

(20) TREATY WITH SPAIN, OCTOBER 9TH, 1863.

KNOW ALL MEN, that whereas His Majesty the King and Her Majesty the Queen of Spain did on the 9th day of October, in the year of Our Lord Eighteen Hundred and Sixty-three, at London, by their respective Plenipotentiaries, negotiate a Treaty of Peace and Friendship, which said Treaty is word for word, as follows :

Her Majesty the Queen of Spain, on the one part, and His Majesty the King of the Hawaiian Islands on the other part, desiring to facilitate the establishment of commercial relations between Spain and the Hawaiian Islands and to favor their development by a Treaty of Amity, Commerce and Navigation suited for securing to the two countries equal and reciprocal advantages, have nominated to this purpose for their Plenipotentiaries, that is to say : Her Majesty the Queen of Spain, Don Juan Tomas Comyn, Knight Grand Cross of the Royal Order of Isabella the Catholic, Knight Commander of the Royal distinguished Order of Charles the Third, Grand Cross of the Order of Phillip the Magnanimous of Hesse, of that of Christ of Portugal, &c., Grand Officer of the Legion of Honor of France, Commander of the Order of Our Lady of Villaviciosa of Portugal and of the Red Eagle of Prussia, &c., Chamberlain of Her Catholic Majesty, late Royal Councillor in extraordinary and Her actual Envoy Extraordinary and Minister Plenipotentiary at the Court of Her Britannic Majesty; and His Majesty the King of the Hawaiian Islands, Sir John Bowring, Knight Bachelor of Great Britain. Who, having mutually communicated their powers, and found them in good and true form, have agreed on the following Articles:

ARTICLE I. There shall be perpetual peace and constant friendship between the Kingdom of Spain and that of the Hawaiian Islands, and between the citizens of the two countries, without exception of person or place.

ARTICLE II. There shall be, between Spain and the Hawaiian Islands, reciprocal freedom in commerce and navigation. Spaniards in the Hawaiian Islands, and Hawaiian subjects in Spain, may enter in the same liberty and security with their vessels and cargoes as are enjoyed by the natives of the respective countries, in all places, ports and rivers which are, or shall in future be open to foreign commerce; provided, always, that the police regulations employed for the protection of the citizens of the most favored nations be respected.

ARTICLE III. The citizens of each of the contracting parties may, like the natives in the respective territories, travel or reside, trade wholesale or retail, let or occupy the houses, stores and shops which they may require; they may carry on the transport of merchandise and money, and receive consignments; they may also, when they have resided more than a year in the country, and their goods, chattels or movables which they there possess shall offer a sufficient security, be admitted as sureties in Custom-house transactions. The citizens of both countries shall, on a footing of perfect equality, be free both to purchase and to sell, to establish and to fix the price of goods, merchandise and articles of every kind, whether imported or of home manufacture, whether for home consumption or for exportation. They shall also enjoy liberty to carry on their business themselves, to present to the Custom-house their own declarations; or to have their places supplied by their own attorneys, factors, consignees, agents or interpreters, whether in the purchase or sale of their goods, property or merchandise; whether for the loading or unloading and expedition of their vessels.

They shall also have the right to fulfill all the functions that are confided to them by their own countrymen, by strangers, or by natives, in the position of attorneys, factors, agents, consignees, or interpreters.

For the performance of all these acts, they shall conform to all the laws and regulations of the country, and they shall not be subject, in any case, to any other charges, restrictions, taxes or impositions than those to which the natives are subject; provided, always, that the police regulations employed for the protection of the citizens of the most favored nation be respected. It is also specially provided, that all the advantages of any kind whatever, actually granted by the laws and decrees now in force, or which in future shall be accorded to foreign settlers, shall be guaranteed to Spaniards established, or who establish themselves in whatever position they may deem fit in the Hawaiian territory, and the same shall hold good for Hawaiian subjects in Spain.

ARTICLE IV. The respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defence of their rights, in every instance and degree of jurisdiction established by the laws. They shall be at liberty, under any circumstances, to employ lawyers, advocates or agents from any class, whom they may see fit to authorize

to act in their name. In fine, they shall in all respects enjoy the same rights and privileges which are granted to natives, and they shall be subject to the same conditions.

ARTICLE V. The Spaniards in the Hawaiian Islands, and the Hawaiians in Spain, shall be exempt from all service, whether in the army or navy, or in the national guard or militia, and they cannot be subject to any other charges, restrictions, taxes or impositions on their property, furniture or movables, than those to which the natives themselves are subject.

ARTICLE VI. The citizens of both countries respectively shall not be subject to any embargo, nor to be detained with their vessels, luggage, cargoes or commercial effects for any military expedition whatever, nor for any public or private service whatever, unless the government or local authority shall have previously agreed with the parties interested, that a just indemnity shall be granted for such service, and for such compensation as might fairly be required for the wrong which (not being purely fortuitous) may have grown out of the service which they have voluntarily undertaken.

ARTICLE VII. Citizens of either of the contracting parties shall, on the respective territories, have the right of possessing property of any sort, and disposing of it on the same conditions as native subjects.

Spaniards shall enjoy in all the Hawaiian territories the right of collecting and transmitting successions *ab intestato* or testamentary as Hawaiians, according to the laws of the country without being subjected as strangers to any burthens or imposts which are not paid by the natives.

Reciprocally Hawaiian subjects shall enjoy in Spain the right of collecting and transmitting succession *ab intestato* or testamentary, on the same conditions as Spaniards, according to the laws of the country, and without being subject as strangers to any charge or impost not paid by the natives.

The same reciprocity between the citizens of the two countries shall exist for donations *inter vivos*. On the exportation of property collected or acquired under any head by Spaniards in the Hawaiian Islands, or by Hawaiians in Spain, there shall be no duty on removal or immigration, nor any duty whatever to which natives are not subjected.

ARTICLE VIII. All Spanish or Hawaiian vessels, sailing under their respective colors, and which shall be bearers of the ship's papers and documents required by the laws of the respective countries shall be considered as national vessels.

ARTICLE IX. Spanish vessels which shall arrive either in ballast or laden in Hawaiian ports, or which shall leave the same, and reciprocally, Hawaiian vessels which, either in ballast or laden, enter or leave the ports of Spain, whether by sea, river or canals, whatever be the place of their departure or that of their destination, shall not be subject either at entry or departure, to duties on tonnage, port or transit, pilotages, anchorage, shifting, light-houses, sluices, canals, quarantines, salvage, bonding-warehouses, patents, brokerage, navigation, passage, or to any duties or charges whatever, levied on the hulks of vessels received or established for the benefit of the government, public functionaries, communes or establishments of any sort other than those which are now or may hereafter be levied on national vessels.

ARTICLE X. In all that regards the stationing, the loading and unloading of vessels in the ports, roadsteads, harbors and docks, and generally for all the formalities and arrangements whatever to which vessels employed in commerce, with their freights and loading may be subject, it is agreed that no privilege shall be granted to national vessels, which shall not be equally granted to vessels of the other country, the intention of the high contracting parties being that in this respect also the respective vessels shall be treated on the footing of perfect equality.

ARTICLE XI. Vessels of the subjects of the contracting parties, compelled to seek shelter in the ports of the other, shall pay neither on the vessels nor the cargo more duties than those levied on national vessels in the same situation; provided, that the necessity of such shelter seeking be legally shown; that the vessels shall carry on no commercial speculations, and that they tarry no longer in the aforesaid ports than is required by the motives which impelled them to seek such shelter.

ARTICLE XII. Spanish ships of war, and whaling ships, shall have free access to all the Hawaiian ports; they may there anchor, be repaired and victual their crews; they may proceed from one harbor to another of the Hawaiian Islands for fresh provisions.

At all the ports which are or may be hereafter opened to foreign vessels, Spanish ships of war and whalers shall be subject to the same rules which are or may be imposed, and shall enjoy in all respects the same rights, privileges and immunities which are or may be granted to Hawaiian ships and whalers, or to those of the most favored nation.

ARTICLE XIII. Articles of all sorts imported into the ports of either of the contracting States, under the flag of the other, whatever be their origin, and from whatever country imported, shall pay neither, other nor heavier duties of entry, and shall not be subjected to any other charges than those imposed on vessels under the flag of the most favored nation.

ARTICLE XIV. Spanish ships in the Hawaiian Islands, and Hawaiian ships in Spain, may discharge a portion of their cargo in the port of their first arrival, and proceed with the rest of their cargo to other ports of the same country, which may be open to foreign trade, whether to complete their unloading or to provide their return cargo, and shall pay in neither port other or heavier duties than those levied on national vessels in similar circumstances.

As regards the coasting trade, the vessels of each country shall be mutually treated on the same footing as the most favored nation.

ARTICLE XV. During the period allowed by laws of the two countries for the warehousing of goods, no other duties than those for custody and storage shall be levied upon articles imported from one of the two countries into the other, until they shall be removed for transit, re-exportation or internal consumption.

In no case shall such articles pay higher duties or be liable to other formalities than if they had been imported under the national flag, or from the most favored country.

ARTICLE XVI. Merchandise shipped on board Spanish or Hawaiian ships, or belonging to their respective citizens, may be transhipped in the ports of the two countries to a vessel bound for a national or foreign port, according to the custom house regulations of the two countries, and the goods so transhipped for other ports shall be exempt from all duties of customs or warehouses.

ARTICLE XVII. Articles of all sorts proceeding from Spain, or shipped for Spain, shall enjoy in their passage through the territory of the Hawaiian Islands, whether in direct transit or for re-exportation, all the advantages possessed under the same circumstances by the most favored nation.

Reciprocally, the articles of every sort proceeding from the Hawaiian Islands or sent for that country, shall enjoy in their passage through Spain, the same advantages as are possessed by the most favored nation.

ARTICLE XVIII. Neither one nor the other of the contracting parties will impose upon the goods proceeding from the soil, the manufactures or the warehouses of the other different or greater duties on importation or re-exportation, than those which shall be imposed on the same merchandise coming from any other foreign country.

Nor shall there be imposed on the goods exported from one country to the other, different or higher duties than if they were exported to any other foreign country.

No restriction or prohibition of importation or exportation shall take place in the reciprocal commerce of the contracting parties which shall not be equally extended to all other nations.

ARTICLE XIX. Consuls-General, Consuls, Vice-Consuls and Consular Agents may be established by each country in the other for the protection of commerce, such agents shall not enter upon their functions or enjoyment of the rights, privileges and immunities which belong to them until they have obtained the authorization of the territorial government, which shall, besides, preserve the right of determining the place of residence where Consuls may be established; it being understood that neither Government will impose any restriction which is not common in the country to all nations.

ARTICLE XX. The Consuls General, Consuls, Vice-Consuls and Consular Agents of Spain, in the Hawaiian Islands, shall enjoy all the rights, privileges, immunities and exemptions enjoyed by the agents of the most favored nation in the same circumstances.

And the same shall be the position in Spain, of the Hawaiian Consuls-General, Consuls, Vice-Consuls and Consular Agents.

ARTICLE XXI. The desertion of seamen embarked in the vessels of either of the contracting parties shall be severely dealt with in their respective territories. In consequence the Spanish consuls shall have the power to cause to be arrested and sent on board, or to Spain, seamen who may have deserted Spanish vessels in the Hawaiian ports. But for this purpose they must apply to the competent local authorities, and justify, by the exhibition of the original or the duly certified copy of the ship's register, the roll or other official documents to prove that the persons named formed part of the ship's crew. On this application, so supported, the delivery of the seamen shall not be refused.

All aid and assistance shall be given for the discovery and arrest of such deserters, who shall be detained in the prisons of the country, on the requirement and at the expense of the consuls, until they shall find an opportunity of sending them away. If, however, no opportunity shall offer in the course of two months, counting from the day of arrest, the deserters may be set at liberty.

It is understood that seamen who are native Hawaiians shall be excepted from this arrangement, and be treated according to the laws of their own country.

If the deserter has committed any crime in the Hawaiian territory, his release shall not take place till the competent tribunal shall have given judgment, and this judgment been carried into execution.

Hawaiian consuls shall possess exactly the same rights in Spain, and it is formally agreed between the two contracting parties, that every other favor or facility granted or to be granted by either to any other power for the arrest of deserters shall be also granted to the present contracting parties as fully as if they had formed part of the present treaty.

ARTICLE XXII. All operations connected with the salvage of stranded or wrecked Spanish vessels on the Hawaiian coasts shall be superintended by the Consular Agent of Spain, and reciprocally the Consular Hawaiian Agents shall superintend the operations connected with the salvage of Hawaiian vessels stranded or wrecked on the Spanish coasts.

But if the parties interested find themselves on the spot, or the captain possess adequate powers, the administration of the wreck shall be committed to them.

The intervention of the local authorities shall only be applied to the maintenance of order, to guarantee the rights of the salvors if they do not belong to the ship-wrecked crew, and to insure the execution of the measures to be taken for the entry and departure of the saved goods. In the absence and until the arrival of the Consular Agents, the local authorities will take the needful steps for the protection of persons and property wrecked.

The goods saved shall never be subjected to customs or other duty, unless they are disposed of for home consumption.

ARTICLE XXIII. The ships, merchandise and effects belonging to the respective citizens which may have been taken by pirates or conveyed to or found in the ports of either of the

contracting parties, shall be delivered to their owners on payment of the expenses should there be such, the amount to be determined by the competent tribunals when the right of the proprietor shall be proved before these tribunals, and the claim being made within the space of eighteen months by the interested parties, by their attorneys, or by the agents of their respective Governments.

ARTICLE XXIV. If, from a concurrence of unfortunate circumstances, differences between the contracting parties should cause an interruption of the relations of friendship between them, and that after having exhausted the means of an amicable and conciliatory discussion, the object of their mutual desire should not have been completely attained, the arbitration of a third power, equally the friend of both, shall by a common accord be appealed to, in order to avoid by this means a definitive rupture.

ARTICLE XXV. Hawaiian subjects shall enjoy, in the Ultra-marine possessions of Spain, the advantages which are conceded to the subjects of the most favored nation, and in the same possessions, the stipulations of this treaty shall have effect when not openly opposed to the special legislation there existing.

ARTICLE XXVI. All vessels bearing the flag of Spain, shall, in time of war, receive every possible protection, short of active hostility, within the ports and waters of the Hawaiian Islands, and Her Majesty the Queen of Spain engages to respect, in time of war the neutrality of the Hawaiian Islands, and to use her good offices with all the other powers having treaties with the same, to induce them to adopt the same policy toward the said Islands.

ARTICLE XXVII. The present treaty shall be in vigor for ten years, to commence six months after the exchange of ratification. If a year before the expiration of this term neither of the contracting parties shall have announced, by an official declaration, its intention of terminating it, the treaty shall still remain in force for a year, and so continue from year to year.

ARTICLE XXVIII. The present treaty shall be ratified and the ratification exchanged at London, within the space of eighteen months, or earlier if may be.

In faith whereof, the respective Plenipotentiaries have signed the same, and thereto affixed their seals.

Done in duplicate at London, this twenty-ninth day of October, in the year of Our Lord One Thousand Eight Hundred and Sixty-three.

[L. s.]

JUAN T. COMYN.

[L. s.]

JOHN BOWRING.

AND, WHEREAS, The said Treaty has been now duly ratified by His Majesty the King, and His Highness the Regent of Spain, and ratifications exchanged, the said Treaty has become a part of the law of this Kingdom, and all the provisions thereof are to be observed.

[L. s.]

CHAS. C. HARRIS,

Minister for Foreign Affairs.

Foreign Office, Sept. 2, 1870.