court yesterday morning, and the following jury empaneled: Jas. Kahalepua, H. C. Bickerton, Alex. K. Aona, Alex. G. Nicholas, Guy Livelyngton, Geo. W. Harrison, Harry S. Swinton, Isaiah Bray, Edwin K. Blake, John L. Hansman, Jas. K. Mersberg, Joseph Richards.

Kunst was visited by two white winged emissaries of the police, and by them under the guise of friendship was induced, so they alleged, to show a bottle of wine for which he was lodged in jail by Officer David Kaapa.

After the convening of court, Deputy Attorney General Cathcart presented his case and placed Kallianu on the witness stand.

The second witness was Nakolelihu. His version of the affair was an exact reproduction of Kallianu's.

When David Kaapa took the stand there was a revelation. He said he employed the two above named gentlemen to go out and look for violations of the law, by the witnesses a hunting ground and sent his two knights forth. They reached their destination and asked for something to drink, tendering in payment therefor the money they had received, and according to their testimony, Kunst fell an easy victim to their wiles and placed a bottle of wine and two glasses upon the festal board.

During this time David Kaapa, having climbed a number of back fences, appeared upon the scene, startling the erring Kunst by declaring him a prisoner.

After ransacking the house and peering under beds, Kaapa discovered, he alleges, five and one-half cases of Green River whiskey, a number of bottles of gin, 52 bottles of wine and glasses too numerous to mention.

At the conclusion of Kaapa's testimony, Deputy Attorney General Cathcart requested the court to instruct the jury, under section 457 of the penal code. Judge Humphreys took the matter under advisement and a recess was ordered until 2 o'clock, at which time the judge declined to instruct the jury as had been requested.

The attorneys for the prosecution and defense having rested their cases, Attorney L. M. Strauss made an able effort in favor of his client, followed by a strong appeal for conviction by the prosecution.

Judge Humphreys then delivered his charge, to which the jury listened attentively. The case then went to the jury. In one hour a verdict of guilty was returned.

The prisoner was sentenced this morning at 10 o'clock.

In declining to instruct the jury under section 457 of the Penal Laws of 1897, Judge Humphreys gave the following decision:

The defendant in this case is charged with selling spirituous liquors without a license as to do, in contravention of our criminal laws. The evidence is all in and the Attorney General now moves that the Court in instructing the jury frame a charge under section 457 of the Penal Laws of 1897. Said section is as follows:

"The delivery of any spirituous liquor, either by the owner or occupier, or by his or her servant or other person in the house or place shall be deemed to be sufficient prima facie evidence of money or other consideration being given for such spirituous liquor, so as to support a conviction unless proof to the contrary be given to the satisfaction of the jury." Prohibition does not exist in this Territory. We have no statute which declares it illegal for one to give away spirituous liquor in one's own house. To do so is in legal contemplation an innocent act. This statute converts what may well be not only an innocent but a commendable act into a presumptively criminal one until the defendant gives "proof to the contrary to the satisfaction of the jury. For instance, a sick neighbor sends to my house for a glass of brandy. His servant is seen leaving my premises with the brandy, whereupon under this statute I may be arrested, charged with selling spirituous liquor and upon mere proof that the liquor was delivered by me, or by my servant, I may be convicted thereof unless I prove my innocence. History reads some sad lessons to the judicial mind as to what Draconic laws have been put upon the statute book to enforce some supposed necessity of state and to even the innocent to get at the guilty on the same tyrannical plea of necessity. May we not paraphrase the cry of Madame De Stael and exclaim: Oh necessity, what outrages are committed in thy name? In every age and country of the civilized world where the common law has been known, its humane maxims that the crime charged must be proven beyond a reasonable doubt and to moral certainty, and that every person charged with crime is presumed to be innocent, are household words known as well by the tyro and the

citizen as by the wisest member of the bar, incorporated into our jurisprudence. Interwoven with the very net work of society. Early and late, in the reigns of the worst of the Tudors, and the Stuarts before the American revolution and since, up to the last page put to press by the last sensible author, these truths of the common law have never been doubted or called into question. Where has a contrary opinion prevailed. In countries of the civil law? In countries of extorted confessions by thumb-screws, the iron boot, the rack, boiling lead—places where the poor wretch charged with an offense is presumed guilty upon proof of an act innocent in itself, and on that presumption is tortured until he confesses in the dungeons of the bastille, and in the tyrant's prison, "where hope never comes that comes to all?" It was in one instance made to nullify the pages of the statute law of England, but it was driven from it in disgrace amid the execrations of honest men. It was that horrible law, which makes the blood curdle in the veins at its recital, which presumed the mother of an illegitimate child, when it died, guilty of infanticide, unless she could prove by the witness at least that the child was born dead.

The crying injustice of condemning men in advance of proving them guilty, upon mere proof of acts which may well be innocent, harmless, charitable, neighborly—in all things commendable, has been immortalized by Virgil, when he makes the common Sybil lead his hero through his fabled hell. On his way to the Elysian plains, the horrid sounds of Tartarus, surrounded by a triple wall salute his ears; the clank of iron, the rattling of chains, the groans of anguish the reverberations of the lash! Afrighted he asks his conductress the meaning of those sounds, who the culprits, by what manner of punishment afflicted. The Sybil replies that "no pure spirit can ever enter those accursed abodes." There the Cretan Rhadamanthus holds his dreadful court—he first punishes then hears the crime, compelling the prisoner to confess. "Nulli fas casto scleratum insisteret limen. Gnosius haec Rhadamanthus habet. Curisissima regna Castigatque auditque dolos, subigitque fateri."

Among the sacred rights guaranteed to the citizen charged with crime is the right to demand "the nature and cause of the accusation," "to be confronted by the witnesses against him," nor can he "be deprived of life, liberty or property without due process of law." Under this statute can it be said that a defendant is informed of the nature and cause of the accusation against him when he is charged with selling and convicted upon mere proof of having delivered spirituous liquor? It is due process of law to require a man to prove to the satisfaction of the jury that an act which we have seen might be innocent was in fact criminal? When the constitution was framed it was required that the crime charged should be proven beyond a reasonable doubt. To dispense with the necessity for this proof is just as great a stretch of power as it would be to dispense with the number of twelve men on the jury.

Under this statute the owner of a house may be found guilty of selling not on proof that he delivered spirituous liquor, but upon mere proof that it was delivered by any person in a house. No man can be said to have a

(Continued on Tenth Page.)

NEW TODAY

NOTICE.

The adjourned annual meeting of the stockholders of the Kehaha Sugar Co., Ltd., will be held at the office of H. Hackfeld & Co., Ltd., on Monday, the 16th day of December, 1901, at 2 o'clock, p. m. F. KLAMP, Acting Secretary.

SALE OF GOVERNMENT LOT AT HILO, HAWAII.

On Monday, January 13th, 1902, at 12 o'clock noon, at the front entrance of the Capitol (Executive Building), will be sold at public auction Government Lot situated on Walaunuenue street, Pihouua, Hilo, Island of Hawaii, and containing 25,000 square feet, more or less.

Upset price, \$15,000.00. Terms cash U. S. Gold Coin. Expense of Patent, Grant and Stamps to be paid by purchaser. Maps of same can be seen at the office of the Superintendent of Public Works, Honolulu, and at the office of E. E. Richards, Government Land Agent at Hilo.

JAMES H. BOYD, Superintendent of Public Works.

Christmas Cheer!

S. B. Rothenberg Whiskies

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MORTGAGEE'S NOTICE OF INTENTION TO FORECLOSE MORTGAGE AND OF SALE.

In accordance with a power of sale contained in that certain mortgage made by Dibble K. Iae to J. Alfred Magoon, dated April 10th, A. D. 1901, recorded in the Register Office, Oahu, in Liber 192, pages 124 and 125, notice is hereby given that said Mortgagee intends to foreclose said mortgage for condition broken, to-wit, the non-payment of interest when due, and upon said foreclosure will sell at public auction, at the sale rooms of Will E. Fisher, Honolulu, on Saturday, the 11th day of January, A. D. 1902, at 12 o'clock m. of said day, the premises described in said mortgage as below specified.

Further particulars can be had of Thomas L. Dillon, Attorney-at-Law, Magoon Block, cor. Alakea and Merchant streets, Honolulu.

J. ALFRED MAGOON, Mortgagee.

MORTGAGEE'S NOTICE OF INTENTION TO FORECLOSE MORTGAGE AND OF SALE.

First—All the right, title and interest of said Dibble K. Iae in and to the lands and premises situate at Aala, described in Royal Patent 1758, Land Commission Award 580.

Second—An undivided one-third of the land situate at Mapulehu, described in Royal Patent 2737, Land Commission Award 3835.

Third—All the right, title and interest of said Dibble K. Iae in and to that certain piece or parcel of land situate at Kamaole, Kula, Maui, described in Royal Patent (Grant) 405.1.

Fourth—An undivided one-third interest of the Ili of Punauala in the Ahupuaa of Mapulehu, being the same premises described in Royal Patent 7232, Land Commission Award 3218.

MORTGAGEE'S NOTICE OF INTENTION TO FORECLOSE MORTGAGE AND OF SALE.

In accordance with a power of sale contained in that certain mortgage made by Ella Awili to J. Alfred Magoon, dated February 1st, A. D. 1898, recorded in the Register Office, Oahu, in Liber 174, pages 353, 354 and 355, notice is hereby given that said Mortgagee intends to foreclose said mortgage for condition broken, to-wit, the non-payment of principal and interest when due, and upon said foreclosure will sell at public auction, at the sale rooms of Will E. Fisher, Honolulu, on Saturday, the 11th day of January, A. D. 1902, at 12 o'clock m. of said day the premises described in said mortgage as below specified.

Further particulars can be had of Thomas L. Dillon, Attorney-at-Law, Magoon Block, cor. Alakea and Merchant streets, Honolulu.

J. ALFRED MAGOON, Mortgagee.

All the right, title and interest of said Ella Awili in and to the Ahupuaa of Hilealiki, Kau, Island of Hawaii (being 2-14), covered by Royal Patent No. 7621, Land Commission Award 7715.

THE ADVERTISER'S FRIEND...

THE advertiser's best friend is the medium through which he obtains the biggest returns for his money. One medium which is used by advertisers to a great extent is the circular or booklet. The circular or booklet is always ineffective, unless it is very handsome—handsome enough to attract the eye of the man to whom it is sent, no matter how busy he may be. A booklet handsome enough to do this almost always costs from three to four cents apiece. There is the mailing to count in (two cents a copy, of course); there is the trouble in getting a list of names, and in addressing. Altogether the cost will figure up to about seven cents a copy for a good booklet. Two thousand circulation in a booklet is very large. Two thousand circulation at seven cents is \$140. I propose to show that you can invest \$140 in newspaper space and get returns five fold of what you would get through a booklet.

Newspaper Space Is Valuable

In the first place, there is the cost. For \$140 you can get a good-sized space in a newspaper of good circulation for quite a long time. You know your newspaper rates; you can figure it out to suit your own instance much better than I can. So much for cost.

Now for Effectiveness

You must tell your customers how much your goods are going to cost. An advertisement without a price is like meat without salt—it will do you no good. How can you put prices in a booklet when you are doing a strictly retail business? You have competitors; you have to change your prices constantly to meet theirs, and to meet other exigencies. The first change of a price will kill the effectiveness of a booklet, and where are you? Your advertisement in a newspaper may be changed as many times as you desire. You are constantly up-to-date.

The Newspaper Is Effective

Any kind of a newspaper has more circulation than you can obtain through a booklet for \$140. Newspapers reach the heart of the home. Every one reads them, and they are far more certain to obtain close attention than any printed matter which you would send. If you sent printed matter of your own accord to persons who do not know you, you would be putting yourself face to face with them without a guarantee. They have nothing to judge the quality of your goods by, and they can only take what you say on our own paper and in your own way. Anybody can say as much as they please.

When your matter appears in a newspaper of good circulation and good standing, the newspaper is a guarantee for what you say. Newspapers are always particular as to whom their advertisers are. (I speak of good newspapers always.) Your ads will gain a value besides their inherent one. They will be vouched for, and this is not to be despised. You have a certain fluctuating trade, which is always valuable, and which needs some sort of an introduction to your store. This introduction the newspaper gives you.

Good Paper Adds Dignity

You are known by the company you keep, you know, and if your ads appear in a paper which holds itself up before the masses as a leader, you will be known as a patron of what is good, and you will obtain trade from those whom it is worth trading with.

On all occasions consider newspaper advertising by far the best. On the score of cheapness; on the score of being able to constantly change your announcements; on the score of direct and immediate returns; and on the score of being introduced to people, to strangers, as a store which can afford to announce its news to every one in a dignified and straightforward manner, and this is the manner which brings trade that pays.

FRANKLIN BURNHAM, New York City.

The above article, written by one of the best-informed advertising men in the country, is in line with the business policy advocated and maintained by THE HONOLULU REPUBLICAN. His description of a good newspaper and its superior merits as an advertising medium is distinctly applicable to an essentially reliable and dignified family paper of large circulation, such as THE REPUBLICAN.

NOTICE OF MEETING.

A meeting of the stockholders of the Robert Grieve Publishing Company, Ltd., is hereby called for Wednesday, December 18th, 1901, at 3 o'clock, p. m., at the office of the Treasurer, J. H. Fisher, on Merchant street, Honolulu.

Said meeting is called for the purpose of considering new quarters for the business of the company, and for such other questions as may legally come before it.

EDWIN S. GILL, Secretary.

Dated at Honolulu, Dec. 11th, 1901.

WILDER'S STEAMSHIP COMPANY.

Notice.

Honolulu, November 14, 1901.

On and after December 1st next all freights must be prepaid unless other arrangements be made at the office of the company, corner Fort and Queen streets, previous to that date.

C. L. WIGHT, President.

ESTATE OF FRANCISCO GOMES CAPICHA, DECEASED.

NOTICE TO CREDITORS.

All creditors of Francisco Gomes Capicha, deceased, are hereby notified to present their claims, duly authenticated, and with the proper vouchers, if any exist, even if the claim is secured by mortgage upon real estate, to me at my residence, on the corner of Spencer and Kinau streets, in Honolulu, Island of Oahu, Territory of Hawaii, within six months from the date of this notice. If such claims be not presented within six months from the date of this notice they shall be forever barred.

Dated at Honolulu, Island of Oahu, Territory of Oahu, December 6th, A. D. 1901.

Her VIRGINIA X GOMES, Mark.

Executrix of the Estate of Francisco Gomes Capicha, Deceased. J. T. De BOLT, Atty. for Executrix.

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