

**SUPREME COURT OF THE HAWAII
ISLANDS. SPECIAL TERM, MAY,
1895. IN THE MATTER OF J. C.
KALANIANAOLE: PETITION FOR
A WRIT OF HABEAS CORPUS**

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Supreme Court of the Hawaii Islands. Special Term, May, 1895. In the Matter of J. C. Kalaniana'ole: Petition for a Writ of Habeas Corpus by J. C. Kalaniana'ole & Paul Neumann

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J. C. KALANIANAOLE & PAUL NEUMANN

**SUPREME COURT OF THE HAWAII
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IN THE
Supreme Court of the Hawaiian Islands

SPECIAL TERM, MAY, 1895.

IN THE MATTER OF J. C. KALANIANA'OLE. PETITION FOR
A WRIT OF HABEAS CORPUS.

BEFORE JUDD, C.J., BICKERTON AND FREAR, JJ.

Under Article 31 of the Constitution, which provides that the President may, in case of rebellion or invasion, or imminent danger thereof, place the whole or any part of the Republic under martial law, the President alone is to decide whether the exigency is such as to require martial law, and how long martial law when proclaimed shall continue in force; and his decision is not subject to review by the courts.

Under martial law, in case of insurrection, the military commander may do whatever, in accordance with the customs and usages of war, he may deem necessary or proper for the suppression of the insurrection and the restoration of peace, and his acts cannot be called in question by the courts except in case of an abuse of power.

Under martial law, if necessary, in the opinion of the military commander, for the restoration of peace, a civilian may be tried by a military commission for misprision of treason.

Such trial may take place after actual hostilities have ceased and while the civil courts are in session, if there is still a state of war, and an impediment to such trials in the civil courts.

Misprision of treason, if committed, is not necessarily completed before an actual outbreak or the proclamation of martial law.

Notwithstanding a reservation in a proclamation of martial law that the civil courts would continue to conduct ordinary business, a person may, if necessary in the opinion of the President, be tried by a military commission.

The President may delegate to a Judge Advocate the power to bring a person before a military commission for trial.

The petition, filed May 20, 1895, and addressed to the Chief Justice, is as follows:

The petition of J. C. Kalaniana'ole respectfully shows:

I.

That he is a resident of Honolulu, Island of Oahu, and is unlawfully and unjustly restrained of his liberty and imprisoned by one James A. Low, in Oahu Prison, at said Honolulu, Island of Oahu, by virtue of a pretended commitment or order in words and figures following, to wit:

GENERAL HEADQUARTERS, NATIONAL
GUARD OF HAWAII,
HONOLULU, ISLAND OF OAHU, H. I.,
March 8, 1895.

GENERAL COURT MARTIAL ORDERS, No. 175.

I. Before a Military Commission, which convened at Honolulu, Island of Oahu, January 17, 1895, pursuant to Special Orders No. 25, dated January 16, 1895, as

amended by Special Orders No. 31, dated January 16, 1895, from these Headquarters, of which Colonel William Austin Whiting, 1st Regiment, N. G. H., was President, were arraigned and tried Jonah Kalaniana'ole.

CHARGE:—MISPRISION OF TREASON, for that the said Jonah Kalaniana'ole, at Honolulu, in the Island of Oahu, one of the Hawaiian Islands, while owing allegiance to the Republic of Hawaii, at various times within three months now last past, had knowledge of the commission of treason against the Republic of Hawaii, and the Government thereof, and having such knowledge concealed the same, and did not as soon as might be disclose and make known the same to some member of the Executive Council, or to some Judge of a Court of Record, or to the Marshal, or to some Sheriff or Deputy Sheriff.

FIRST SPECIFICATION:—That one Samuel Nowlein, at Honolulu, in the Island of Oahu, one of the Hawaiian Islands, while owing allegiance to the Republic of Hawaii, at divers times within three months now last past, did conspire with divers other persons to overthrow, put down and destroy, by force, the Republic of Hawaii, and the Government thereof, and to levy war against it, and to oppose by force, the authority thereof; and in pursuance of said conspiracy, and in effectuating and carrying out the same did, together with certain of his co-conspirators aforesaid, commit treason against the Republic of Hawaii, and the Government thereof, and *did cause fire-arms to be sent from a foreign country for the purpose of being landed on said Island of Oahu, there to be used to levy war against the Republic*

of Hawaii, and Government thereof, and that the said Jonah Kalaniana'ole, while owing allegiance to the Republic of Hawaii, and having knowledge of the commission of said treason, and of the various matters in this specification alleged, *concealed the same*, and did not as soon as might be disclose and make known the same to some member of the Executive Council, or to some Judge of a Court of Record, or to the Marshal, or to some Sheriff or Deputy Sheriff.

SECOND SPECIFICATION:—That the said Samuel Nowlein, at Honolulu, in the Island of Oahu, one of the Hawaiian Islands, while owing allegiance to the Republic of Hawaii, at divers times within three months now last past, did conspire with divers other persons to overthrow, put down and destroy, by force, the Republic of Hawaii, and the Government thereof, and to levy war against it, and to oppose by force the authority thereof; and in pursuance of said conspiracy and in effectuating and carrying out the same, did commit treason against the Republic of Hawaii, and the Government thereof, and together with certain of his co-conspirators aforesaid, *did dispatch a vessel from the port of Honolulu, in said Island of Oahu, to procure fire-arms with which to levy war*, on said Island of Oahu, against the Republic of Hawaii, and the Government thereof, and to effectuate and carry out the purposes of said conspiracy, and that the said Jonah Kalaniana'ole, while owing allegiance to the Republic of Hawaii, and having knowledge of the commission of said treason, and of the various matters in this specification alleged, *concealed the same*, and did not as soon as might be disclose and make known the same to some member of

the Executive Council, or to some Judge of a Court of Record, or to the Marshal, or to some Sheriff or Deputy Sheriff.

THIRD SPECIFICATION:—That the said Samuel Nowlein, at Honolulu, in the Island of Oahu, one of the Hawaiian Islands, while owing allegiance to the Republic of Hawaii, at divers times within three months now last past, did conspire with divers other persons to overthrow, put down and destroy, by force, the Republic of Hawaii, and the Government thereof, and to levy war against it, and to oppose, by force, the authority thereof; and in pursuance of said conspiracy, and in effectuating and carrying out the same, did commit treason against the Republic of Hawaii, and the Government thereof, and together with certain of his co-conspirators aforesaid, *did dispatch a vessel to procure fire-arms with which to levy war against the Republic of Hawaii, and the Government thereof; and to effectuate and carry out the purposes aforesaid of said conspiracy, which said fire-arms were taken aboard said vessel,* and that the said Jonah Kalaniana'ole, while owing allegiance to the Republic of Hawaii, and having knowledge of the commission of said treason, and of the various matters in this specification alleged, concealed the same, and did not as soon as might be disclose and make known the same to some member of the Executive Council, or to some Judge of a Court of Record, or to the Marshal, or to some Sheriff or Deputy Sheriff.

FOURTH SPECIFICATION:—That the said Samuel Nowlein, at Honolulu, in the Island of Oahu, one of the Hawaiian Islands, while owing allegiance to the Re-

public of Hawaii, at divers times within three months now last past, did conspire with divers other persons to overthrow, put down and destroy, by force, the Republic of Hawaii, and the Government thereof, and to levy war against it, and to oppose by force the authority thereof, and in pursuance of said conspiracy, and in effectuating and carrying out the same, did commit treason against the Republic of Hawaii, and the Government thereof, and together with certain of his co-conspirators aforesaid, *did procure fire-arms with which to levy war against the Republic of Hawaii*, and the Government thereof, and to effectuate and carry out the purpose aforesaid of said conspiracy, and that the said Jonah Kalaniana'ole, while owing allegiance to the Republic of Hawaii, and having knowledge of the commission of said treason, and of the various matters in this specification alleged, concealed the same, and did not as soon as might be disclose and make known the same to some member of the Executive Council, or to some Judge of a Court of Record, or to the Marshal, or to some Sheriff or Deputy Sheriff.

FIFTH SPECIFICATION:—That the said Samuel Nowlein, at Honolulu, in the Island of Oahu, one of the Hawaiian Islands, while owing allegiance to the Republic of Hawaii, at divers times within three months now last past, did conspire with divers other persons to overthrow, put down and destroy, by force, the Republic of Hawaii, and the Government thereof, and to levy war against it, and to oppose by force the authority thereof, and in pursuance of said conspiracy, and in effectuating and carrying out the same, did commit treason against the Republic of Hawaii, and the Gov-

ernment thereof, and together with certain of his co-conspirators aforesaid, *did obtain and procure men to levy war against the Republic of Hawaii*, and the Government thereof, and to effectuate and to carry out the purposes aforesaid of said conspiracy, and that the said Jonah Kalaniana'ole, while owing allegiance to the Republic of Hawaii, and having knowledge of said treason, and of the various matters in this specification alleged, concealed the same and did not as soon as might be disclose and make known the same to some member of the Executive Council, or to some Judge of a Court of Record, or to the Marshal, or to some Sheriff or Deputy Sheriff.

SIXTH SPECIFICATION:—That the said Samuel Nowlein, at Honolulu, in the Island of Oahu, one of the Hawaiian Islands, while owing allegiance to the Republic of Hawaii, at divers times within three months now last past, did conspire with divers other persons to overthrow, put down and destroy, by force, the Republic of Hawaii, and the Government thereof, and to levy war against it, and to oppose by force the authority thereof, and in pursuance of said conspiracy and in effectuating and carrying out the same, did commit treason against the Republic of Hawaii, and the Government thereof, and together with certain of his co-conspirators aforesaid, *did partially establish a pretended government and a military force, and did appoint and procure certain officers and agents for said pretended government and military force aforesaid*, and that the said Jonah Kalaniana'ole, while owing allegiance to the Republic of Hawaii, and having knowledge of the commission of said treason, and of the various matters in