

Nos. 6545-6546

**United States
Circuit Court of Appeals
For the Ninth Circuit**

In the Matter of the Application of
VICTORIA WARD to Register
and Confirm Title to Certain
Land Situate at Kewalo, Hono-
lulu, Oahu, Territory of Hawaii.
HATTIE KULAMANU WARD,
LUCY KAIAKA WARD and
VICTORIA KATHLEEN
WARD,

Appellants,

vs.

CITY AND COUNTY OF HONO-
LULU, a Municipal Corporation,
Appellee.

HATTIE KULAMANU WARD,
LUCY KAIAKA WARD and
VICTORIA KATHLEEN
WARD,

Appellants,

vs.

CITY AND COUNTY OF HONO-
LULU, a Municipal Corporation,
Appellee.

FILED

DEC 10 1931

**PAUL P. O'BRIEN,
CLERK**

**APPEAL FROM THE SUPREME COURT OF
THE TERRITORY OF HAWAII**

BRIEF OF APPELLANT

CHARLES B. DWIGHT,
*Attorney for Hattie Kulamanu Ward,
Lucy Kaiaka Ward and Victoria
Kathleen Ward, Appellants.*

Filed this.....day of....., 1931

PAUL P. O'BRIEN, Clerk.

By.....

Deputy Clerk.....

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BRIEF OF APPELLANTS

These proceedings have come to this Court upon the appeals of HATTIE KULAMANU WARD, LUCY KAIKA WARD and VICTORIA KATH-

LEEN WARD, from the judgments of the Supreme Court of the Territory of Hawaii, made and entered on the 2nd day of March, 1931. As the issues involved in both causes are similar, by stipulation, approved by this Court, the causes were consolidated for briefing and argument.

FACTS

Cause No. 6545

This cause was instituted in the Land Court of the Territory of Hawaii by a petition of the City and County of Honolulu, praying for the issuance to it of a certificate of title covering Lots "F" and "G" of Land Court Application No. 670.

The Petitioner alleged in its petition that on March 19, 1928, the City and County of Honolulu instituted a suit in eminent domain in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, against Victoria Ward to condemn the parcels above named; that the summons in the condemnation suit were issued on the 19th day of March, 1928, and that service was made on March 20th, 1928; that on July 26th, 1928, Victoria Ward, through her attorneys, filed an answer; that prior thereto and on to-wit, the 18th day of July, 1928, during the pendency of the eminent domain suit, Victoria Ward executed a deed conveying parcels "F" and "G" and other lands to her daughters, HATTIE KULAMANU WARD, LUCY KAIKA WARD and VICTORIA KATHLEEN WARD as joint tenants with herself, and that pursuant thereto Transfer Certificate of Title No. 7250 was issued

out of the Land Court of the Territory of Hawaii to HATTIE KULAMANU WARD, LUCY KAIAKA WARD and VICTORIA KATHLEEN WARD.

The petition further alleged that the trial of the eminent domain proceeding began in the Circuit Court of the First Judicial Circuit on October 1st, 1928, and continued to and including October 12th, 1928, when a verdict was rendered; that judgment was entered on October 23rd, 1928, and that the final order of condemnation was entered on January 7th, 1930, which order was recorded in the office of the Registrar of Conveyances as Document No. 20898. The petition also alleged that during the trial of the condemnation suit either one or all of the grantees of Mrs. Ward were in attendance and had notice of the proceedings and that neither of them entered an appearance or intervened in said suit. An order to show cause was issued upon the petition, addressed to Victoria Ward, Lucy Kaiaka Ward, Hattie Kulamanu Ward and Victoria Kathleen Ward.

Victoria Ward separately filed an answer and return and the cause was dismissed as to her. Hattie Kulamanu Ward, Lucy Kaiaka Ward and Victoria Kathleen Ward filed their answer and return and in the answer and return admitted that the eminent domain proceeding was commenced in the Circuit Court on October 1st, 1928; that a verdict was rendered on October 12th, 1928, and that judgment thereon was entered on October 23rd, 1928. They also admitted that the final order of condemnation was entered on January 7th, 1930, and was recorded in the Office of the Registrar of Conveyances as Docu-

ment No. 20898. They denied that they were present during all of the trial, but admitted that they had notice of the condemnation proceedings and further averred that they were the owners, as joint tenants, of Lots "F" and "G" of Land Court Application No. 670, subject to a life estate in Victoria Ward, and were such owners at the time of the trial of the condemnation suit; that they were not joined as defendants; that no summons was served upon them in the eminent domain proceedings; that no compensation was offered or paid to them by the City and County of Honolulu, or the Territory of Hawaii. The respondents set up other grounds in their answer which will not be considered here.

A demurrer was interposed to the return of the respondents and overruled.

The facts, having been admitted by the pleadings, the cause was argued and the Land Court of the Territory of Hawaii granted the prayer of the petition.

An appeal upon Writ of Error was taken to the Supreme Court of the Territory of Hawaii.

The Supreme Court of the Territory of Hawaii on the 27th day of February, 1931, entered its Opinion and Decision sustaining the Decree of the Land Court. A Judgment pursuant to the Opinion and Decision of the Land Court of the Territory of Hawaii was made and entered on the 2nd day of May, 1931, from which Judgment these respondents have appealed to this Court.

FACTS

Cause No. 6546

This cause has come to this Court upon an appeal

taken by the Petitioners from the Judgment of the Supreme Court of the Territory of Hawaii made and entered on the 2nd day of ^{March} ~~May~~, 1931, pursuant to the Opinion and Decision of the Supreme Court of the Territory of Hawaii made and entered on the 27th day of February, 1931, which opinion and decision sustained the decree of the Circuit Judge of the First Judicial Circuit, Territory of Hawaii.

On December 5th, 1930, the Appellants herein filed their bill in equity praying for an injunction to restrain the respondent, The City and County of Honolulu, its officers, agents and servants, from in any manner trespassing upon Lots "E", "F" and "G" of Land Court Application No. 670 and committing irreparable injury to the homestead of the petitioners. A temporary restraining order was issued, which was modified by stipulation of counsel, and the respondent was temporarily restrained from trespassing on Lot "G" of Land Court Application No. 670 and from committing irreparable injury to the homestead of the petitioners.

The respondent demurred to the bill, which demurrer was overruled.

The cause was heard before the Circuit Judge at Chambers and a decision was entered dismissing the petition for injunction.

Pursuant to the decision of the Circuit Judge a Decree was duly entered, from which an appeal was taken to the Supreme Court of the Territory of Hawaii, and as hereinbefore stated, on March 2nd, 1931, the Supreme Court of the Territory of Hawaii dismissed the appeal.

The petition for injunction alleged that the peti-

tioners were the owners in fee simple, and as joint tenants with Victoria Ward, of Lots "E", "F" and "G" of Land Court Application No. 670; that on July 18th, 1928, there was issued to them Transfer Certificate of Title No. 7250 out of the Land Court of the Territory of Hawaii; that Lots "E", "F" and "G" are a portion of the lands constituting the family homestead of the petitioners, which homestead had been maintained as such for more than fifty years; that the grounds of the said homestead were planted to valuable trees and the plants and trees were set out and cultivated with great care by the petitioners and Victoria Ward; that Lots "E", "F" and "G" constitute the proposed right-of-way for the Kapiolani Boulevard, a proposed public highway of the City and County of Honolulu and that the proposed right-of-way constituted a strip running over and across the homestead of the Petitioners, dividing the same into two parts.

The petition further alleged that the City and County of Honolulu had threatened and was threatening to trespass upon Lots "E", "F" and "G" and to break down the family fence of the homestead and enter upon said Lots "E", "F" and "G" and trespass thereon; that the respondent threatened to fill in the right-of-way to a grade considerably higher than the remaining portion of the homestead lying mauka (the direction toward the mountains and away from the sea); that if the respondent had carried out its threat to enter upon the strip and trespass upon the property of the petitioners, the petitioners would suffer irreparable injury in that by filling in the proposed strip the natural flow of surface waters, off the

homestead of the petitioners, would be obstructed and that the flood waters would back up over and upon the homestead of the petitioners, damaging the property of the petitioners and that the back waters would kill and injure the plants and trees planted by the petitioners and their mother and that the stoppage of the flow of surface waters would seriously affect the homestead and make insanitary, unhealthful and uninhabitable the premises occupied by the petitioners as their home.

The petition further alleges that no compensation had been paid to the petitioners by the City and County of Honolulu, or the Territory of Hawaii, for Lots "E", "F" and "G" notwithstanding the fact that the respondent proposes to use the property for public purposes, to-wit, for a public highway.

The petition further alleged actual threats by the agents of the City and County of Honolulu to enter upon and trespass over the above described lots.

Other allegations in the petition need not be inserted here as those allegations are immaterial to a decision by this Court.

The answer of the respondent averred that as to Lot "E", the petitioners had only a bare legal title, subject to a binding agreement between the predecessor in interest of the Petitioners and the Territory of Hawaii. As to Lots "F" and "G" the respondent claimed title pursuant to a proceeding in condemnation instituted by the City and County of Honolulu against Victoria Ward.

The answer also admitted the threats to enter upon Lots "E", "F" and "G" by the agents of the City and County of Honolulu but denied that the

petitioners were suffering, or did suffer, any irreparable injury. To which answer the petitioners filed their replication denying that they owned a bare legal title to Lot "E", but reasserted their claim to title in fee simple to Lots "E", "F" and "G".

In the hearing before the Circuit Judge the petitioners offered in evidence Transfer Certificate of Title No. 7250, which certified that title in fee simple to Lots "E", "F" and "G" was in the petitioners, as joint tenants with Victoria Ward.

It was stipulated by counsel in the Circuit Court, that neither of the petitioners were made parties-defendant in the suit in condemnation, but that the petitioners did have notice of the suit.

Kathleen Ward, one of the petitioners, testified that she was one of the owners in fee simple of Lots "E", "F" and "G"; that she received no compensation for her interest in the property from the City and County of Honolulu, nor was any compensation ever offered to her. She further testified that one Oliveira, purporting to act as the agent of the City and County of Honolulu, threatened to break down the family fence and that the County engineer had addressed a communication to her conveying the intention of the City and County of Honolulu to enter upon Lots "E", "F" and "G", which letter was introduced in evidence. She further testified that a partial fill had been put upon Lot "G" and that as a result the surface waters had backed up and into their homestead and made a portion of the homestead low, marshy and insanitary. That because of the backing up of the water a number of choice trees had died.

Miss Lucy Ward, one of the petitioners, testified that she was the owner of Lots "E", "F" and "G" with her sisters and mother; that no compensation had been paid to her, nor offered by the City and County of Honolulu, nor anyone in its behalf; that a portion of Lot "G" had been filled by the City and County of Honolulu and as a result thereof the surface waters had backed up and a portion of the homestead had become insanitary, low and marshy causing several choice trees planted many years prior to the time that she testified, to die.

The City and County of Honolulu by way of defense offered in evidence the record in the case of "City and County of Honolulu vs. Victoria Ward" and a portion of the record in Land Court Application No. 670. It also offered in evidence a letter signed by E. H. Wodehouse, attorney in fact for Victoria Ward, and the reply thereto signed by James H. Boyd, Superintendent of Public Works, both letters being dated in the year 1902, all of which exhibits are now before this Court.

The City and County of Honolulu then proceeded to prove through its witnesses that it had partially complied with the conditions set forth in the letter of Mrs. Ward.

The Petitioners were then recalled and testified that the Territory of Hawaii had failed to comply with the conditions set forth in the letter of 1902. That the petitioners and their mother at their own expense, were compelled to put in fences on both sides of Lot "E"; that Lot "E" was never paved until 1916; that no curbs were laid and that an attempt to lay curbs was being made by the City and County

of Honolulu after the filing of the suit; that the petitioners were compelled at their own expense to fill in a large portion of the area Ewa (westerly side) of Lot "E".

The petitioners also put in evidence the entire record in Land Court Application 670.

The Court entered its decision dismissing the bill. Pursuant thereto a decree was entered, from which decree an appeal was taken to the Supreme Court.

The Supreme Court of the Territory sustained the Circuit Judge and the matter is now before this Court upon appeal.

ASSIGNMENTS OF ERROR

No. 6545

I

That the Supreme Court of the Territory of Hawaii erred in holding that the petitioner, the City and County of Honolulu, was entitled to the relief prayed for in its petition, to-wit, to compel these respondents to deliver their Transfer Certificate of Title No. 7250 to the Registrar of the Land Court.

II

That the Supreme Court of the Territory of Hawaii erred in holding that these respondents were bound by the final order of condemnation made and entered on the 7th day of January, 1930, in that certain cause entitled "The City and County of Honolulu vs. Victoria Ward," docketed and numbered Law No. 11946.

III

That the Supreme Court of the Territory of Hawaii erred in failing to hold and decide that it was without jurisdiction to grant the prayer of the petition.

IV

That the Supreme Court of the Territory of Hawaii erred in failing to hold and decide that there was and is no provision of law upon which the petition herein could be based, or an order to show cause issued, or the prayer of the petitioner granted.

V

That the Supreme Court of the Territory of Hawaii erred in failing to hold and decide that these respondents, would be deprived of property without due process of law by granting the relief prayed for in said petition.

VI

That the Court erred in failing to hold and decide that the property of these respondents would be taken for public use without just compensation by granting the prayer of the petitioner.

No. 6546

I

That the Supreme Court of the Territory of Hawaii erred in overruling the appeal of the petitioners and affirming the decision of the Circuit Court of the

First Judicial Circuit, Territory of Hawaii, made and entered on the 5th day of February, 1931.

II

That the Supreme Court of the Territory of Hawaii erred in holding and finding that the petitioners were not entitled to the relief prayed for in their petition.

III

That the Supreme Court of the Territory of Hawaii erred in holding and finding that the petitioners were bound by the judgment in the eminent domain proceeding entitled "The City and County of Honolulu vs. Victoria Ward."

IV

That the Supreme Court of the Territory of Hawaii erred in failing to grant the relief prayed for by the petitioners in their petition.

V

That the Supreme Court of the Territory of Hawaii erred in failing to hold and find that the petitioners would be deprived of their private property without just compensation if the prayer of the petitioners was not granted.

VI

That the Supreme Court of the Territory of Hawaii erred in failing to hold and find that the petitioners were not bound by the Final Order of Con-

demnation in the eminent domain proceeding entitled "The City and County of Honolulu vs. Victoria Ward."

ARGUMENT

The assignments of error in both causes raise but one main issue—whether, the City and County of Honolulu, under the power of eminent domain, can take private property for public use without first paying just compensation therefor, to the owner at the time of taking. For this reason all of the assignments of error will be argued together.

It will be remembered that these appellants were purchasers *pendente lite* of Lots "F" and "G" of Land Court Application No. 670; that said lots were condemned for public purposes in a proceeding against their predecessor in interest, and a judgment fixing the damage for the taking had been entered, but that the compensation fixed by the judgment to be paid to the owner was not paid to these appellants but to their predecessor in interest, notwithstanding the prior issuance to them of a Certificate of Title out of the Land Court of the Territory of Hawaii, certifying that these appellants were the owners in fee.

While it is contended by these appellants, that they were not bound by the judgment in the eminent domain proceeding, we will assume for the purposes of this argument that they are, that is, that as to them, it has been judicially determined that Lots "F" and "G" of Land Court Application No. 670, could be taken for public purposes upon the payment of the award fixed in the judgment. It is, however,

respectfully contended that the Final Order of Condemnation was void and of no effect as to them and was ineffectual to divest them of their fee simple title because of the failure of the City and County of Honolulu to pay to them the compensation fixed by the judgment for their interest in the land. It would violate the constitution of the United States to hold otherwise for their private property would be taken for public use, without just compensation.

As hereinbefore stated, the Final Order of Condemnation involves Lots "F" and "G". The evidence before the Circuit Court was conclusive that the Petitioners, Lucy Kaiaka Ward, and her sisters, the appellants herein, were the owners in fee simple, as joint tenants with their mother, prior to the entering of the judgment fixing the compensation. Transfer Certificate of Title No. 7250, had already been issued to them by the Land Court of the Territory. The Certificate, on its face, shows these appellants to be the owners and under our statute a transfer certificate of title is conclusive evidence of the statements contained therein.

"Sec. 3237. Certificate as Evidence. The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar or assistant registrar, and the seal of the Court, and also the owners duplicate certificate, shall be received as evidence in all the courts of the Territory, *and shall be conclusive as to all matters therein contained*, except so far as otherwise provided in this chapter."

Revised Laws of Hawaii, 1925.

The evidence also conclusively showed that no

part of the compensation fixed by the judgment was ever paid to these appellants. This fact was not only proven, but admitted by the City and County of Honolulu. The compensation was not paid to these appellants notwithstanding the fact that a year and a half elapsed between the issuance of the Transfer Certificate and the filing of the Final Order of Condemnation.

There can be no question but that the award of damages set forth in the eminent domain proceeding should be payable to the owner or owners at the time the title passes to the government.

The authorities are uniform in that regard. They all hold that the owner at the time that the title passes to the government is the person to whom the award is payable.

“When land is condemned, the damages belong to the owner at the time of taking.”

Spencer vs. Comm. River Co. 101 A. 528.

“He from whom the title of the condemned property is taken is entitled to the compensation.”

Van Etten vs. C. of N. Y. 124 N. E. 201.

See also 99 A 64 and 106 A. 65.

“The right of compensation for land taken for public use occurs when the land is taken.”

East San Mateo Land Co. v. S. P. Ry. Co.

157 P. 634.

“Damages for the taking of land for a highway belong to the one who owns the land at the time of taking.”

Canoe v. Davis, 121 S. E. 601.

“Grantee entitled to damages caused by laying out of road.”

Johnson vs. Washington Co.
20 S. W. (2) 179.

“Vendee is entitled to damages suffered where right to condemnation proceeds, accrues after conveyance.”

Russakox vs. McCarthy, 275 Pac. 808.

“It is the divesting of title which entitles to the compensation.”

Van Etten vs. C. of N. Y. 124 N. E. 201.

“Damages for appropriation of land by either public or private corporation belong to the owner of land when appropriation is made.”

Safe Deposit & Title Guaranty Co.
vs. Lenton, 100 A. 831.

It is provided in Section 824, Revised Laws of Hawaii, 1925, that the owners are divested of their title when the final order of condemnation is entered and recorded. This Court in the case of U. S. vs. Marriam, 161 Fed. 303, in construing this section has so held. It said:

“The direct language of this provision makes it plain that the judgment must be filed and recorded before the property vests in the plaintiff. By the use of the adverb ‘thereupon’ the law fixes the time when the title shall vest, that is when the act of filing and recording the certified copy of the judgment is done and not until then. The reason for requiring such registry must also lie in the general rule that the judgment, unless filed and recorded, would not create a lien upon the realty involved, or *conclude any who were not parties to the con-*

demnation proceedings." Lindsay v. Kanaina, 4 Haw. 165; Baker v. Morton, 79 U. S. 150; 20 L. Ed. 262.

It will be noted that our statute is silent as to whom the compensation should be payable. It is a matter of general knowledge, and it is not uncommon that owners of lands about to be condemned who do not feel that they can bear the burden of the cost of the improvement sell their lands to others who can bear the burden and that the owner at the time when the Final Order is entered is the person to whom the payments provided by the judgment should be made, and to no other.

The Petitioners therefore, being the owners of Lots "F" and "G", were entitled to the compensation. The evidence conclusively shows that they did not receive it. Certainly under the law and the conclusive evidence there could be no justification for the conclusion of the Supreme Court of Hawaii that the "Compensation was awarded and paid to the owner of the land" (Tr. No. 6545, p. 29). Furthermore Section 823, Revised Laws of Hawaii, 1925, provides that the payments must be made within two years and Section 824 of the Revised Laws, 1925, provides:

"When all payments required by the final judgment have been made the Court shall make a final order of condemnation and until then no final order can be made."

It is submitted that the requirements of Section 824 were not complied with by the City and County

of Honolulu and that the final order of condemnation was therefore void. The title to Lots "F" and "G" therefore remained in the appellants, and the appellants who were not parties to the condemnation proceedings are not concluded.

It is fundamental that private property cannot be taken for public use without compensation. It is a constitutional right guaranteed to every citizen and no legislature or court can deprive a citizen of that right.

"Private property cannot be taken unless compensation be first made, a constitutional provision which the legislature cannot abrogate."

Weieke v. Chic. M. & St. P. Ry. 178 N. W. 1009.

The conclusion of the Supreme Court of Hawaii that these appellants' constitutional rights were not violated, even though their private property was taken for public use without paying just compensation therefor, is manifestly error.

The attempt of the City and County of Honolulu to enter upon and take possession of these appellants' private property violates the Constitution. *The question as to whom the compensation is to be paid is just as vital as the amount which is to be paid*, when constitutional rights are concerned, in an eminent domain proceeding.

While a purchaser *pendente lite*, may be bound by the judgment, still and notwithstanding that fact, the Owner's subsequent conveyance does affect the question as to whom the compensation should be paid. (See Department of Public Works v. Ingall, 146 N. E. 521, and Chicago vs. Messler et al, 38 Fed.

302 at 303.) And, as the law clearly indicates that these appellants should have been paid the compensation as they were the owners at the time of the taking the Supreme Court of Hawaii erred, and should be reversed.

The Supreme Court also erred in failing to grant injunctive relief.

The threatened acts of the City and County of Honolulu to take and injure the property of these Appellants is sufficient ground, in itself, for the issuance of an injunction to restrain such acts.

“Property owner has right to enjoin acts of damages to his property by municipality where there is an attempt to take or injure his property for public use without compensation.”

City of Troy v. Watkins, 78 So. 50.

“Citizens may enjoin municipality from taking or injuring his property without first making compensation without regard to the fact that adequate damages at law can be recovered.”

Id.

See also

Stall vs. Bremer, 118 N. E. 1087.

Rockaway Pacific Corp. v. Stotesburg et al, 255 Fed. 345.

Uvalde Rock Asphalt Co. v. Asphalt Belt Ry. Co. et al. 103 So. 40.

Hargett v. Franklin County et al, 267 S. W. 688.

The Supreme Court of Hawaii in its opinion and decision found that as to Lot “E” these Appellants had an adequate remedy at law, to-wit, a suit against the City and County of Honolulu in ejectment. Lot “E” is a highway. To arrive at the conclusion that

the Supreme Court did, it must of necessity also arrive at the conclusion that the fee to Lot "E" was in the Territory.

Section 1892 of the Revised Laws of Hawaii, 1925, defines public highways as roads, etc., dedicated to the public as a highway, and Section 1893 of the Revised Laws provides that:

"The ownership of all public highways and the land, real estate and property of the same shall be in the government in fee simple."

In other words, once a way becomes a public highway by dedication the fee therein is in the Territory.

If the fee is in the Territory then the conclusion of the Supreme Court is clearly error, for the Supreme Court has in the case of *Bush vs. Territory*, 13 Hawaii 1, held:

"That ejectment does not lie against the Territory."

As to the power of a court in equity to restrain a trespass the Supreme Court of Hawaii has in the case of *Yee Hop v. Colburn*, 24 Hawn. 658, set down the rule as follows:

"In the present case we have a petition addressed to a court of equity by the owner in possession of the property to restrain parties who have trespassed upon the property and caused destruction of a part thereof and who threaten future trespasses and acts of destruction. Upon two recognized principles equity would afford relief in such a case. *First, because the threatened acts of the respondents, if carried into effect, might tend to*

the destruction of the property, and second, the repeated acts of trespass would result in a multiplicity of suits."

The evidence before the circuit court also showed that the City and County of Honolulu had trespassed upon Lots "E", "F" and "G" and had caused damage to a portion of these Appellants homestead by making the same low, marshy and insanitary, resulting in the death of several choice trees. These facts entitle the appellants to equitable relief.

"Equity may enjoin the destruction of or injury to trees when the inadequacy of the remedy at law is because of the value of the trees as a part of the estate, the destruction of which would be irreparable injury to the owner of the land."

Cowan v. Skinner, 42 So. 730.

And in the case of German Evangelical Cong. v. Hoessle, 13 Wis. 348, at page 358, that Court, in speaking of the rule said:

"But in cases of a peculiar nature which damages could not compensate, or where the injury reached the very substance and value of the estate and went to the destruction of it *in the character in which it was enjoyed* then Courts of Equity would grant an injunction to prevent the injury complained of."

How can money compensate the Appellants for the damage suffered? How can money replace the trees and shrubs that have been killed? How can money replace the security of the Appellants in their enjoyment in the tropical beauty and splendor of their home grounds, a portion of which already has

been taken away? How can money place in status quo that portion of "Old Plantation" that has become low, marshy and insanitary—a swamp? The injury suffered is irreparable. This, it is submitted, has been clearly proven by the evidence. The circuit court in its decision found that the damage set forth above had been suffered.

The Appellants having proved that they had suffered and were suffering irreparable injury, the Supreme Court erred in not granting the relief prayed for.

"It is well settled that if the bill shows that irreparable injury will result from a trespass, a sufficient ground for the interference of equity by injunction to restrain its commission or continuance is made out."

32 C. J. 136.

Or, to put the rule, in another form :

"Where the injury is of such a nature that it cannot be fully compensated in damages by any pecuniary standard, it is irreparable and the trespass may be enjoined."

32 C. J. 137.

CONCLUSION

It is the respectful contention of the Appellants, in view of the law, that the Supreme Court of Hawaii erred in the manner and form set forth in the Specifications of Error. The Appellants herein under the law and facts were entitled to the relief prayed for by them and for these reasons the Judgments of the Supreme Court of Hawaii should be reversed.

Dated at Honolulu, Hawaii, this day of November, A. D. 1931.

CHARLES B. DWIGHT,
Attorney for HATTIE KULAMANU WARD,
LUCY KAIAKA WARD and VICTORIA
KATHLEEN WARD,
Appellants.

