

Saturday Press Supplement, March 5, 1881.

Cruise of the Pomare.

VOYAGE OF THE HAWAIIAN BRIG "POMARE"—LABOR CRUISE.

Sailed July 26, 1880, for Jaluit. Crossed the 180th Meridian from Greenwich, in Lat. 9° 51' N., carrying so far steady to N. E. trades, and fine weather to Aug. 9th. From date, light variable winds and calms to Jaluit. Arrived Sept. 1st—37 days passage.

Sept. 10th, 1880, light N.E. wind; 7:30 a. m. got underway. At dawn was clear of the islands and shaped course to the eastward. Oct. 15th—crossed the Equator in Long. 177° 17' E.

Oct. 18th, 1880, squared away for Rotumah, and up to date experienced continual head wind and calms. From date Oct. 18th, strong E.N.E. wind and fine weather to Rotumah where we came to anchor, Oct. 23d, 1880—44 days passage.

Oct. 28th, 1880, up anchor, made sail, stood for an offing, and shaped course for the Island of Tanna.

Nov. 3d, 1880, at daylight close to the land 1:30 p. m., came to anchor off Black Beach; went on shore in the boats and engaged a boat's crew for recruiting purposes.

The chief of Black Beach tells me that a Capt. W. J. McDonald of the bark *Melbourne* from Victoria, Australia, has purchased a large tract of land from him for the purpose of a cattle ranch—7 miles sea frontage and 10 miles inland. The chief expects the vessel's return shortly with stock and material for houses.

Nov. 5th, up anchor and stood over to Erromanga Island and at 4:50 p. m. came to anchor in Dillon Harbor. Went on shore and visited the Polynesian Mission Station. Mr. J. Robertson, a native of Halifax, B. America, and his lady Mrs. Robertson, received us very kindly. They say they are and also appear to be very comfortable; he informs me that all the natives are Christians, and requested that I should oblige by not taking any of their class people.

Nov. 6th strong S.E. trades, 8:30 a. m. up anchor and shaped course for Sandwich Island, New Hebrides Group.

Nov. 8th came to anchor at 4:30 p. m. in Havana Harbor, Sandwich Island. Vessel in port, schooner *Tahiti*, Capt. W. McDonald, from the Solomon Islands on labor cruise; 94 laborers on board bound for Lyvuka, Fiji. Capt. McDonald reports that a great number of laborers can be obtained from the Solomon Islands. Those recruiting have to be very cautious and not put too much confidence in the natives and also to be well armed.

Nov. 10th, having replenished water, at 4 p. m. got under weigh, passed through Deception Passage.

Nov. 11th off Api, commenced recruiting laborers successfully up to Dec. 13th, 1880, being 32 days in recruiting 103 immigrants.

Dec. 19th came to anchor in Mission Bay, Vanua Laua Island, Banks Group; lowered the boats and went on shore—the natives friendly. I traded for yams, etc., and took several natives on board; they seemed well pleased with the vessel and some of them promised to re-visit next day; 5 p. m. returned the natives on shore.

Dec. 20th great change in the weather. At 3:30 a. m. a heavy squall from N.E., 5:30 a. m. wind and sea rising. All hands were busy getting the vessel under weigh; 6 a. m. set fore top-sail, commenced heaving up anchor. The barrel of windlass was carried away and the windlass axle bent, rendering it perfectly useless. The vessel being in imminent danger of dragging on the reef, Capt. Tripp gave orders to slip the chain, which was done immediately; the vessel paid off handsomely; clear of the reef. At 7 a. m. fresh gale from N.N.E. and a heavy sea. Dec. 22d wind varied to N.W. by W., fresh gale; 6:30 p. m. passed between Santa Maria and Vanua Laua and shaped course for Honolulu, having left one bower anchor and 30 feet chain. The windlass also being perfectly useless, and it being the hurricane season it was deemed prudent to leave the group.

Jan. 12th, 1881, moderate N.W. winds; at 4:20 a. m. the vessel grounded on the north point of the outer reef of Bishop's Island. It was very dark—impossible to see land at any distance. Fortunately the vessel went on very easy. Capt. Tripp had the boats down in a few minutes and a kedge run out astern; the wind being light had all sail furled. At daylight took about 50 people on shore including the women and youngsters. Also started the water tanks that were on deck and pumped water from tanks in the hold; at 2 p. m. tide flooding, hove the vessel off and made sail. Sounded pumps—the vessel making no water. At 4 p. m. I left the vessel in the boats to fetch the recruits from shore, fortunately just in time, as on our arriving we found the natives attacking our people, having already stripped the women and threatening to kill the men if they interfered; however on our arrival they soon cleared. Having returned all safe on board, up boats and shaped course for Jaluit.

Feb. 13th, 1881, strong N.N.E. wind; crossed the Equator in 173° 20' E. Long.

Jan. 19th came to anchor in Jaluit Harbor. Vessels in port, schooner *Francisco* from China, consigned to Messrs. Homsham & Co.; also one local trader at anchor.

Jan. 21st having replenished water sailed for Honolulu; fine weather up to Feb. 11th. Fresh westerly gale and a heavy sea running, carried away our port boat, foremost davit and midship rail. Feb. 11th weather moderating. Jan. 28th sighted Maui, arrived at Honolulu Feb. 28th—passage 39 days. Left the New Hebrides with 103 recruits on board; deaths on passage 17—disease—dysentery.

MEMORANDUM.

On Nov. 28th when off Aurora Island at dusk, we observed two schooners astern of us at 8 p. m. A boat boarded us from one of the schooners, the *Aurora*, Capt. McCloud, from New Caledonia, trading. The other schooner, the *Idaobe*, owned by Mr. Chaffin, an American gentleman, who with his partner, Mr. Johnson, has been living this last four years on the Island of Oba as traders. Capt. McCloud and Mr. Chaffin were in the boat; the gentleman came on board to advise us not to recruit at Oba, as he, Mr. Chaffin, had that day shot the principal chief Ouley and then left the Island.

Mr. Chaffin's statement is that the deceased chief, Ouley gave orders for the murder of his partner Mr. Johnson and himself. Fortunately for Mr. Chaffin he is suffering from asthma and could not sleep that night, and went on the beach for a walk to cool himself, and during that time he heard the report of firearms near his house, he went up to see the cause and found his partner shot dead in his bed. Since then he himself has not been molested. Mr. Chaffin states also that it was Ouley that gave orders to take the *Mystery's* boat and kill all hands. The people in the boat were the chief officer of the vessel and native boat's crew recruiting labor for Queensland, and that the said chief Ouley had a cannibal feast off the body of the white man; that, Mr. Chaffin saw himself. Mr. Chaffin says he has written to the authorities about

the murder of his partner, and as no notice has been taken, and being about to leave the island, he considered it his duty to avenge the death of his partner, and the death of many others, and requested Captain Tripp and myself to make his statement public, so as to warn traders not to trust any of the natives five miles north or south of the north point of Oba.

November 29th.—Not being successful on the south point of Aurora stood over to Oba, and near the place where Ouley was shot; hove to off Longauna, the north point of Oba, lowered the boats and pulled in for the beach. A great number of men and women on the beach were more inclined to fight than to recruit; pulled about five miles south to another chief's landing. The chief of the district was not on the beach, but his son, Fangany came to us and said his father had just returned from a big meeting and feast, all the chiefs of the island had met, and it was decided that any boats coming near the shore were to be fired on and the crews killed if possible. The young chief advised me not to attempt recruiting at Longauna beach in the morning, as I told him I thought of doing; he said if I did, they would decoy us close in, and shoot us all. I thanked the youth much, and at 5 p. m. returned to the vessel without recruiting any this day. On returning to the vessel I met a canoe with a young native in it, that I have known this last four years. I asked him about the disturbance on shore, and what kind of a man his chief Ouley was, pretending that I knew nothing of his death. The lad told me he was a very bad man, and had killed a lot of white men. It was he who had the *Mystery's* crew killed, and another chief was punished for doing it by a man-of-war; he also gave orders for Mr. Johnson and Chaffin to be shot, but Mr. Chaffin was not in the house at the time or he would have been killed also; but Mr. Chaffin has shot him now, so I am not afraid of talking about him. The youth's account corroborates Mr. Chaffin's statement.

J. DROBZAYEV, Government Immigration Agent, brig *Pomare*.

IN THE SUPREME COURT OF THE HAWAIIAN ISLANDS.

In Admiralty—Before L. McCully, J.

IN THE MATTER OF THE STEAMSHIP "SEPTIMA."

ARGUMENTS OF COUNSEL.

Mr. J. M. Davidson appeared for the libellant, Mr. A. S. Hartwell for the defendant.

Mr. Hartwell said he could not help thinking that this proceeding was in deference to a supposed public demand that it be brought now. It is pleasant at a time of such excitement to have to deal with the Court, and on questions of pure law. The authorities he had cited would be found to substantiate every exception taken to the libel. The extreme penalty of the law is sought. The Government had urged the introduction of Chinese, and held out no ordinary inducement to bring them here. If the law authorized it, a rule ought to be made that foreign physicians ought to be appointed to each vessel bringing immigrants. There were no rules that the master should be held responsible for any contagious disease being introduced into the Kingdom, unless he introduced it clandestinely.

The libel should have been presented by the Attorney-General in person, or by his deputy. He referred to the Act of 1866, page 16. He denied that this was a purely formal matter. It makes a difference if a sworn officer of the Crown brings a case or not. This libel is presented in the name of the King. The oath appended is not an official oath. This libel states that it is the libel of H. A. P. Carter, Attorney-General, in behalf of the King, as represented by J. M. Davidson. It is an anomaly, injurious as well as irregular. His learned friend is not responsible for the acts of the Hawaiian Government, still less responsible for the acts of the King. It is ambiguous. It should be alleged that he is the Deputy Attorney-General. Again, a libel of this nature should be presented on behalf of the Minister of Finance, but in this case his name is not used. It alleges that the forfeiture is to go to the use of the Hawaiian Government; the statute makes it for the benefit of the public treasury. That goes to show that the Minister of Finance should order such proceedings to be instituted. This is not a case of Admiralty, by either English or American law. He referred to section 1235 of the Civil Code. That section does not contain any case of this nature. In England no statute exists authorizing cases for breach of revenue laws to be tried in Admiralty. No Court should pronounce sentence under the law, unless the law presents the facts.

The Court cannot infer that small-pox was introduced clandestinely by the *Septima*. It is the master alone that is called upon to account for this disease. In order to make the master guilty of this offense, it must be averred that he knew all about it. A man cannot conceal what he does not know. By Worcester, the word "clandestinely" means "studious concealment." To bring in small-pox, or to be negligent about the sanitary condition of a vessel, is not a penal offense on the part of the master. He admitted all the law regarding criminal negligence, but a malfeasance must be proved. A false statement would not be a basis for an action at common law, unless false to the knowledge of the person making the statement. The statute requires not only failure to report, but the doing of something in order to conceal the introduction of contagious disease. It would be well if we had such a statute, compelling a master to know or to ascertain what disease existed on board of his vessel. A false assertion cannot be made reason for the forfeiture of a ship. He referred to the penalty by section 301 for "not reporting" the disease. If the master was put immediately under quarantine, he had not the opportunity to do so. The Court would not impute to the master knowledge which he is not averred to possess. Take it for granted there was a case of small-pox on board, absolute knowledge had to be shown. What one person might have reason to know, another might not. There was no averment throughout the libel to show clandestine introduction of the disease; he therefore contended that the libel should be dismissed. The Court should be very exact in measures calling for forfeiture. When the Government set to work the machinery of the law, it should conform to all the requirements of law. By Art. III of the libel the Court cannot pronounce a sentence, as no act is there alleged to be against the statute. In answering the libel, he pointed out that it was not alleged that the vessel was brought into harbor at the request of the master. The law places the quarantine grounds as outside the reef. Let us know who brought this disease into the Kingdom before property valued at over \$100,000 is forfeited. The extreme penalty of the law is sought for, and if he hurts anyone's feelings, he was sorry for it. How could the master conceal from the health officer any disease before the vessel was inside the harbor; this was an important item. They were not there to answer ambiguous charges, and if the libel meant anything, it should

be so defined and certain that no error could be made. Lastly, he saw no averment in the libel, on which the Court could pronounce sentence of forfeiture. If any gentleman connected with the Government caused the vessel to enter the harbor, the master was not responsible who brought the said steamer within the harbor of Honolulu? The statute says the disease must be introduced into the Kingdom. He wanted to know what he had to meet. A copy of the health certificate should be appended to the libel. If a man was brought up for forging a document, the paper must be produced. It is monstrous to cause a person to answer a charge of making a false certificate unless that certificate is set forth. He contended there was a difference between this public treasury and the general government. He prayed that the libel be dismissed.

Mr. Davidson said that this was a civil proceeding, and he understood that as civilization advanced, pleadings were becoming less technical, and more liberal and sensible. He considered the criticism of his learned friend, unfair and illiberal. You must take the context of the pleadings as well as the context of the law. The first exception taken is by the Attorney-General. The Attorney-General represents the King, (Laws 1866, page 14, Sec. 5) and he, Mr. Davidson, was employed as advocate in the matter, which was a right to be inferred from the maxim, *qui facit per alium, facit per se*. Confiscation for the Public Treasury is the same as forfeiture for the benefit of the Hawaiian Government, and the language of the libel means that. It had been said that the suit must be brought by the Minister of Finance, but the law gave here no right to bring such suit. The statute gave the Minister of Finance power over suits for forfeiture of property and ships violating the revenue laws, but in proceedings of this nature, he considered the Attorney-General the proper person to conduct the suit. It is his duty to bring forward all actions relating to the interests of the country. In referring to the statement that this suit should not be brought before an Admiralty Court, but before a Court of Equity, he contended that the latter could not pronounce sentence of forfeiture, therefore it was necessary to establish Admiralty Courts with power of forfeiture, and he believed jurisdiction was conferred on the Court by the express letter of the law. The learned counsel contended that the libel is vague and uncertain, but every material fact is set forth. It contains a narrative of the events, from which the right of action arose. Repetition does not add to that which is well said. The old mode of pleading has passed away, and a distinct manner of announcing facts has been substituted in its stead. He denied that knowledge on the part of the captain should have been alleged. If the captain was negligent, he was guilty of culpable and criminal ignorance. It was his duty before he came to this port to know the sanitary condition of his vessel and neglecting that duty he is liable to the law and should pay the penalty. He cited the case of the *Nebraska*. The exceptions are technical and frivolous. But if the Court should find the libel insufficient the right to amend would follow as a matter of course, and was a right under the law C. C. 1145. The libel articulates sufficient facts to let the Court know the nature of the offense. He therefore asked the Court to sustain this libel and dismiss the exceptions.

Mr. Hartwell agreed with his learned friend as to propriety and liberal rules of pleading, but he loved correctness and exactness in the language used. Justice McCully said, he would examine the authorities. He had arrived at a conclusion with regard to part of the exceptions. The health certificate should certainly have been set forth. The libel failed to show that disease has been brought into this Kingdom by the *Septima*. A judgment to dismiss this libel is in favor of the libellant, unless they assumed the responsibility of holding the vessel.

Mr. Davidson said he would prefer to take the responsibility to the libel being dismissed. His Honor delivered the following judgment: "The exceptions are in part sustained, and the libel dismissed."

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