

(25) TREATY OF FRIENDSHIP, COMMERCE
AND NAVIGATION AND CONSULAR CONVENTION,

BETWEEN THE GERMAN EMPIRE AND THE KINGDOM
OF THE HAWAIIAN ISLANDS.

His Majesty the German Emperor, King of Prussia, in the name of the German Empire on the one part, and His Majesty the King of the Hawaiian Islands on the other part, being desirous to maintain and improve the relations of good understanding which happily subsist between Germany and the Hawaiian Islands, to promote the development of commerce and navigation between the two countries and to define the rights, privileges, immunities and duties of the respective Consular officers, have deemed it expedient to conclude a Treaty of Friendship, Commerce and Navigation and a Consular Convention, and have for that purpose appointed their respective Plenipotentiaries, namely:

His Majesty the German Emperor, King of Prussia: His Superior Privy Councillor of Government Dr. Johannes Rosing and His Privy Councillor of Legation, Hermann Adolph Heinrich Albrecht von Kusserow and His Majesty the King of the Hawaiian Islands: His Envoy Extraordinary and Minister Plenipotentiary near His Majesty the German Emperor Henry A. P. Carter; who after having communicated to each other their respective full powers, found to be in good and due form, have agreed to and signed the following articles:

ARTICLE I. There shall be perpetual friendship and peace between the German Empire and the Kingdom of the Hawaiian Islands and between the subjects and citizens of the two countries.

ARTICLE II. The subjects and citizens of the two High Contracting Parties may remain and reside in any part of said territories respectively and shall receive and enjoy full and perfect protection for their persons and property. They shall have free and easy access to the courts of justice, provided by law, in pursuit and defence of their rights, and they shall be at liberty to choose and employ lawyers, advocates or agents to pursue or defend their rights before such courts of justice; and they shall enjoy in this respect all the rights and privileges as native subjects or citizens.

In whatever relates to rights of residence, to the possession of real estate, goods and effects of any kind, to the suc-

cession to real or personal estate, by will or otherwise, and the disposal of property of any sort and in any manner whatsoever, the subjects and citizens of each Contracting Party shall enjoy the territories of the other the same privileges, liberties and rights and shall be subject only to the same imposts or charges in these respects as native subjects and citizens.

In regard to marriages concluded by subjects and citizens of the German Empire in the Kingdom of the Hawaiian Islands and by Hawaiian subjects and citizens in the German Empire, the form of marriage shall be regulated by the laws of the country where the marriage is concluded.

The subjects or citizens of each of the High Contracting Parties shall enjoy in the dominions of the other entire liberty of conscience and of private or public exercise of their worship and all the guarantees, rights and protection now ensured, or that may be hereafter ensured to native subjects and citizens, or to the subjects and citizens of any other nation. This liberty and protection shall extend also to the right of burying their respective countrymen according to their religious customs in suitable and convenient places, which they may establish and maintain for that purpose, subject always to the local laws and regulations.

The subjects and citizens of either of the Contracting Parties residing in the territories of the other shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans or military exactions or requisitions, and they shall not be compelled under any pretext whatsoever to pay any ordinary charges, requisitions or taxes, other or higher than those that are or may be paid by native subjects or citizens.

They shall not be subject to any embargo, nor be detained with their vessels, crews, cargoes or commercial effects, to be used for any military expedition whatever, or for any public or private service whatever, unless the Government or local authority shall have previously agreed with the parties interested on the indemnity to be granted for such service and for such compensation, as may fairly be required for the injury, which (not being purely fortuitous) may grow out of the service, which they have voluntarily undertaken.

ARTICLE III. There shall be between the dominions of the High Contracting Parties a reciprocal freedom of Commerce and Navigation.

The subjects and citizens of the two Contracting Parties

shall have liberty to travel in any part of said territories respectively and hire and occupy houses and warehouses; and they may trade, by wholesale or retail, in all kinds of produce, manufactures and merchandise of lawful commerce without being restrained or prejudiced by any monopoly, contract or exclusive privilege of sale or purchase whatever, subject only to the laws, police and customs regulations of the country, like native subjects or citizens.

They shall have liberty, freely and securely, to come and go with their ships and cargoes to all places, ports and rivers in the territories of the other, which are or may be opened to foreign commerce, and they shall have liberty, there to discharge under the same conditions as natives or the subjects of any other nation, wholly or in part, the cargoes imported by them from abroad, and to lay in and complete, wholly or in part, their return cargoes. This liberty, however, shall not apply to the coasting trade, which the High Contracting Parties reserve to be regulated by the laws of their respective countries; but it is understood, that the subjects and citizens of the High Contracting Parties shall enjoy also in this respect the rights, which are or may be granted, under such laws, to the subjects and citizens of any other country.

No other or higher duties or charges on account of tonnage, light or harbor dues, pilotage, quarantine, salvage in case of damage or ship wreck, or any other local charges, shall be imposed in any of the ports of the two countries respectively than shall be payable by vessels of the country, to whose dominions such ports belong; and for competing such dues upon tonnage the ships' registers shall be taken as indicating the tonnage expressed therein under the system of admeasurement actually adopted by both countries, save any additions or deductions authorized by the admeasurement laws of the respective countries.

It is agreed that German or Hawaiian ships sailing under the flag of their respective country and provided with the papers and documents required by the laws of their respective country shall, for the purposes of this Treaty, be deemed such vessels as their flag and papers show.

In fact, the two High Contracting Parties agree that any favor, privilege or immunity whatever in matters of trade, commerce or navigation, which either Contracting Party has actually granted, or may hereafter grant to subjects and citizens of their own (without prejudice to the coasting

trade before mentioned or to such other trade, as they may by law exclusively reserve to their respective subjects or citizens), or of any other country, shall be extended to the subjects and citizens of the other party under the conditions and regulations, gratuitously, if such concession shall have been made gratuitously, or (without prejudice to the matter of customs duties treated of in the following articles) in return for a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement if such concession shall have been conditional.

ARTICLE IV. No other or higher duties shall be imposed on the importation into the Hawaiian Islands of any article the growth, produce or manufacture of the German Empire, and no other or higher duties shall be imposed on the importation into the German Empire of any article, the growth, produce or manufacture of the Hawaiian Islands, than are or shall be payable on the like article being the growth, produce or manufacture of any foreign country.

ARTICLE V. No prohibition shall be imposed upon the importation of any article, the growth, produce or manufacture of the territories of either of the two Contracting Parties into the territories of the other, which shall not equally extend to the importation of the like article being the growth, produce or manufacture of any other country; without prejudice however to the reciprocal right of temporarily prohibiting from sanitary reasons the importation of certain articles from the territories of the other Contracting Party.

Nor shall any prohibition be imposed upon the exportation of any article from the territories of either of the two Contracting Parties to the territories of the other, which shall not equally extend to the exportation of the like article to the territories of all other nations.

ARTICLE VI. The same duties shall be paid on the importation into the dominions of either of the Contracting Parties of any article, which is, or may be legally imported therein by native or foreign subjects and citizens, whether such importation shall be in German or in Hawaiian vessels. The same duties shall be paid and the same bounties or drawbacks allowed on the exportation of any article from the dominion of either of the Contracting Parties, which is or may be legally exportable therefrom by native or foreign subjects and citizens, whether such exportation shall be in German or in Hawaiian vessels.

Merchandise shipped on board German or Hawaiian ships or belonging to their respective subjects or citizens may be transhipped in the ports of the two countries to a vessel bound to a national port of entry or for any foreign port, subject always to the custom-house regulations of the two countries, and the goods so transhipped for foreign ports shall be exempt from all duties of customs or warehouses.

Articles of all sorts proceeding from or shipped for the two countries respectively shall enjoy in their passage through the territories of the High Contracting Parties, whether in direct transit or for re-exportation, all the advantages possessed under the same circumstances by any other nation.

ARTICLE VII. The vessels of war, vessels belonging to the State, mail packets and whaling vessels of either of the Contracting Parties shall have free access to all ports, rivers or places of the other, which are open to foreign commerce and be at liberty to stay therein, to make repairs and refresh their crews and provisions. They shall be subjected to the same charges, rules, laws and regulations, as are or may be imposed on, and shall enjoy in all respects the same rights, privileges or immunities, which are or may be granted to vessels of the same class of any other nation.

ARTICLE VIII. All vessels bearing the flag of Germany or Hawaii shall in times of war receive every possible protection, short of actual hostility, within the ports and waters of the two countries, and each of the High Contracting Parties engages to respect under all circumstances the neutral rights of the flag and the dominions of the other.

ARTICLE IX. For the better security of commerce between the respective subjects it is agreed that if at any time any interruption of friendly intercourse should unfortunately take place between the two Contracting Parties, the subjects of either of the two Contracting Parties shall be allowed a year to close up their accounts and dispose of their property; and a safe conduct shall be given them to embark at the port, which they may themselves select. All subjects of either of the two Contracting Parties, who may be established in the territories of the other in the exercise of any trade or special employment, shall in such case have the privilege of remaining and continuing such trade and employment therein, without any manner of interruption, in full enjoyment of their liberty and property as long as they behave peaceably and commit no offence against the laws,

and their goods and effects of whatever description they may be, whether in their own custody or intrusted to individuals or to the State, shall not be liable to seizure or sequestration or to any other charge or demand than those, which may be made upon the like effects or property belonging to native subjects. In the same case debts between individuals, public funds and the shares of corporations shall never be confiscated, sequestered or detained.

ARTICLE X. Each of the Contracting Parties agrees to receive from the other Consuls-General, Consuls, Vice-Consuls and Consular Agents in all its ports, cities and places, except in those, where it may not be convenient to recognize such officers. This reservation, however, shall not apply to one of the contracting parties, without also applying to every other Power.

ARTICLE XI. The Consuls-General, Consuls, Vice-Consuls or Consular Agents shall be reciprocally received and recognized on the presentation of their commissions in the forms established in their respective countries. The necessary exequatur for the exercise of their functions shall be furnished to them free of charge, and on the exhibition of this instrument they shall be admitted at once and without difficulty by the territorial authorities, judicial or executive, of the ports, cities and places of their residence and district to the enjoyment of the prerogatives reciprocally granted. The Government that furnishes the exequatur reserves the right to withhold or withdraw the same on a statement of the reasons, for which it has thought proper to do so.

ARTICLE XII. The respective Consuls-General, Consuls, Vice-Consuls or Consular Agent, as well as their Chancellors and Secretaries shall enjoy in the two countries all privileges, exemptions and immunities, which have been granted or in future may be granted to the agents of the same rank of the most favored nation. Consular officers not being citizens of the country where they are accredited shall enjoy in the country of their residence personal immunity from arrest or imprisonment, except in the case of crimes, exemption from military billetings and contributions, from military service of every sort and other public duties, and from all direct or personal or sumptuary taxes, duties or contributions. If, however, the said Consular officers are or become owners of real estate in the country, in which they reside, or engage in commerce, they shall be subject to the same taxes and imposts and to the same jurisdiction as citizens of the country, owners of real estate and merchants. But under no

circumstances shall their official income be subject to any tax. Consular officers, who engage in business or commerce, shall not plead their consular privileges to avoid commercial or other liabilities. Consular officers of either character shall not in any event be interfered with in the exercise of their official functions further than is indispensable for the administration of the laws of the country.

ARTICLE XIII. Consuls-General, Consuls, Vice-Consuls and Consular Agents may place over the outer door of their offices or of their dwellings the arms of their nation with the proper inscription indicative of the office. And they may also hoist the flag of their country on the Consular edifice, except in places, where a Legation of their country is established. They may also hoist their flag on board any vessel employed by them in port exclusively for Consular purposes.

ARTICLE XIV. The Consular archives shall be at all times inviolable, and under no pretence whatever shall the local authorities be allowed to examine or seize the papers forming part of them. When, however, a Consular officer is engaged in other business, the papers relating to the Consulate shall be kept in a separate enclosure, apart from his private papers.

ARTICLE XV. In the event of the death, prevention or absence of Consuls-General, Consuls, Vice-Consuls and Consular Agents, their Chancellors or Secretaries, whose official character may have previously been made known to the respective authorities in Germany or in the Hawaiian Islands, may temporarily exercise their functions, and while thus acting they shall enjoy all the rights, prerogatives and immunities granted by this convention to their incumbents.

ARTICLE XVI. Consuls-General and Consuls may with the approbation of their respective Governments appoint Acting Consuls as their substitutes in case of hinderance or temporary absence, and Consular Agents in the cities, ports and places within their jurisdiction. Such Acting Consuls or Consular Agents shall be furnished with a commission by the Consul, who appoints them, or by his Government. Any substitute thus appointed shall enjoy consular privileges according to Articles XI and XII, while Consular Agents are to be treated as subordinates of the Consul under whose responsibility they act.

ARTICLE XVII. Consuls-General, Consuls, Vice-Consuls and Consular Agents shall have the right to apply to the authorities of the respective countries, judicial or executive,

within the extent of their consular district, for the redress of any infraction of the treaties and conventions existing between the two countries, or of international law; to ask information of said authorities and to address the same to the end of protecting the rights and interests of their countrymen, especially in cases of the absence of the latter or of any legal representative of the same, in which cases such Consuls, etc., shall be presumed to be their legal representatives. If due notice should not be taken of such application the Consular officers aforesaid, in the absence of a Diplomatic Agent of their country, may apply directly to the Government of the country where they reside.

ARTICLE XVIII. Consuls-General, Consuls, Vice-Consuls and Consular Agents of the two countries or their Chancellors, shall have the right conformably to the laws and regulations of the country:

1. To take at their office or dwelling, at the residence of the parties, or on board of vessels of their own nation, the depositions of the captains and crews, of passengers on board, of merchants or any other citizens of their country;

2. To receive and verify unilateral acts, wills and bequests of their countrymen, and any and all acts of agreement entered upon between citizens of their own country, and between such citizens and the citizens or other inhabitants of the country where they reside; and also all contracts between the latter, provided such contracts relate to property situated in, or to business to be transacted in the territory of the nation, which said Consular officers represent. But nothing in this article shall interfere with the regulations of the Hawaiian Islands regarding labor contracts.

All such acts of agreement and other instruments and also copies and translations thereof, when duly authenticated by such Consul-General, Consul, Vice-Consul or Consular Agent under his official seal, shall be received by the public officials and in courts of justice as legal documents or as authenticated copies, as the case may be, and shall have the same force and effect as if drawn up or authenticated by competent officers of one or the other of the two countries.

ARTICLE XIX. In case of the death of any citizen of Germany in the Hawaiian Islands or of any citizen of the Hawaiian Islands in the German Empire, without having in the country of his or her decease any known heirs or testamentary executors by him or her appointed, the competent local authorities shall at once inform the nearest Consular

officer of the nation, to which the deceased belonged, of the circumstances, in order that the necessary information may be immediately forwarded to parties interested.

The said Consular officer shall have the right to appear personally or by delegate in all proceedings on behalf of the absent heirs or creditors until they are duly represented. He may also, when he deems it expedient, personally administer upon the estate of the deceased for the benefit of his or her lawful heirs and creditors in accordance with the laws of the country, where the death has taken place. To that end he shall apply to the competent court for authority, and in the absence of reasonable objection such authority shall be granted. In all successions to inheritances citizens of each of the Contracting Parties shall pay in the country of the other such duties only as they would be liable to pay if they were citizens of the country, in which the property is situated, or the judicial administration of the same may be exercised.

ARTICLE XX. Consuls-General, Consuls, Vice-Consuls and Consular Agents of the two countries are exclusively charged with the inventoring and the safe-keeping of goods and effects of every kind left by the sailors on ships of their nation, who died on board ship or on land, during the voyage, or in the port of destination, or by passengers while attached to the ship.

ARTICLE XXI. Consuls-General, Consuls, Vice-Consuls and Consular Agents shall be at liberty to go either in person or by proxy on board vessels of their nation, admitted to entry, and to examine the officers and crews, to examine the ships' papers, to receive declarations concerning their voyage, their destination and the incidents of the voyage, also to draw up manifests and lists of freight, to facilitate the entry and clearance of their vessels, and finally to accompany the said officers or crews before the judicial or administrative authorities of the country, to assist them as their interpreters or agents. In case of the seizure or detention of any vessel in the ports of either party for violating revenue or other laws, the authorities shall give due notice to the said Consular officers, in order that they may be present at any proceedings with reference to the same, and assist the officers and crew of the ship in courts of law or before any local magistrate. Upon the non-appearance of the said officers or their representative, the case may be proceeded with in their absence.

ARTICLE XXII. Consuls-General, Consuls, Vice-Consuls or Consular Agents shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall have the exclusive power to take cognizance of and to determine differences of every kind, which may arise either at sea or in port between the captain, officers and crew, especially also in reference to wages and the execution of mutual contracts. Neither any court or authority shall on any pretext interfere in these differences, except in cases where the differences on board ship are of a nature to disturb the peace and public order in port or on shore, or when persons other than the officers and crew of the vessel are parties to the disturbance or difference. Except as aforesaid the local authorities shall confine themselves to the rendering of efficient aid to the Consuls when they may ask it, in order to arrest and hold all persons, whose names are borne in the ships' articles and whom they may deem it necessary to detain. Those persons shall be arrested at the sole request of the Consuls, addressed in writing to the local authorities and supported by an official extract from the register of the ship or the list of the crew, and shall be held during the whole time of the stay of the vessel in the port at the disposal of the Consuls. Their release shall be granted only at the request of the Consuls, made in writing. The expenses of the arrest and detention of those persons shall be paid by the Consuls.

ARTICLE XXIII. Consuls-General, Consuls, Vice-Consuls or Consular Agents may arrest the officers, sailors and all other persons making part of the crews of ships of war or merchant-vessels of their nation, who may be guilty or accused of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To that end the Consuls of Germany in the Hawaiian Islands shall apply to the authorities, and the Consuls of the Hawaiian Islands in Germany shall apply to any of the competent authorities, and make a request in writing to the deserter, supporting it by an official extract of the register of the vessel and the list of the crew, or by other official documents, to show that the men, whom they claim, belong to said crew. Upon such request alone thus supported and without the exaction of any oath from the Consuls the deserters (not being citizens of the country, where the demand is made either at the time of their shipping or of their arrival in port, or accused of, or under conviction for any crime or offence) shall be given up to the Consuls. All aid and pro-

tection shall be furnished them for the pursuit, seizure and arrest of the deserters, who shall be taken to the prisons of the country and there detained at the request and the expense of the Consuls until the said Consuls may find an opportunity of sending them away.

If, however, such opportunity should not present itself within the space of six months, counting from the day of the arrest, the deserters shall be set at liberty and shall not again be arrested for the same cause.

ARTICLE XXIV. In the absence of an agreement to the contrary between the owners, freighters and insurers all damages suffered at sea by the vessels of the two countries, whether they enter port voluntarily or by stress of weather, shall be settled by the Consuls-General, Consuls, Vice-Consuls and Consular Agents of the respective countries. If, however, the said Consul-General, Consul, Vice-Consul or Consular Agent is interested in or agent for said vessel or cargo, or if any inhabitant of the country or citizen or subject of a third power shall be interested in the matter, and the parties cannot agree, the local authorities shall decide.

ARTICLE XXV. In the event of a vessel belonging to the Government or owned by a citizen of one of the two Contracting Parties being wrecked or cast on shore on the coast of the other, the local authorities shall inform the Consul-General, Consul, Vice-Consul or Consular Agent of the district of the occurrence, or if there be no such Consular Agency they shall inform the Consul-General, Consul, Vice-Consul or Consular Agent of the nearest district. All proceedings relative to the salvage of Hawaiian vessels wrecked or cast on shore in the territorial waters of the German Empire, shall take place in accordance with the laws of Germany; and, reciprocally, all measures of salvages, relative to German vessels wrecked or cast on shore in the territorial waters of the Hawaiian Islands, shall take place in accordance with the laws of the Hawaiian Islands. The Consular authorities have, in both countries, to intervene only to superintend the proceedings having reference to the repair and revictualling, or, if necessary, to the sale of the vessel wrecked or cast on shore, and then only in the absence of parties interested, their factors or agents. For the intervention of the local authorities no charges shall be made, except such as in similar cases are paid by the vessels of the nation.

In case of doubt concerning the nationality of a shipwrecked vessel, the local authorities shall have exclusively

the direction of the proceedings provided for in this article. All merchandise and goods not destined for consumption in the country where the wreck takes place, shall be free of all duties, but subject to regulations of bonded goods.

ARTICLE XXVI. The present Treaty shall come in force immediately after the exchange of the ratifications. In order that the two Contracting Parties may have an opportunity of hereafter treating and agreeing upon such modifications or other arrangements as may tend to the improvement of their mutual intercourse or to the advancement of the interests of their respective subjects, it is agreed that at any time after the 31st day of July, 1882, either of the Contracting Parties may give to the other notice of its intention to terminate Articles IV, V and VI of the present Treaty or to terminate the Treaty as a whole, and that at the expiration of twelve months after the date of such notice, the said articles (if such notice shall have reference only to said articles) or the present Treaty (if such notice shall have been to that effect) and all the stipulations contained therein shall cease to be binding on the two Contracting Parties.

ARTICLE XXVII. The present Treaty shall extend also to the Grand Duchy of Luxemburg as long as the same belongs to the German Customs Union.

ARTICLE XXVIII. The present Treaty shall be ratified and the ratifications exchanged at Berlin before the 31st day of July, 1880, or sooner if possible.

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

Done at Berlin the twenty-fifth day of March, and at Honolulu the nineteenth day of September, in the year of Our Lord one thousand eight hundred and seventy-nine.

[L. S.]

[L. S.]

[L. S.]

JOHANNES ROSING, DR.,

H. v. KUSSEROW,

HENRY A. P. CARTER.

SEPARATE ARTICLE. Certain relations of proximity and other considerations having rendered it important to the Hawaiian Government to enter into mutual arrangements with the Government of the United States of America by a convention concluded at Washington, the 30th day of January, 1875.

The two High Contracting Parties have agreed, that the special advantages granted by said convention to the United States of America, in consideration of equivalent advantages,

shall not in any case be invoked in favor of the relations sanctioned between the two High Contracting Parties by the present Treaty.

The present separate article shall have the same force and value, as if it were inserted, word for word, in the Treaty signed this day, and shall be ratified at the same time.

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

Done at Berlin the twenty-fifth day of March, and at Honolulu the nineteenth day of September, in the year of Our Lord one thousand eight hundred and seventy-nine.

[L. S.]

JOHANNES ROSING, DR.,

[L. S.]

H. v. KUSSEROW,

[L. S.]

H. A. P. CARTER.

AND WHEREAS, the said Treaty has been now duly ratified by His Majesty the King and His Imperial Majesty of the German Empire, 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.]

JOHN MAKINI KAPENA,

Minister of Foreign Affairs.

DECLARATION.—The undersigned, Plenipotentiaries, negotiators of the foregoing Treaty of Friendship, Commerce and Navigation and Consular Convention, between the German Empire and the Hawaiian Kingdom, have met to-day and agreed, with the consent of their respective Governments, to the following explanatory notes regarding some dispositions of said Treaty:

First—The third section of Article II, of said Treaty, in regard to marriages, concluded by citizens of the one country in the other, in the forms sanctioned by the laws of the latter, shall be considered and held legal and valid likewise in the former country; provided, that in regard to the material conditions of matrimony, no disposition applicable to such case, according to the law of the native country, is violated or contravened by such marriage.

Second—The clause of Article XII, in regard to the reciprocal exemption of Consular officers, not being citizens of the country where they are accredited, “from all direct or personal or sumptuary taxes, duties or contributions,” is not intended in any case to include customs duties.

Third—The clause in the same Article XII, “if, however,

the said Consular officers are, or become owners of real estate in the country where they reside, or engage in commerce," is intended and shall be construed to mean the engaging of any Consular officer in any business or pursuit for profit extraneous to his consular functions.

Done at Berlin, February 10th, 1880.

HENRY A. P. CARTER,
JOHANNES ROSING,
H. v. KUSSEROW.