

(14) TREATY WITH FRANCE,

RATIFIED ON THE 8TH OF SEPTEMBER, 1858.

Treaty of Friendship, Commerce and Navigation, between His Majesty Napoleon III., Emperor of the French, and His Majesty Kamehameha IV., King of the Sandwich Islands.
In the name of the Most Holy Trinity,

Relations of commerce having been established several years ago between France and the Sandwich Islands, it has been considered useful to regulate these relations, to favor their development and to perpetuate their duration, by a treaty of Friendship, Commerce and Navigation, founded on the common interests of the two States, and such as to secure the enjoyment, by their respective subjects, of equal and reciprocal advantages.

In conformity with this principle, and with this object, they have nominated for their Plenipotentiaries, to wit:

His Majesty the Emperor of the French, Monsieur Louis Emile Perrin, Knight of the Imperial Order of the Legion of Honor, His Consul and Commissioner near the Hawaiian Government:

And His Majesty the King of the Sandwich Islands, His Royal Highness the Prince Lot Kamehameha, General Commanding-in-Chief, His Minister of the Interior, Acting Minister of Finance, Member of His Privy Council and of the House of Nobles; and Robert Crichton Wyllie, Esq., His Minister of Foreign Relations, His Secretary of State for War and the Navy, Member of His Privy Council and of the House of Nobles:

Who, having communicated their respective powers, found in due form and order, have agreed to the following articles:

ARTICLE I. There shall be constant peace and perpetual friendship between His Majesty the Emperor of the French, His heirs and successors, on the one part, and His Majesty the King of the Sandwich Islands, His heirs and successors, on the other part, and between the subjects of the two States, without excepting persons or places.

ARTICLE II. There shall be reciprocal liberty of commerce between all the territories of the French Empire, in Europe, and those of the Hawaiian Islands. Their respective subjects shall have entire liberty to enter with their ships and cargoes, in all the places, ports and rivers of the two States, which are or may be opened to foreign commerce.

They shall have liberty to trade from place to place, under the provisions of the laws, to discharge there, in all or in part, the cargoes by them imported from abroad, and, thereafter, to lay in their return cargoes; but they shall not have liberty there to discharge the merchandise which they shall have received from another port of the same State, or, in other words, to carry on the coasting trade, which remains exclusively reserved to the natives.

They shall have liberty, in their respective territories, to travel or reside, trade by wholesale or retail, as native subjects, to establish themselves wherever they may think it suitable for their interests, to hire and occupy the houses, stores and shops which may be necessary to them, to effect the transmissions of goods and money and to receive consignments, to be admissible as bondsmen, at the custom-houses, after they shall have been established more than one year in their places of residence, within either of the two States, and after that the real estate which they may there possess shall afford a sufficient guaranty.

They shall be at entire liberty to conduct their business themselves, and especially to present in the custom-houses their own declarations, or to be represented when they find it convenient by a factor, agent, consignee or interpreter, without having, as foreigners, to pay any extra charge or pecuniary allowance. They shall have the right to buy and to sell of and to whom they please, without any monopoly, contract or exclusive privilege of sale or purchase, prejudicing or restricting in any manner whatever, their liberty in this respect. They shall be equally free in all their purchases as well as in all their sales, to fix the price of their goods, merchandise and objects of every kind, both imported and destined for exportation, so long as they comply with the laws and regulations of the country.

Finally, they shall not be subjected in any of the aforesaid cases, to other charges, taxes or imposts at the custom-houses than those to which native subjects are subjected.

ARTICLE III. It is agreed that documents presented by French subjects in their own language shall be admitted in every case in which documents in the English language may be admitted, and the business to which the documents drawn up in said language may relate shall be dispatched with the same good faith and care; but whenever a translation is presented about the accuracy of which a difference may arise, the same shall be referred to the French Consul for his revision and certificate of approval.

ARTICLE IV. Their respective subjects shall enjoy, in both States, a constant and complete protection for their persons and properties. They shall, consequently, have free and easy access to the tribunals of justice, in prosecution and defense of their rights, in every instance, and in all the degrees of jurisdiction established by the laws. They shall be at liberty to employ, in all circumstances, the advocates, solicitors or agents of every class that they may think proper; in fine, they shall enjoy, in all these respects, the same rights and privileges which are or may be granted to native subjects.

They shall, besides, be exempt from all personal service, whether in the army or the navy, in national guards or militia, as also from every war tax, forced loan, requisition or military service, whatever it may be, and in every other case they shall not be subjected, whether as regards their personal property or real estate, to other charges or imposts than those to which the natives themselves, or the subjects or citizens of the most favored nation, without exception, shall be subjected.

Hawaiian subjects shall enjoy in all the possessions and colonies of France the same rights, privileges and the same liberty of commerce and navigation which are actually enjoyed or may be enjoyed by the most favored nation; and, reciprocally, the French inhabitants of the possessions and colonies of France shall enjoy, in all their extension, the same rights and privileges, and the same liberty of commerce and navigation which, by this treaty, are accorded in the Hawaiian Islands to the French in regard to their commerce and navigation.

ARTICLE V. French subjects shall not be disturbed or troubled in any way in the Hawaiian Islands on account of religion; they shall enjoy, on the contrary, in the public or private exercise of their worship, entire liberty of conscience and all the guarantees, rights and protection now ensured or that may be hereafter ensured to native subjects and the subjects or citizens of the most favored nation.

Hawaiian subjects shall enjoy, in France, in regard to religion, the same rights, guarantees, liberty and protection.

ARTICLE VI. The subjects of the two countries shall be free to acquire and possess real estate, and to dispose, as may suit them, by sale, donation, exchange, will, or in any other way whatever, of all the property which they may possess in the respective territories; also, the subjects of either of the two States who may become heirs of property situated in the

other, may succeed without hindrance to those said properties which may devolve upon them even *ab intestato*, and dispose of them according to their pleasure; and the said heirs or legatees shall not be subjected to any charges of transfer or deduction, and shall not be bound to pay any expenses of succession or others higher than those which shall be borne, in like cases, by the natives themselves.

ARTICLE VII. If (which God forbid!) the peace between the two contracting parties come to be broken, there shall be granted, on both sides, to the subjects of each of the two contracting parties, a term of one year to settle their affairs and to dispose of their property, and, moreover, a safe conduct shall be delivered to them to embark in such ports as they may voluntarily indicate.

All other Frenchmen or Hawaiians having a fixed or permanent establishment in the respective States, for the exercise of any profession or occupation, whatever it may be, shall be allowed to preserve their establishments and to continue their profession without being disturbed in any manner whatever, and they shall continue in the full and entire possession of their liberty and their property so long as they shall commit no offense against the laws of the country. Finally, their property or goods, of whatever nature they may be, shall not be subjected to any seizure or sequestration, nor to other charges and imposts than those exacted from natives.

Likewise the moneys which may be due to them by private individuals, or which they may possess, in the public funds, in banks, in manufacturing and commercial companies, shall never be seized, sequestered or confiscated.

ARTICLE VIII. French commerce in the Hawaiian Islands, and Hawaiian commerce in France, shall be treated, in regard to custom-house duties, both for importation and exportation, as that of the most favored foreign nation.

In any case the import duty imposed in France upon the products of the soil or of the industry of the Hawaiian Islands, and in those Islands upon the products of the soil or of the industry of France, shall not be other or higher than those to which the same products of the most favored nation are or may be subjected. The same shall be observed in regard to duties on exportation.

No prohibition or restriction of importation or exportation shall take place, in the reciprocal trade of the two countries, which shall not be equally extended to all other nations, and

the formalities which may be required to authenticate the origin or the process of the goods respectively imported into either of the two States, shall be equally common to all other nations.

ARTICLE IX. All the products of the soil and of the industry of either of the two countries, the importation of which is not expressly prohibited, shall pay in the ports of the other the same duties of importation, whether they be laden on board of French or Hawaiian vessels. Also the products exported shall pay the same duties and enjoy the same franchises, allowances and drawbacks of duties which are or may be reserved to the exportation made in national vessels, excepting, however, from the foregoing all special privileges and encouragements granted or to be granted in either of the two countries to their national fisheries.

ARTICLE X. It is agreed:

1. That the importation and the sale of wines and brandies of French origin shall not be prohibited in the Hawaiian Islands.

2. That the rate of duties imposed in Hawaiian ports on the importation of wines of French origin, namely, those known as wines of "cargaison" in casks and in cases, shall not exceed, during the existence of the present treaty, the rate of 5 per cent. on the value, the invoice cost to serve as the basis of appraisement, agreeably to the Hawaiian law of April 27th, 1846.

3. That the rate of duties on French wines of higher quality, but under 18 per cent. of alcoholic strength, shall not, during the same period, exceed that of 15 per cent. *ad valorem*.

4. That the rate of duties imposed upon brandies of French origin shall not exceed, during the same period, three dollars, as a maximum, on the gallon, such as defined by the Hawaiian law of April 27th, 1846, 3d part, 4th chapter, article 2d, page 187.

5. There shall not be added, in any case, to the duties on wines and brandies herein specified any extra charge of customs or navigation, or any other charge, whatever its title may be.

It is understood that nothing in this article shall prohibit the imposition of tonnage dues by the Hawaiian Government on the total amount of foreign and national navigation.

ARTICLE XI. French vessels arriving in the ports of the

Hawaiian Islands or departing from them, and Hawaiian vessels on their entrance to or departure from the ports of France shall not be subjected to other or higher duties of tonnage, light-houses, anchorage, port, government wharfage, pilotage, quarantine or others, under any denomination whatever it may be, affecting the hull of the vessel, than those to which the vessels of the most favored nation are or may be subjected.

ARTICLE XII. French vessels in the Hawaiian Islands, and Hawaiian vessels in France, may discharge a part of their cargo in the port which they may first enter, and repair, afterwards, with the rest of the same cargo to other ports of the same State, whether it be to complete the discharge of their cargo imported, or to complete the lading of their return cargo, they not paying in each port other or higher duties than those which national vessels pay in similar circumstances.

ARTICLE XIII. Whenever in consequence of a forced putting into port or proved average, the vessels of either of the two contracting powers shall enter the ports of the other or touch upon its coast, they shall not be subjected to any duties of navigation, under any denomination under which these duties may be respectively established, except the duties of pilotage and others representing the payment of the services rendered by private exertions, provided that the vessels shall not engage in any operation of trade, whether in loading or in discharging goods. They shall be allowed to deposit on shore the goods composing their cargoes to prevent their destruction, and no other charges shall be exacted of them than those which relate to the hiring of stores and public workshops which may be necessary for the deposit of the goods and the repairs of the damages of the vessels.

ARTICLE XIV. Vessels constructed in France, or nationalized according to the laws of that country, shall be considered to be French vessels, provided always that the captain and three-fourths of the crew be French. The owner or the owners of the said vessels shall have to prove the same nationality only in the same proportions as required by the French laws.

In like manner all the vessels constructed within the territory of the Hawaiian Islands, or nationalized agreeably to Hawaiian laws, shall be considered Hawaiian vessels, provided always that the captain and three-fourths of the crew be Hawaiian. The owner or the owners of the said vessels

shall have to prove the same nationality only in the same proportions as those required by the Hawaiian laws.

It is besides agreed that every French or Hawaiian vessel, in order to enjoy, under the above conditions, the privilege of its nationality, shall be furnished with a passport, license to sail, or register, the form of which shall be reciprocally communicated, and which being certified by the authorities competent to deliver the same shall show:

1. The name, the profession and the residence in France, or in the Hawaiian Islands, of the owner, expressing therein that he is the only owner, or if there are several owners, stating their number and what share each of them possesses.

2. The name, the dimensions, the burden, and in short all the peculiarities of the vessel which may distinguish her as well as establish her nationality. In case of any doubt in regard to that nationality, that of the owner, of the captain and of the crew, the consuls or consular agents of either of the two countries to which the vessel may be destined shall have the right to require authentic proofs before viséing the papers on board, but this to be without any expense to the vessel.

If experience should hereafter demonstrate that the interests of the navigation of either of the two contracting parties suffer by the tenor of the present article, they reserve to themselves to make therein in common accord the modifications which may appear to them convenient.

ARTICLE XV. The vessels of war, the steam vessels belonging to the State, the packet boats engaged in the postal service, and the French whaling vessels, shall have free access to the Hawaiian ports of Hanalei, Honolulu, Lahaina, Hilo, Kawaihae, Kealakeakua and Koloa; they shall have liberty to stay there to make repairs and to refresh their crews; they may also proceed from one port to another of said ports of the Hawaiian Islands with the view of there procuring fresh provisions.

In all the ports specified in the present article, as well as in all those which may be hereafter opened to foreign vessels, the vessels of war, steam vessels belonging to the State, the packet boats engaged in the postal service and the French whaleships shall be subjected to the same rules as are or may be imposed on, and shall enjoy in all respects the same rights, privileges and immunities which are or may be granted to the same Hawaiian vessels and whaleships, or to those of the most favored nation.

ARTICLE XVI. Consuls and vice-consuls of each of the two countries may be established in the other for the protection of commerce, but those agents shall not enter upon their functions without having obtained the *exequatur* of the territorial government. The latter shall besides preserve their right to determine the localities in which it may suit it to admit consuls, it being well understood that in this respect the two governments shall not offer respectively any restriction which, in their country, may not be common to all nations.

ARTICLE XVII. The respective consuls and vice-consuls, as well as "eleves consuls," chancellors or secretaries attached to their mission, shall enjoy, in the two countries, the privileges generally allowed to their office, such as the exemption from the billet of soldiers and that from all direct contributions as well personal as on movables, or sumptuary, unless always they be subjects of the country, or that they become either proprietors or possessors of real estate, or, finally, that they engage in trade or commerce, whereby they will be subjected to the same taxes, charges or imposts, as other private individuals. These agents shall enjoy, besides, all the other privileges, exemptions and immunities which may be granted in the places of their residence to the agents of the same rank of the most favored nation.

Neither consuls, vice-consuls, nor their "eleves," chancellors or secretaries, provided they are not engaged in business of any sort, but exclusively confine themselves to the fulfillment to their public duties, shall be subjected to appear as witnesses before the tribunals. When the justice of the country shall have need to take any judicial declaration, on their part, it ought to require it of them in writing, or to proceed to their domicile to receive it *viva voce*.

In case of the death, indisposition or absence of the consuls or vice-consuls, the chancellors or secretaries shall enjoy the perfect right of being admitted to manage, *ad interim*, the affairs of the consular establishment, without hindrance or obstacle on the part of the local authorities, which, on the contrary, shall give them, in that case, every aid and assistance; and they shall enjoy, during the period of their provisional management, all the rights, privileges and immunities stipulated, in the present convention, in favor of consuls and vice-consuls.

To secure the execution of the paragraph which precedes, it is agreed that the chiefs of the consular offices, on their arrival in the country of their residence, shall send to the

Government a list of the names of the persons attached to their mission, and if any change should therein afterwards be made, they shall in like manner give notice of the same.

ARTICLE XVIII. The archives, and in general, all the papers of the offices of the chancellors of the respective consulates, shall be inviolable, and, under no pretext nor in any case whatever shall they be seized or examined by the local authorities.

ARTICLE XIX. The respective consuls shall be free to establish consular agents or vice-consuls in the different towns, ports and places within their consular jurisdiction, where the good of the service confided to them shall require it; it being well understood that they shall first obtain the approval and the *exequatur* of the territorial government.

These agents may be indiscriminately chosen from among the subjects of the two countries, as well as from among foreigners, and shall be furnished with a commission delivered by the consul who shall have named them, and under whose orders they may be placed. They shall enjoy, besides, the same privileges and immunities stipulated for by the 17th article of the present convention, subject to the exceptions mentioned in the first paragraph of the said article.

ARTICLE XX. The respective consuls, on the death of their fellow-countrymen, deceased without having made wills, or designated any testamentary executors, shall have power:

1. To affix seals, whether officially or at the request of the parties interested, upon the movable effects and the papers of the deceased, giving, beforehand, notice of that operation to the competent local authorities, who may thereat attend, and who, also, if they think proper, may cross, with their seals, those which shall have been affixed by the consuls, and then those double seals shall not be removed except in concert.

2. Also to draw up, in the presence of the competent authorities of the country, if they think it to be their duty to present themselves on the spot, the inventory of the estate.

3. To cause proceedings to take place, according to the usage of the country, for the sale of the movable goods, belonging to the estate; in fine, to administer or liquidate personally, or to name, under their responsibility, an agent to administer and liquidate the said estate, without any interference by the local authorities in these new operations.

But the said consuls shall be bound to cause to be announced the death of the deceased in one of the gazettes

which may be published within the compass of their jurisdiction; and they shall not have power to make a delivery of the estate, or of its proceeds, to the lawful heirs, or to their mandatories, except after having paid all the debts which the deceased may have contracted in the country, or until one year shall have transpired from the date of the death, without any reclamation having been presented against the estate.

ARTICLE XXI. In everything that concerns the police of the port, the lading and discharging of vessels, the safety of merchandise, property and goods, the subjects of the two countries shall be respectively subject to the laws and statutes of the territory. Nevertheless, the respective consuls shall be exclusively charged with the internal order on board of the merchant vessels of their nation, and shall alone take cognizance of all the crimes, misdemeanors and other matters of difference, in relation to said internal order, which may supervene between the master, the officers, and the crew, provided the contending parties be exclusively French or Hawaiian subjects, and the local authorities shall not be allowed therein to interfere, unless by the approval or consent of the consuls, or in cases where the public peace and tranquility are disturbed and endangered.

ARTICLE XXII. The respective consuls shall have power to cause to be arrested and returned, whether on board or to their own country, sailors and all other persons regularly forming part of the crews of the vessels of their respective nations, bearing any other title than that of passengers, who shall have deserted from the said vessels. For this purpose they shall apply, in writing, to the competent local authorities, and they shall prove by the exhibition of the register of the vessel, or of the roll of the crew, or, if the vessel shall have departed, by copy of the said document, duly certified by them, that the men whom they reclaim made part of the said crew. When this application is so justified, the return is not to be refused. Besides, every aid and assistance shall be given to them for the search, seizure and arrest of the said deserters, who shall even be detained and guarded in the prisons of the country, on the request and at the expense of the consuls, and till those agents shall find an opportunity to send them away. If, however, such an opportunity should not present itself within the period of three months, counting from the day of arrest, the deserters shall be placed at liberty, and shall not be again arrested for the same cause.

It is, moreover, formally agreed that every other concession or facility tending to repress desertion which one of the two contracting parties may have granted, or may hereafter grant, to another State, shall be considered as equally acquired, in full right, by the other contracting party, in the same manner as if that concession or facility had been expressly stipulated in the present treaty.

ARTICLE XXIII. In all cases where there shall be no objection by any of the owners, freighters, insurers, or their respective agents, either in the port of departure or of arrival, the injuries which the vessels of the two countries may have experienced at sea while on their voyage to the respective ports, the repairs of such injuries shall be regulated by the consuls of their respective nations.

ARTICLE XXIV. All the operations relative to the salvage of French vessels shipwrecked or stranded upon the coast of the Hawaiian Islands shall be directed by the consuls of France, and, reciprocally, the Hawaiian consuls shall direct the operations relative to the salvage of the vessels of their nation shipwrecked or stranded on the coasts of France.

The local authorities shall only interfere in the two countries to preserve order, to secure the interests of the salvors, if they do not belong to the shipwrecked crew, and to carry into effect the regulations to be observed for the entry and the exportation of the merchandise saved. In the absence of, and until the arrival of the consul or vice-consul, the local authorities shall, moreover, take all necessary measures for the protection of individuals, and the preservation of goods shipwrecked.

The goods saved shall not be subjected to any custom-house duties, unless they be entered for internal consumption.

The charges for salvage and other necessary expenses in the two countries shall not be other or higher than those which may be paid in like cases by national vessels.

ARTICLE XXV. It is formally agreed between the two contracting parties, that besides the preceding stipulations the diplomatic and consular agents, the subjects of every class, the ships, the cargoes and the merchandise of either of the two States, shall enjoy in full right in the other, the franchises, privileges and immunities of every kind, granted to or which may be hereafter granted in favor of the most favored nation, and this gratuitously if the concession be gratuitous, or with the same compensation if the concession be conditional.

It is specially stipulated that the postal arrangements, concluded in Honolulu on the 24th of November, 1853, and which regulate the exchange of correspondence between the Society Islands and the Hawaiian archipelago, and reciprocally, shall be maintained, and that the two contracting parties reserve to themselves only the right of modifying the details thereof, in the proportion and measure that hereafter necessity may point out.

ARTICLE XXVI. The present treaty shall be in force for ten years, counting from the day of exchange of the ratifications, and if, in one year before the expiration of this term, neither the one nor the other of the two contracting parties announce by an official declaration its intention that it shall cease to have effect, the said treaty will remain still obligatory during one year, and so onwards until the expiration of the twelve months which shall follow the official declaration in question, at whatever time it may be made.

It is well understood that in case this declaration come to be made by one or other of the contracting parties, the provisions of the treaty, relative to trade and navigation, and contained in the articles 8, 9, 10, 11, 12, 13, 14 and 24, shall be alone considered as having ceased and expired, but that, in regard to the other articles, the said treaty shall remain, nevertheless, perpetually obligatory, and cannot be modified except by a mutual agreement between the two contracting parties.

ARTICLE XXVII. The present treaty shall be ratified, and the ratifications exchanged, at Honolulu, within the term of ten months or sooner, if possible, and it shall not go into effect until after twelve months from the date of said exchange.

In faith of which the before-named Plenipotentiaries have signed the same, and have affixed their respective seals.

Done at Honolulu, this twenty-ninth day of October, in the year of Our Lord, one thousand eight hundred and fifty-seven.

(Signed.)	(Signed.)	(Signed.)
EM. PERRIN.	L. KAMEHAMEHA.	R. C. WYLLIE,
[Seal.]	[Seal.]	[Seal.]

AND, WHEREAS, We have fully examined all the points and articles thereof, by and with the advice of Our Privy Council of State, We have confirmed and ratified the foregoing treaty, and We do confirm and ratify the same, in the most effectual

manner, promising on Our faith and word as King, for Us and Our successors, to fulfill and observe it faithfully and scrupulously in all its clauses.

In faith of which We have signed this ratification with Our hand, and have affixed thereto the great seal of Our Kingdom.

Given at Our Palace, at Honolulu, this eighth day of September, in the year of our Lord, one thousand eight hundred and fifty-eight, and the fourth year of Our reign.

KAMEHAMEHA.

KAAHUMANU.

By the King and Kuhina Nui,

R. C. WYLLIE.