The Honorable Elisha H. Allen
Chief Justice of the Supreme Court

Whereas it has pleased the Almighty in his Inscrutable Providence to remove from this World - my late Consort - His Majesty Kamehameha IV - whose personal name was Alexander Liholiho - Solani - on the 30th day of November last at his Palace at Honolulu - and whereas - I am advised that it is necessary for me to take out letters of Administration in as much - as His Majesty had made no will and was possessed of a considerable estate - I respectfully pray your Honor that Letters of Administration may issue out of Your Honorable Court to William Webster Esqr.

Emma

Subscribed & sworn to
before me this 30th day
of Dec 1863
Elisha H. Allen
Ch. Jus. Sup. Court

P. 2411

Supreme Court
(In Probate)

In the matter of the Estate of Kamehameha IV. of Honolulu late deceased.

Application for Letters Adm^n

Filed 10 Dec: 1863
Jno E. Parward
Clerk Sup: Court

Supreme Court
(In Probate)

In the matter of the Estate of His Majesty Kamehameha IV King of the Hawaiian Islands late deceased. —

28th Dec. 1863

Before
Chief Justice Allen
at Chambers.

Present Atty General Harris, Hon. G. M. Robertson, R. C. Wyllie. M. de Varigny, C. G. Hopkins and William Webster.

Mr. Attorney General Harris presented a Petition from Her Majesty Queen Emma, praying that Letters of Administration be granted upon the above Estate to William Webster.

Robert Crichton Wyllie, sworn, says:

I knew Kamehameha the fourth, in his life time, he was the King of these Islands, I served him as the Minister of Foreign affairs and Secretary at War. He is now dead. — I saw him last about fifteen minutes

before 9 a.m. o'clock, on the 30th of November last, St. Andrew's day, he was quite speechless. I was with him at that time for about half an hour during the progress of his expiring, his pulse was weak, and finally he expired at about a quarter past 9 a.m. of the same day. I have seen his body since; on the Tuesday following. –

George M. Robertson, sworn, says:

I knew Kamehameha the fourth, for the last 19 years; he was King of these Islands. I served him during his entire reign as Judge of the Supreme Court and as a Member of His Privy Council. I saw him last in Honolulu. The last time I saw him alive was about the 20th November last. On the morning of the 30th November a short time after I arrived at my office, some one came in, I think Mr. Harris, and said it was reported that the King was dead, in a few

minutes Mr. Harris, the Atty General, and myself proceeded to the Palace to ascertain whether the report was true. Upon arriving at the Palace we found there, the Chief Justice, Mr. Wyllie the last witness, and several Members of the Privy Council, and were informed that the King had expired at about a quarter past 9 a.m. At a meeting of the Privy Council held a few hours afterwards, a written Certificate was produced of the Kings' death, in the usual form, before the Privy Council, and a Proclamation was issued by the Kuhina nui, by the authority of the Privy Council, announcing the death of Kamehameha 4th and the accession of Kamehameha 5th on the same day. I am now serving Kamehameha 5th as Minister of the Interior. The day after his death the body of the King lay in state. On

that occasion I saw his body and was in the room several hours. He never alluded to his will to me

Charles Gordon Hopkins, sworn, says:

I knew Kamehameha 4th from his youth up. I served him as Minister of Finance & as a Privy Councillor. I was at the Palace, just when the King expired, I was called by an orderly to come; but when I arrived he had expired. The King was — confidential in almost every matter, with me; about 6 weeks before his death he sent for me one morning; he was lying in the Queen's bed chamber — evidently very ill, I asked him what was his pleasure, and he said Hopkins I dont think I shall live through this day, and that he intended then, to send for Chief Justice Allen to come & draw a will for him, saying that he had not made a will. — He then

spoke to me about some arrangements in regard to his funeral, I encouraged him if he got better in the course of an hour, he did not ask me to go for Judge Allen. I think John Welsh, his body servant has had the arrangement of his papers.

The Chief Justice stated, that he never had drawn the King's will, that the King spoke to him about it, about 4 months ago, and said he would make him a memorandum for the disposition of his property, but he never did.

Examination resumed:

I was one who helped to put the King in his coffin and saw it sealed down. Mr. William Webster has been His Majesty's Land Agent ever since he ascended the Throne. He enjoyed the King's most entire confidence, he hardly ever did any thing in his private affairs without consulting Mr. Webster.

C. C. Harris, sworn, says:

Subsequent to my return from the Hawaiian Circuit, I had an interview with the King at the Palace, at his command; he was in poor health, and after talking over the business that he had required my attendance upon, he stated that he would require my assistance relative to a matter personal to himself, upon which, he said, he would require the advice of the Judges of the Supreme Court also. - I understood by his tone and manner, and by the state of his health, that he referred to his Will. On that day he rose and went to the Board of Education, and a short time after I mentioned the circumstance to Judge Robertson. - I never saw the King again on any matter of business except during a few days that he resided with Governor Kekuanaoa and he did not allude to the subject again.

John O. Dominis, sworn, says:

I knew Kamehameha 4th during his life time. – I was his Private Secretary about a year and eight months. He is now dead. – I had not the entire charge of his papers, but such as he gave me to take charge of. I have not had access to his papers since his death. I cannot say whether he made any will, but I think I should have known it if he had. I merely know of his having mentioned his intention to do so. – I think it was about the time he was preparing to leave for Vancouver's Island. I do not know of his having carried out that intention. –

Mr. Attorney General Harris filed — Polynesian Newspapers of the 5th 12th & 19th Instant containing the notice of the hearing of this application, and the — Proclamation of Kamehameha 5th as King

The Court ordered Letters of Administration

to be issued to William Webster upon his filing a Bond with three sureties in the sum of $15,000

Jno. E. Barnard
Clerk Supreme Court.

O. 2411

Supreme Court
(In Probate)

In the matter of the Estate of His Majesty Kamehameha IV. King of the Hawaiian Islands, late deceased.

Proceedings on application for Letters of Administration.

28 Dec: 1863.

Know all Men by these Presents, THAT WE, William Webster of Honolulu principal, and Charles C. Harris, William L. Green, and Stephen Spencer sureties of Honolulu in the Island of Oahu Hawaiian Islands, are held and firmly bound unto the Honorable Elisha H. Allen, Chief Justice of the Supreme Court, and his successors in office, in the penal sum of Eighteen Thousand Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 29 day of December 1863

The condition of the above obligation is such: That whereas the above bounden William Webster principal has been duly appointed administrator upon the estate of His Majesty Kamehameha the fourth late of Honolulu in the Island of Oahu deceased: Now, if he shall well and faithfully perform the duties of administrator as aforesaid, and shall not commit any fraudulent misapplication of the assets of the said estate committed to his charge, and shall duly account for the same, then this obligation to be void, otherwise of full force and virtue.

Signed, sealed and delivered in the presence of

Wm. Webster

Charles C. Harris

W. L. Green

S. Spencer

12

Supreme Court
(In Probate)

In the matter of the Estate of His Majesty Kamehameha IV the King of the Hawaiian Islands, late — deceased

Bond.

29 Dec. 1863

13

To His Majesty in Cabinet Council

Sir

Question submitted to for my consideration is

Who is Heir to the Estate of His Late Majesty? Was the Estate Descendable like the Estate of Private Persons - and is it subject to the right of Dower? - and divisible by the Law of Descent? Civil Code Sec. 1448

On the act dated the 27th of June 1848 - printed at pages 375 to 402 - is found the Legislative Enactment applicable to the question - That act appears to have been drawn hastily - without due regard to the importance of the subject to be legislated on - for it is enacted That the King after reserving to himself certain lands as his own Private Property surrendered and forever made over to His Chiefs and People the greater portion of His Royal Domain -

Civil Code

Now the difficulty seems to be to reconcile the expression "Private Lands" in one line - with the expression "Royal Domain" - in another But if we pass to the concluding or enacting part of the Statute - it is enacted - They are to be the Private Lands of His Majesty Kamehameha III to have and to hold to himself - his heirs and Successors forever -

Now it appears to me that the words Private Lands - are exclusively placed there - and do not mean the property of the then King as a Private Person - to be held by himself and divided among His Personal Heirs - like those of a Private Person - for such a construction is unreasonable of itself - and would entirely suppress the meaning of the more important words "Royal Domain" - and make the word "Successors" as following the word "Heirs" - entirely void - I say 1st That it is unreason

able; because such a construction would have the effect to strip the Crown of the "Royal Domain" - and make it impossible to maintain a reasonable Royal State - The case of the Accession of His Present Majesty - is not the only instance, in which this construction would have that effect - But any Monarch, leaving a large family, and His Consort to Dower in his Estate would by the force of division and subtraction and the Public injury resulting therefrom, reduce the Estate, and thus inevitably impoverish the Crown - The force of this was felt so greatly in England after King William IIIrd's time, Parliament made such enactments as to prevent any grants or leases of Crown-lands, for more than 31 years - and for building purposes for more than 50 years - afterwards extended to 90 years - and vested all authority over the Crown-lands in Commissioners - 10th George IV ch. 50 - Now if these Estates can pass away from Royal-Lands - by the force of Statutes of inheritance or descent - it follows that they are not Royal-Domain - nor would they be thereby satisfying the rest of the Statutes, that they are to be held to His Heirs and Successors - for Successors means His Successors in the Regal-Office - and can not mean any thing else - and therefore it follows that Heirs - must mean, in that Statute, when taken in connection with the word "Successors" - the Heirs to the Regal Office - and the word Private is used somewhat carelessly - meaning only to contrast these lands thus reserved by the King - with those

Act

set aside for the Public Domain – Now by examining the law it will be found that "The King as Representative of the Government was possessed of all the lands" See Vol. 2nd Statute Laws – Page 83 last four lines – and he was to be considered as continuing to hold them – in the same capacity – unless "proof was rendered to the contrary" – That is on that day, he held all lands, (on which no right had vested – by reason of the act of 1839) – as a "Corporation Sole" – and accordingly the Commission was about to proceed to ascertain and settle rights – on the General principle, that the Tenants were to have one third of the occupied lands – The Landlord had one third – and the other third to belong to the King – in the same capacity – see same page – 15 lines from the bottom – the King to retain all those of which no proof of ownership might be given – So that it will be seen that what came into the King's hands, had so come by reason of His Regal Office – So that it will be seen that the King became possessed of a number of lands, the manner of which occupy some 25 pages in the Statute Book – as a Royal Domain – that is to say a Domain pertinent to His Royal State – Having parted with those between the 379th page and the 402nd to the Public – there remained to himself the balance of the same Royal Domain – But as it was a Royal Domain in the beginning – so it was a Royal Domain after the division – or gift –

and was to pass to His Successors in the Regal Office as a Royal Domain - This will easily be seen by examining the manner of the King's possession - How did he obtain the lands? as Conqueror that is a King - See principles adopted by the Land Commission - at page 81 Vol. 2nd of the Statute Laws - and what did he own in 1839 all "the land on which the Houses are built is the property of the King" - Lord Edward Russell's Treaty - quoted at page 82 - so that he proceeded to divide with his Chiefs as King - he as King yielding to them their share, and keeping his own as King - The act of 1839 recognises three classes of persons having rights in the lands - The King or Government - The Land-Lords - and The Tenants - Now the Land-Lords took their at the Mahele, and were confirmed in the Land Commission - and the Tenants took their

26th of Oct. 1846

by the Land Commission - Then there was left the share of the King or Government - which by the act above quoted were again divided - assigning to the Government certain lands as their portion - and keeping for His Royal Domain the remainder - Thus it will be seen that Kamehameha III came into the Estate by Reason of his being King - It belonged to him by that reason, and that alone - The Estate descended to the late King - in the same manner (by which I do not mean to disregard the

Will of Kamehameha III. – merely to say that the Will does not contradict this idea) – and should now pass by Statute to His Present Majesty – because he is Heir and Successor to Kamehameha IIIrd and consequently can not be treated in any respect – as the Estate of a Private Individual – and if it does not then pass by Statute it is not amenable to the Statute of Dower –

The Nation should and no doubt will provide liberally for the Widower Queen Nor do I in this opinion lose sight of the point which may be suggested adversely to it – "that Kamehameha III would thereby not have the same right over his Property – i.e. his land thus received – that the other Chiefs did – My answer to this would lead me into so lengthy an argument that I beg leave to submit what it may be deemed necessary to say – verbally – or to make it a subject of another report as I may be commanded –

I have – Sire
Your Majesty's –
Obedient & Obedient Servant
Charles C. Harris

8. 2411

Report of Hon. Atty
Gen on Royal domaine

Read and filed in
Cabinet Council on
the 3rd March 1864.

C. de S.

19

To
The Honble George W. Robertson, Associate
Justice of the Supreme Court.
In Probate

The Undersigned would respectfully suggest to your Honor that the Honble William Webster who had been appointed Administrator on the Estate of His Majesty Kamehameha IV deceased - deceased on the 23 of this present Month - and that the said William Webster was Sole Administrator, as aforesaid; and that the Undersigned is advised, that it will be necessary to appoint another Administrator - and therefore I respectfully ask that the Honble John O. Dominis may be appointed to administrate upon so much of the said Estate as still remains unadministrated upon -

Done at Iolani Palace this 26th day of March A. D. 1864.

Emma

20

Supreme Court
(In Probate)

In the matter of the
Estate of His Majesty
Kamehameha IV.
of Honolulu, deceased

Application for the
appt. of J. C. Dominis
Adm.

Filed 28 March 1864
J. W. E. Parnard
Clerk Sup Court

Court
1864

Know all Men by these Presents, THAT WE, John C. Dominis principal, and I. H. Cole & Charles C. Harris surety of Honolulu in the Island of Oahu Hawaiian Islands, are held and firmly bound unto the Honorable Elisha H. Allen, Chief Justice of the Supreme Court, and his successors in office, in the penal sum of Fifteen Thousand Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 29th day of March 1864

The condition of the above obligation is such: That whereas the above bounden John C. Dominis principal has been duly appointed administrator upon the estate of Kamehameha 4th late of Honolulu in the Island of Oahu deceased: Now, if he shall well and faithfully perform the duties of administrator as aforesaid, and shall not commit any fraudulent misapplication of the assets of the said estate committed to his charge, and shall duly account for the same, then this obligation to be void, otherwise of full force and virtue.

Signed, sealed and delivered in the presence of

Jno. C. Dominis

I. H. Cole.

Charles C. Harris

The above Bond is approved by me this 29th March 1864.

G. M. Robertson
Justice Sup Court.

Pond

Filed 29 March 1864
Jno. E. Parmard
Clerk Sup. Court

3

Supreme Court
(In Probate)

In the matter of the Estate of Kamehameha 4th of Honolulu late deceased.

28th March 1864
At Chambers
Before
Justice Robertson

Upon reading and filing the application of Her Majesty Emma, Queen Dowager, setting forth the death of the Hon: William Webster, who had been appointed Administrator upon the Estate of His late Majesty Kamehameha 4th, on the 29th day of December 1863; and asking that John O. Dominis may be appointed to administer upon so much of the said Estate as still remains unadministered upon; It is ordered accordingly that the said John O. Dominis be appointed administrator upon the said Estate and that Letters issue to him upon his filing a Bond with 2 Sureties, in the penal sum of $15,000

J. E. Parnard
Clerk Sup: Court

Supreme Court
In Eq

P. 2411

Supreme Court
(In Probate)

In the matter of the
Estate of His Majesty
Kamehameha IV.

Order appointing J. C.
Dominis Administrator.

28 March 1864

In the Matter of the descent of the Real Estate - of Kamehameha IV - on submission - before - The Supreme Court

The undersigned being duly sworn, depose and say that the Controversy on the claim of Her Majesty Queen Emma - Widow of His Late Majesty Kamehameha IV - to a portion of the Estate of His late Majesty - which He inherited from His Predecessor - a statement of facts concerning which, has been this day filed - and a submission been made to the Supreme Court, in accordance with Sections 1140-1141 ~~1141~~ 1142 & 1143 of the Civil Code is real - and the Proceedings are in good faith to determine the rights of Parties

April 19th 1864

Asher B. Bates
Solicitor for Queen Emma

Sworn and subscribed before me this 19th day of April 1864

Charles C. Harris
Attorney - General

Lorrit Thurston
Asst Clerk Sup. Ct.

No

8. 2419

Supreme Court

In the matter of the descent of the Real Estate of His Majesty Kamehameha IV. late deceased.

Affidavit of the good faith of the action

Filed 19th April 1864
W. C. Parnard
Clerk Sup: Court

Filed 19th April 1864
Lunet Rowe
assist Clerk Sup Ct.

Statement of a case submitted to the Supreme Court under sections 1140, 1141, 1142 and 1143 of the Civil Code.

His Majesty Kamehameha III acquired and enjoyed the same personal, private, and public, rights in the real estate of the Kingdom as were possessed by Kamehameha II upon succeeding to the Throne or his Successor.

During his reign as Sovereign the Statute Laws of the Kingdom, which are contained in the printed volume known as the "Blue Book", were passed and promulgated, and are to be regarded and referred to in settling the question at issue, under this Statement of facts, as part of this case.

On the 8th October 1840 his said Majesty published and proclaimed the first Constitution of the Kingdom which is to be referred to and regarded as part of this case

On the 27th April 1846 the second Act to organize the Executive departments of the Government was passed and published and is to be referred to and regarded as part of this case

On the 26th October 1846 the principles adopted on the 20th August 1846 by the Board of Commissioners to quiet Land titles in

their adjudication of claims presented to them were adopted and published by the Legislative Council and are to be referred to and regarded as part of this case.

After the organization of the said Board of Commissioners under the Law His Majesty Kamehameha III entered into an agreement with the Chiefs and Konohikis of the Kingdom for a severance of their Estates in the Lands of the Kingdom, and by several deeds of partition executed by himself and the Chiefs made a partition of the real estate of all the Islands, designating the several lands and portions of land by their ancient names and thereby he surrendered to the Chiefs and Konohikis all his rights and interests in certain lands specified in the Mahele Book subject to the conditions stated therein and the Statutes of the realm: and the Chiefs and Konohikis surrendered to his Majesty all their rights and interests in certain other lands specified in the opposite pages of said Mahele Book which Book is to be referred to and regarded as part of this case.

On the completion of that Mahele, which covers a large number of pages of the said Book, his said Majesty decided on making another partition of the lands so, as aforesaid, surrendered to him by the said Mahele, and endow his Government

2.

with the greater portion of them and, accordingly, by a deed, or Instrument in writing, written in the said Mahele Book and dated 8th March 1848, and in the native language, he gave and set apart to the Chiefs and people all his rights and interest in the lands described on pages 179, 181, and further alternate pages, for the use of the Chiefs and people, subject to the control of his Parliament, and for the promotion of the prosperity of the Kingdom, and the honor of the Crown. No authorised English version of the said Instrument is extant, but a literal copy of the native version is appended to this Statement.

And by another Instrument of equal date written on the opposite page of said Mahele Book reciting the said last mentioned instrument His Majesty reserved in the words of the original (au nou iho {no kou poe hoo lina a me kou poe hope a mau loa) the ~~original~~ lands mentioned at pages 178 and following alternate pages of said book, adding in the native ua hookawaleia ua poe aina la nou (o no kou poe hooilina a me na hope ou a mau loa, he waiwai ponoi nou, aole mea a ae). No authorised English version of this Instrument is in existence, but a literal copy of it in the original is appended to this Statement.

3.

On 7th June 1848 the Legislature, with the concurrence of the King, passed an "Act relating to the lands of his Majesty the "King and the Government," published at page 22 of the volume of Laws of that year, and since republished, at page 375 and the following pages of the Civil Code, confirming the two last mentioned instruments of 1st March previous, and which is to be referred to and regarded as part of this case.

On 6th August 1850 an act to regulate the descent of property, both real and personal, was passed and published, and has since been republished at page of the Civil Code, and is to be referred to and regarded as part of this case.

On the 2d April 1853 his Majesty Kamehameha III made and published his last will and testament in writing which, subsequent to his death, was duly proved in the probate court and is to be referred to and regarded as part of this case.

Several years prior to his decease his said Majesty had married Kekelipone Kalama Kapakuhailimaikai ~~[illegible]~~ whom he left surviving, and who still survives, without issue, and had also adopted as his chief Alexander Liholiho ~~who also survived him~~ and ~~died~~ who, upon his decease, became and was recognized as King by the title of Kamehameha IV who thereupon took possession of all the real estate of his predecessor not previously

4.

disposed of by him and used and dealt with the same as his own will and pleasure during his lifetime having covenanted with the said Queen Dowager to pay her an annuity of 2000 $ her own for life in consideration of which she released all the ~~[illegible]~~ estate of her said husband from dower by a deed which is duly recorded and is to be referred to and regarded as part of this case.

His said Majesty Kamehameha IV on the 19th day of June 1856 married Emma Rooke in accordance with the Laws of the Kingdom and afterwards whilst reigning died on the 30th November last, intestate and without issue, leaving his said Queen Emma his widow and also his father M. Kekuanaoa him surviving having no wife.

On the foregoing facts, and the Law, her said Majesty Queen Emma, as widow of King Kamehameha IV, claims that all the property, both real and personal which had been acquired by her late husband during his lifetime, by will, inheritance, gift or purchase and not at the time of his death disposed of by him descended to his heirs under the provisions of chapter XXXII of the Civil Code (subject to his debts and the said annuity to the Widow of his late Majesty Kamehameha III) and that under the foregoing circumstances one half

5.

of his said estate, so charged as aforesaid, descended to her as his widow absolutely and that she has a right to power in the other half.

Honolulu 12th March 1864

Emma

Per Centre.

The undersigned, for and on behalf of His Majesty the King and of His Successors in the Regal Office, claims that the said Estate to which His late Majesty Kamehameha IV succeeded, on the death of His Majesty Kamehameha III, can not descend to Her Majesty Queen Emma nor can any part thereof so descend - nor can Her Majy Queen Emma have any right of Dower therein But that the said Estate must descend to His Majesty Kamehameha V who has succeeded to the Throne as the Heir & Successor to Kamehameha IV

Charles C. Harris
Attorney General

6.

We the undersigned - having agreed upon a case - to wit - the case herein - above stated - all the facts upon which the controversy depends being set forth above - do hereby submit the same to the Justices of this Supreme Court in vacation and to pray the said Justices that they or a Majority of them will hear and determine the case and render judgment thereon as though an action were actually depending -

Honolulu 19 April 1864.

Sam Ennis
By Albert B. Bates
Her Solicitor

Charles C. Harris
Attorney General

34

E Ke aumanei na Kanaka a pau ma Keia palapala, owau o Kamehameha III no Ka lokomaikai o Ke Akua Ke Lii o Ko Hawaii Pae aina, ua haawi aku i Keia la no Kou makemake maoli no, a ua hoolilo a me Ka hookaawale mau loa aku i na lii a me na Kanaka Ka nui o Kou aina alii, e pono ai a e pomaikai ai Ke Aupuni Hawaii; nolaila ma Keia palapala, Ke hookoe nei au nou iho a no Kou poe hoolilina a me Kou poe hope a mau loa aku na aina ou i Kakauia ma na avao 178 &c &c, o Keia buke; ua hookaawaleia na poe aina la nou a no Kou poe hoolilina a me na hope ou a mau loa, he waiwai ponoi nou, aole mea e ae (exclusively)

Hana Kou inoa a me Kuu Lila ma Ka Hale alii i Keia la 8 o Mareka 1848

Kamehameha

Kamihamba
Reservation of the
Dano

E Ke ukoi na Kanaka a pau na Keia palapala Pauu o Kamehameha III, no Ka Lokomaikai o Ke Akua Ke Lii o Ko Hawaii Pae aina, Ke haawi aku nei au me Ka hoalelo a me Ka hookaawale mau loa aku no na Lii a me na Kanaka o Koi Aupuni, a Pilo Koi Kuliana a pau a me Koi Liki a me Koi waiwai a pau iloko o na aina, eia no na Ko Hawaii Pae Moku, ua Kakauia ma na aoao 179, 180 Je Je o Keia buke, e noho ai a e hoopaa ai Koi poe alii a me Koi poe lahui Kanaka a mau loa aku

E malama mau nae Ka Ahaolelo o na Lii Hawaii a me Ka Poe i Kohoia e na Makaainana i Keia poe aina, a i ole ia, o Ka mea a Ka poe paha i hoolilo ia i Luna no ia poe aina ma Ka lakou Koho ana i Kela manawa a i Keia manawa, a e hooponopono ia a me Ka hoolinalinaia, a me Ke Kuaiia paha e Ke me Ka manao o na Poe Alii la o Ka Ahaolelo a me Ka Poe i Kohoia e na Makaainana, e pono ai Ke Aupuni Hawaii a i mea e hanohano ai Ka Lei Alii Hawaii.

Kakauia Koi inoa a me Kui Ola ma Ka Hale Alii i Keia la 8 o Malaki 1848

Kamehameha

To
Chiefs & People

P. ~~242~~ 244

Supreme Court

In the matter of the descent of the Real Estate of His Majesty Kamehameha IV. late deceased.

Submission to the Court of Statement of facts.

34

Filed 20th April 1864
Jno. C. Parnard
Clerk Sup: Court

Filed 19th April 1864
Lunce Benner
Asst Clerk Sup Ct.

Supreme Court
(In Probate)

In the matter of the Estate of His Majesty Kamehameha 4th late deceased

22 April 1864
Before
Justice Robertson &
Justice Davis.

Mr Bates opened ~~the case to~~ the case to the Court, which was a statement of facts agreed to be submitted to the Court on behalf of His Majesty — Kamehameha 5th and Queen Emma, under sections 1140. 1141. 1142 & 1143, of the Civil Code —

He then read the statement of facts which had been filed.

Mr Montgomery followed Mr Bates on behalf of Her Majesty Queen Emma. Read his statement & referred to page 85 of

That the alloduim had never been parted with by Kamehameha 3rd by the Deed of 7th March. —

So. That he had private lands also

but how they could be distinguished from those that had been bestowed upon him. —

Page 12 of old Laws.

Laws of 1848. p. 12. § 22. —

When the King granted the lands by the Mahele, what was reserved would have been reserved without any deed for that purpose, and is there to day —

Argued that the proper interpretation was of the deed, to his heirs and assigns forever & ought not to be interpreted "Successors." —

Civil Code p 276.

That the interpretation of Successors was not correct — Laws 1846 pp 96. 97

The form at 97. — in regard to the word assigns is exactly the same as that interpreted in the Laws of 1848 Successors. That the word Successors was an — arbitrary interpretation. — That no other interpretation than heirs & assigns could be other than a contradiction in Terms.

If the lands were his own private lands did they not descend to his heirs, if they were to go to His Successors, how could he dispose of them? & he

had disposed of a great many of them, they would have been subject to the next person in remainder if he had not the power to divest himself of an atom of it.—

The word Royal domain ought never to have been used, the act recited, that it had pleased His Majesty to make over His Royal Domains, and referred to the act of the 8th March, by which he had made over the lands in the Mahele Book. The word Royal Domain was arbitrary, as Aina Alii meant Chiefs or King's lands not Royal Domains. But those reserved by the King were his own not Royal Domains. A Trust in lands must be by Deeds and must be set forth.—

That the King at the time of the Mahele understood his rights to be a holder in fee simple that he was reserving to himself his private lands in the way now urged.

That in interpreting an obscure —
Instrument as a Deed or Will, the
very first thing to ascertain is the —
intention and understanding of the maker
of the instrument in question, when making
it, & that when that intention & —
understanding are ascertained, it must ~~be~~
control. — The deed must be —
consistent with itself. —

That the King did deal with these
lands as he pleased, down to his
death & he made a will, in the 3rd
article he charged his Executors to pay
his just debts out of the property. —
And in article 4 he gave part of his
lands to Queen Kalama in lieu of
Dower, by which he supposed himself
that he had a right to grant her
the lands, as he had done.

And by the 5 article he bequeathed
the remainder of his Estate to Prince
Alexander Liholiho. —

53

She will contradicts the idea that the King held the lands in Trust. –

If they were saunds, Kalama had ~~now~~ no right to dower, Kamehameha 4th would not have endowed Kalama with 2000$ a year, if he had not supposed that she was entitled to dower. –

If the Atty General was correct, all the Sales which had been made of lands by the late King were not worth a cent. –

If the late King was Trustee, Queen Emma would not be entitled to a farthing of Dower

Stephen's Commentaries pp 561. 587. – 588. – 589

The Court continued the argument until tomorrow at 10 A.M.

J. W. E. Parnard
Clerk Supreme Court.

Supreme Court
(In Probate)

In the matter of the
Estate of Kamehameha
4th late deceased.

The Court met pursuant to adjournment

Mr. Montgomery referred to the Laws of 1846 English Version p 75
Native Version p 97.

Mr. Harris proceeded with his argument.
Read from Stephens Commentaries pp 588.
The Will of Kamehameha 3rd & the acts of Kamehameha 4th under it.—

The Crown was permanently settled by Art: 25 Constitution.

The Proclamation was April 1853.

The Crown of the Islands was Hereditary and descends with the blood of the Kamehamehas.

Referred to Byron's voyage of the Blond.

The Throne then descended to Liholiho the first as Kamehameha the 2nd.

There was no will of Kamehameha the 2nd — instant, — & yet the Crown passed to Kamehameha 3rd.

When Kamehameha 2d succeeded to the Crown he succeeded to the property of

the State, not the bare Crown. -

The property of the dead King did not go to any other than the Successor, it went along with the Crown. -

That the King Kamehameha 1st is alive to day; in his official position, & as the King had never parted with the property, he held it to day.

Article — § 22 of the Constitution. -

The Settlement in England was upon the heirs of Sophia being Protestant.

Laws 1846 — p. 96 S. 3.

"Kona ma hope" appeared there as — meaning Successor. the preceding section "Kona ma" "mua e hawe ai" ~~means~~ being used as ahepio

Laws 1846 S. 4. Alluded to "hope" in the first line where it was used as Successor. -

Proceeded to take up the Statute and then the deed, ~~by which~~ touching the lands the Mahele. —

That the Statutes were drawn in

English by "Record" who was a Lawyer, & competent to draw them & afterwards translated into Hawaiian by men who were competent to translate them

~~That I have demonstrated~~ that the rule prevail.s hitherto in this Court has been, that in case of irreconcilable difference between the two, the Hawaiian version should prevail, & there was no irreconcilable difference here, & the Mahele Book would be the proof —

Every mortgage or Conveyance made by the King is good. —

Blackstone p. 287.

If Albert had survived the Queen could he have taken the Royal Domain? If the Princess of Wales survived the Prince, could she take the Royal Domain? —

There are Royal Domains yet in England & the Prince of Wales received the Revenues of the Duchy of Cornwall & Lancaster ~~as~~ as long as he is Prince of Wales —

Article 36 of the Constitution

That in construing all Laws, they must be construed in regard to the Laws of the Realm & public policy. —

That it was not consistent with public Policy that the Crown should be stript of its ~~mode~~ means of existence & its dignity.

That if Alex. had been incapacitated & Prince Lot had become King, the Personal private property of the late King such as horses &c owned have passed to Liholiho. —

Laws 1846 ~~p~~ p 85.

The Court appointed Monday morning at 11 o'clock for the further hearing of the argument.

Wm. C. Parnard
Clerk Supreme Court.

22/23 April 1864.

The Court met pursuant to adjournment. –

Mr. Bates in replying to the Attorney General said:

That Kamehameha 3rd gave nothing but the usufruct of the land to be resumed at his pleasure.

That Kamehameha 2nd was proclaimed as the rightful owner of the Throne and property of Kamehameha 1st. –

Claimed that all the Successors of Kamehameha 1st were recognized by the people, & held the property of Kamehameha 1st if they had not been granted away. –

The Constitution of 1840 must be the guide to the Court.

That from the time of that Constitution it had not been an Hereditary Monarchy.

That that Constitution was the imperative Law of the Land.

That it reserved to him his private Lands by which it meant to make a distinction between the Government & his own Lands.

50.

That he had private Lands in all directions, & any land that he thought proper to acquire the title of could be made Royal domain. That every thing was Royal domain up to the time when he gave away some for Public domain, it was Royal domain in distinction from others, while other domains should be called the domains of the Chiefs. — ~~It was not regarded~~ That at that time it was for the father to declare who was his heir, it was not necessary that he should be the heir of his body.

Old Laws p 16. — 15.

It was recognized that Kamehameha 3rd had private Lands throughout the Kingdom. —

Olds Laws p 57. —

Claimed that the old Laws indicated clearly what the Law was. —

Referred to the Act appointing the Land Commission —

51

Referred to the proceedings in the Privy Council. & the resolution proposed by McBylie & those of Chief Justice Lee. — in regard to the division of the Lands.

Privy Council & Rs 3 pp 266. 282.
Records

" pages 298. 304.
Rule 7th —

" — p 404 —

Printed Rept. of Minister of the Interior for the year end. March 1848. —

Laws 1846. Vol 1. — p 101

That there was then, a declaration that the King had his own private Lands

That the word "Kuiapoo" was used in English for a foreign in several places.

That the Executors of the Will of Kamehameha obtained an order to sell, lease or Mortgage any of the Kings private lands to ~~pay~~ ~~Lease~~ to pay the Kings debts —

It was a recognition of the Chief Justice of the Kingdom, that it was the Estate of a private individual. —

That Prince Lot was appointed to act as the Executor in the place of

Judge Lee during his absence in the United States, and sales of land were effected during the time he acted.

Jno. E. Barnard
Clerk Supreme Court.

8. 2411.

Supreme Court
(In Probate)

In the matter of
the Estate of
Kamehameha IV.
late deceased.

Proceedings

A

22. 23 & 25. Apl. 1864

67

In re the Estate of
His late Majesty
Kamehameha IV

In Probate
Before Honble Justice Robertson

The undersigned respectfully represents that the personal property of His late Majesty Kamehameha IV - is insufficient to pay his debts, and that therefore it will be necessary to sell some Real Estate for that purpose - That the Estate known as the Ahupuaa of Kahalumbelonymy to the said Estate situated on the Island of Oahu, in the District of Honolulu - Poko is sought for by several - and will be very available for the purpose of aforesaid. Wherefore the undersigned prays that an order may issue out of Your Honorable Court authorizing him to sell the said Estate of Kahalu in such a manner as may appear to the Court most advantageous to the said Estate

John C. Dominis
Administrator by
his Proctor Chas. C. Harris

Charles C. Harris, being duly sworn, deposes and says that the facts set forth in the foregoing petition are true

Chas. C. Harris

Subscribed and Sworn
before me this 5th day
of May - A.D. 1864
G. M. Robertson
Justice Supreme Court.

8. 2411

Supreme Court
(In Probate)

In the matter of
the Estate of
Kamehameha IV.
late deceased.

Petition for Sale of
Real Estate.

Filed 6 May 1864
Jno. E. Parnard
Clerk Sup: Court

85

Supreme Court
(In Probate)

In the matter of the Estate of His Majesty Kamehameha IV. late deceased

27 May 1864
Before
Justice Robertson &
Justice Davis

Justice Robertson this morning delivered the decision of the Court.

Wm. C. Parnard
Clerk Supreme Court.

P. 2411.

Supreme Court
(In Probate)

In the matter of
the Estate of
His Majesty
Kamehameha IV
late deceased.

Proceedings.

27 May 1864

Supreme Court

In the matter of the Estate of His Majesty Kamehameha 4th late deceased.

In Banco

A difference of opinion having arisen touching the descent of the property held and possessed by His late Majesty Kamehameha IV, a case has been submitted to the Court, upon an agreed statement of facts, in order that the rights of the several high personages interested may be solemnly adjudicated upon, and amicably settled.

It is claimed on behalf of His Majesty Kamehameha V, that he, as Hereditary Successor to the Throne, shall inherit the entire Estate, both real and personal derived from His Majesty Kamehameha III at his decease, and

54 held by Kamehameha IV, the King lately deceased.

On the part of Queen Emma, lately the Consort of His Majesty — Kamehameha IV., it is claimed that all the property possessed by her late Royal husband, was his private property, and must descend in accordance with the general law of the Kingdom, and that she is therefore entitled to inherit one half of his real and personal estate, after — payment of his debts, and to take Dower in the other half.

We deem it unnecessary to recapitulate, here, the statement of facts — submitted on behalf of the parties, as those facts will be referred to in the course of our decision, as such reference may be necessary to elucidate the grounds upon which our judgment rests.

In order to simplify the case, we will first dispose of the claim for Dower, in one half of the Estate, in addition to an absolute right in

the other half, as heir under the — Statute, set up on behalf of Queen Emma. In our opinion, if she is entitled to dower at all, she must take dower in the entire estate which came to her late Royal Husband, with the Crown, at the demise of his Predecessor, Kamehameha III. — If, as is claimed on her behalf, she is entitled, as a statutory heir, to take one half of her late Husband's Estate, absolutely, by way of inheritance, she cannot take dower also in the other half. In that case, her right to dower, as widow, would be lost in her superior right to inherit as an — heir. She cannot take, in both those rights, in the same Estate.

The claim to the entire Estate, as an appanage of the Crown, put — forward by the Attorney General, on behalf of His Majesty the present King, is made to rest, chiefly, on the construction which it is contended should

be given to the Statute passed on the 7th day of June, A. D. 1848, entitled "An Act relating to the Lands of His Majesty the King and of the Government". The preamble to that Act, and the portions of it which bear upon the case read as follows:

"Whereas, It hath pleased His most Gracious Majesty Kamehameha 3, the King, after reserving certain lands to himself as his own private property, to surrender and for ever make over unto his Chiefs and People, the greater portions of his Royal Domain:

And whereas it hath pleased Our Sovereign Lord The King, to place the lands so made over to his Chiefs and People, in the keeping of the House of Nobles and Representatives, or such person or persons as they may from time to time appoint, to be disposed of in such manner as the House of Nobles and Representatives may direct, and as may best promote the prosperity

of this Kingdom and the dignity of the Hawaiian Crown. - Therefore,

Be it

enacted by the House of Nobles and Representatives of the Hawaiian Islands, in Legislative Council assembled: -

That, expressing our deepest thanks to His Majesty for this noble and truly royal gift, we do hereby solemnly — confirm this great act of our good King, and declare the following named lands viz.: (here follow the names of the — reserved lands)

To be the private lands of His — Majesty Kamehameha III, to have and to hold to himself, his heirs, and successors, for ever; and said lands shall be regulated and disposed of according to his royal will and pleasure subject only to the rights of tenants. -

After the foregoing follows the acceptance by the Legislature, of the lands made over by the King to the Hawaiian Government, the lands being mentioned

by name.

It is contended by the Attorney General that, by the true construction of this Act, it must be understood as declaring that the Lands reserved to himself by Kamehameha III, in the Grand Division of 1848, were to descend for ever to His heirs and Successors on the Throne, as a Royal Domain annexed to the Hawaiian Crown, and that they are not subject even to the right of Dower.

On the other hand, it is argued that, by a fair construction of the Act, taken in connection with the instrument of reservation, signed and sealed by Kamehameha III, on the 8th day of March, 1848, of which the Act of the Legislative Council was simply a — confirmation, the lands in question were declared to be the private property of Kamehameha III, his heirs and assigns, that as such, they are not only subject to the right of dower, but distributable

6d

under the Statute regulating the descent of property generally, like other private Estates of persons ~~living~~ dying intestate; and that therefore, Her Majesty Queen Emma, in the absence of any lineal heir of her husband, the late King, is entitled to one half of the Estate, under the — peculiar provisions of Hawaiian Law, — which would pass the other half to His Royal Highness M. Kekuanaoa, the surviving father of the late, as of the present King.

The view which the Court takes of this matter, after the most careful examination and reflection, agrees, in some respects, with the views so ably propounded by the learned Counsel for both the Royal claimants, and yet, as will be seen, differs materially from either.

It is conceded that the Court, in order to enable it to give a just construction to the Act of the 7th June, 1848, is at liberty to refer not only to the two

instruments executed by His Majesty Kamehameha 3rd, on the 8th of March, 1848, which were, unquestionably, the — foundation of the legislative enactment, but also to Hawaiian History, custom, legislation and polity, as well as to the records of the Privy Council, and the acts of the parties immediately interested, subsequent to the Great Division.

The nature of land tenures in this Kingdom, prior to the great changes effected during the reign of King Kamehameha 3rd will be found very clearly explained in the "Principles adopted by the Board of Commissioners to quiet Land Titles" (Vol 2. Statute Laws, page 81) which were drawn up with much care, upon the most valuable testimony that could be obtained. It is therein declared that, "When the Islands were conquered by Kamehameha 1st, he followed the example of his predecessors, and divided out the lands among his

principal warrior Chiefs, retaining — however, a portion in his hands, to be cultivated or managed by his own — immediate servants or attendants. Each principal chief divided his lands anew, and gave them out to an inferior order of chiefs, or persons of rank, by whom they were subdivided again and again; after, often, passing through the hands of four, five, or six persons, from the King down to the lowest class of tenants." All these persons were considered to have rights in the lands, or the productions of them; the proportions of which rights were not clearly defined, although — universally acknowledged. "All persons possessing landed property, whether — superior landlords, tenants or sub-tenants, owed and paid to the King not only a land tax, which he assessed at pleasure, but also, service which was called for at discretion, on all the grades from the — highest down. They also owed and paid some portion of the productions of the

land in addition to the yearly taxes." A failure to render any of these ~~was~~ was always considered a just cause for which to forfeit the lands. "The same rights which the King possessed over the superior landlords and all under them, the several grades of landlords possessed over their inferiors, so that there was a joint ownership of the land; the King really owning the allodium, and the person in whose hands he placed the land, holding it in trust." Such was the nature of the tenures, and such the titles by which the lands were held, when in 1839 protection was declared both for person and property in the following words: "Protection is hereby secured to the persons of all the people, together with their lands, their building lots, and all their property" (See Old Laws, page 10). "The same law confirms what has been already stated in relation

to the rights of His Majesty the King in all lands. Section 3 requires that every tenant of land shall work 36 days in the year for the King or Government, shewing clearly that there is no individual who has an allodial title to the soil, that title remaining with the King." (Principles, Vol 2, Stat. Laws, p 82) - The Commissioners proceed to say that, the King could not dispose of the allodium to any other person without infringing on the rights of the superior lord, nor could the lord, if he purchased the allodium, seize upon the rights of the tenants and dispossess them. "It being therefore fully established, that there are but three classes of persons having vested rights in the lands, - 1st the Government (i.e. the King) 2nd the landlord, and 3rd, the tenant, it next becomes necessary to ascertain the proportional rights of each" (Ibid page 83.

page 83.). The Commissioners, in view of the evidence given, arrived at the conclusion that should the King allow to the landlord one third, to the tenant one third, and retain one third himself, he according to the uniform opinion of the witnesses, would injure no one, unless himself" (Ibid page 83). It was the imperative necessity of separating and defining the rights of the several parties interested in the lands, which led to the institution of the Board of Land Commissioners, and to the Division made by the King himself, with the assistance of His Privy Council.

At the death of Kamehameha 1st. his Son Liholiho, Kamehameha 2nd, was recognized as King, in accordance with his fathers express will. Along with the Crown, Kamehameha 2nd inherited all his fathers rights as an absolute Sovereign, and as Suzerain or Lord Paramount of all the lands in the Kingdom;

which rights, unimpaired, descended with the Crown to Kamehameha 3rd, upon the death of his brother and Predecessor.

In the year 1839, began that peaceable but complete revolution in the entire polity of the Kingdom, which — was finally consummated by the — adoption of the present Constitution, in the year 1852. His Majesty Kamehameha 3rd began by declaring protection for the persons and private rights of all his people, from the highest to the lowest. In 1840, he granted the first Constitution, by which he declared and established the equality before the law of all his subjects Chiefs and people, alike. By that constitution, he — voluntarily divested himself of some of his powers and attributes as an absolute Ruler, and conferred certain political rights upon his subjects, — admitting them to a share with himself in legislation and government. This

was the beginning of a government, as contradistinguished from the person of the King, who was thenceforth to be regarded rather as the Executive Chief and Political Head of the Nation, than its absolute Governor. Certain kinds of public property began to be recognized as government property, and not as the King's. Taxes, which were previously applied to the King's own use were collected and set apart as a public revenue, for governmental purposes, and, in 1841, His Majesty appointed a Treasury Board, to manage and control the property and income of the Government. But the political changes introduced at that period did not affect in the least the King's rights as the great feudal Chief or Suzerain of the Kingdom. He had not as yet yielded any of those rights. It was expressly declared that he should still retain his own lands, and that lands forfeited for the nonpayment of

taces should revert to him. (Old Laws page 12). Under the first law relating to the descent of lands to heirs, a portion of the lands held by any landlord were, at his death, to be restored to the King; and in case the landlord died leaving no heir, his lands and other property belonged to the King by escheat. (Old Laws, p 47). Kamehameha 3rd gave a striking proof of his power as Suzerain of the Kingdom, when he resumed the possession of all the fishing grounds within his dominions, for the purpose of making a new distribution of them, with the consent of his Chiefs in Council. (Old Laws, p 36; Haalelea vs Montgomery, March 1858).

The laws organizing the executive departments of the Government were enacted in the year 1846. Those laws provided, among other things, for the establishment of the Board of Land Commissioners, for the

purpose of effecting a division of rights in lands, and of quieting the titles, throughout the Kingdom. - The subject of rights in land was one of daily increasing importance to the newly formed government, for it was obvious that the internal resources of the Country could not be developed, until the system of undivided and undefined ownership in lands should be abolished. Several expedients were resorted to with a view to obviate in some measure the existing difficulties, in advance of the action of the Land Commission. With that view, the Legislative Council, on the 7th November, 1846, passed a series of "Joint Resolutions on the subject of rights in lands and the leasing, purchasing and dividing of the same" (Stat. Laws Vol 2, page 70, see Oni vs Meek, October Term, 1858). But it was evident that such expedients could be but of but little real

benefit, while it must have also been foreseen that the operations of the Land Commission would occupy a long series of years, and that the Commission would encounter much difficulty in settling the rights of the Chiefs and Konohikis. — In the month of December, 1847, the subject was discussed at great length in the Privy Council. The record of that discussion is of the highest interest, and has been carefully examined by the Court. It was finally resolved by the King in Council, to effect, through the assistance of a Committee, a division of lands between the King, as Suzerain, and the high Chiefs and Konohikis, his Feudataries. — That division appears to have been effected with dispatch, for, by the end of February, 1848, it was completed. The King had — resumed the possession of the larger part of the lands previously in the possession of the Chiefs and landlords, and

the remainder had been granted to the several holders, by freehold title, certified to the Land Commission for its formal awards, and capable of being converted into an allodial title, by payment to the Government of a commutation to be fixed in Privy Council.

His Majesty's suzerainty over the lands held by his Chiefs and other individuals, was then at an end. He stood possessed of the lands which were in his own hands previous to the division, and of those resumed in the division, constituting, together, a large part of the landed property of the — Kingdom — a truly Royal Domain. But it is evident from the minutes of the Privy Council, that the lands comprised in that domain were not regarded as the Kings private property, strictly speaking. — Even before his division with the landholders, a second — division between himself and the

Government, or State, was clearly contemplated, and he appears to have admitted that the lands he then held might have been subjected to a — commutation, in favor of the Government, in like manner with the lands of the Chiefs. The records of the discussion in Council, shew plainly His Majesty's — anxious desire to free his lands from the burden of being considered Public Domain, and as such subjected to the danger of confiscation, in the event of his Islands being seized by any foreign Power; and also his wish to enjoy complete control over his own property. Moved by these considerations, and by a desire to promote the interests of his Kingdom, he proceeded with an exalted liberality, to set apart for the use of the Government, the larger portion of his Royal Domain, reserving to himself what he deemed a reasonable amount

of land, as his own estate. To effect that object, he signed and sealed on the 8th of March, 1848, two instruments contained in the Mahele Book, the first of which reads as follows: "E ike — auanei na Kanaka a pau ma Keia palapala, Owau o Kamehameha III, no Ka Lokomaikai o Ke Akua, Ke Ali'i o Ko Hawaii nei Pae Aina, ua haawi au i Keia la no Kou makemake maoli no, a ua hoolilo a me Ka hookaawale mau loa aku i na 'lii a me na — Kanaka, Ka nui o Kau Aina Alii, e pono ai a e pomaikai ai Ke Aupuni Hawaii, nolaila, ma Keia palapala, Ke hookoe nei au nau iho a no Kou poe hoailina a me Kou poe hope a mau loa aku na aina au i Kakauia ma na aoao 178, 182, 184, 186, 190, 194, 200, 204, 206, 210, 212, 214, 216, 218, 220, 222, o Keia Buke; ua hookaawaleia na poe aina la nau a no Kou poe hoailina

a me na hope aiu a mau loa, he —
waiwai ponoi noiu, aole mea e ae." —
That instrument we translate into
English, thus: Know all men by these
presents, that I, Kamehameha 3rd, by
the grace of God, King of these —
Hawaiian Islands, have given this
day of my own free will, and have
made over and set apart for ever, to
the Chiefs and people, the larger part
of my Royal Lands, for the use and
benefit of the Hawaiian Government;
therefore, by this instrument, I hereby
retain (or reserve) for myself and for
my heirs and successors, for ever, my
lands inscribed at pages 178, 182, 184,
186, 190, 194, 200, 204, 206, 210, 212,
214, 216, 218, 220, 222, of this Book;
these lands are set apart for me and
for my heirs and successors, for ever,
as my own property, exclusively.

The other instrument, which was
also executed in the Hawaiian language

we translate into English, thus: Know all men by these presents, that I, Kamehameha III, by the grace of God, King of these Hawaiian Islands, do hereby give make over and set apart for ever, to the Chiefs and people of my Kingdom, and convey all my right, title and interest in the lands, situated here in the Hawaiian Islands, inscribed on pages (179 to 225, both inclusive) of this Book, to have and to hold to my Chiefs and people for ever.

These lands are to be in the perpetual Keeping of the Legislative Council (Nobles and Representatives) or, in that of the Superintendents of said lands, appointed by them from time to time, and shall be regulated, leased, or sold, in accordance with the will of the said Nobles and Representatives, for the good of the Hawaiian Government, and to promote the dignity of the Hawaiian

Crown. –

By referring now, to the confirmatory act of the 7th June, 1848, it must be apparent to every one, from the close similarity of the language used in said Act, with that of the instruments just recited, that the Legislative Council, simply intended by that Act, to ratify what had already been done by the King in Privy Council, and thereby bind the Nation to its faithful observance for ever. We think the Attorney General was mistaken when he said the Act of 7th June, 1848, appeared to have been drafted hastily, or inadvertently. – It is within the — knowledge of the Court, that the Act in question was prepared, in the English — language, by the late Chief Justice Lee, who had taken a prominent part in the discussion of the subject, in the Privy Council, and who, in common with other Councillors, appears to have

been fully alive to the nature and importance of the business, and knew well the legal import of the language introduced into the Act. –

His Majesty Kamehameha 3rd. had no surviving child of his own, but had adopted his nephew, Prince Alexander Liholiho. In the month of April, 1853. His Majesty, with the consent of the House of Nobles, and in accordance with the 20th Article of the Constitution, publicly proclaimed Prince Liholiho as his Successor on the Throne. At the same time, he made and executed his last Will and Testament, declaring his will both in regard to the descent of the Crown, and the disposition of his Estate. By the first clause of that instrument he declared his will that his adopted child Prince Liholiho, should be his Heir and Successor to the Crown. By the second clause he declared that, if Prince Liholiho should

not survive him; or should become incapacitated under the Constitution, his will was that Prince Lot Kamehameha should be Heir to the Throne; and, failing him, the Princess Victoria — Kamamalu. By the third clause he — directed that all his just debts should be paid, out of his estate, by his executors, as soon as convenient after his decease. By the fourth clause he devised, to his consort, Queen Kalama, certain — Lands, in lieu of Dower, provided she should accept the same. By the — fifth clause he devised all his remaining estate to his adopted son, Prince Liholiho. His Majesty died on the 15th December, 1854, and was succeeded by Prince Liholiho, as Kamehameha 4th. The will of Kamehameha 3rd was duly proven before the Hon. Lorrin Andrews, Judge of Probate, on the 29th day of — January, 1855, and the provisions thereof, touching the King's estate, were carried

out by his Executors. –

It is admitted that, from the time when Kamehameha 3rd separated his own property from that of the Government in 1848, up till his death, he dealt with his reserved lands, in every — respect, as his own private estate, leasing, mortgaging, or selling the same at his pleasure. Ever since the division, those lands, except such as have been sold, have always been known as the Kings' lands and have been managed by an Agent, or land Steward employed by the King. After the death of Kamehameha 3rd Queen Kalama declined to accept the lands devised to her by the Kings Will, in lieu of dower, on the ground that she had received those lands from him in the Division of 1848. Her right to dower was — acknowledged by King Kamehameha 4th, who made an amicable arrangement — touching the same, by settling upon her

a fixed annuity for life, in consideration of which she relinquished her claim for dower, by deed. In the year 1856, the late King ~~King~~ married his still — surviving consort, Queen Emma. No ante-nuptial agreement was made as to their property, nor any provision in the nature of a jointure for the Queen. — During His Majesty's reign, a period of nearly nine years, he constantly dealt with the lands in question, as his private property, in like manner as his Predecessor had done, and Her Majesty Queen Emma was always in the habit of joining with him in deeds to individuals, whenever it was necessary that she should do so, in order to bar her dower. On the 30th day of November, last, His Majesty died intestate.

Having stated fully all the facts and circumstances which seem to us calculated to throw light on the

subject, and to guide the Court in ascertaining the intention of Kamehameha 3rd as declared in the instrument of — reservation of the 8th March, 1848. and in giving a sound construction to the Confirmatory Act of the Legislative Council, it only remains for us now to announce the conclusions at which we have arrived.

begin

In our opinion, while it was — clearly the intention of Kamehameha 3rd, to protect the lands which he reserved to himself out of the domain which had been acquired by his family, through the prowess and skill of his father, — the Conqueror, from the danger of being treated as Public Domain, or Government property; it was also his intention to provide that those lands should descend to his Heirs and Successors, the future wearers of the Crown which the Conqueror had won; and we understand the Act of 7th June, 1848.

as having secured both those objects. — Under that Act, the lands descend in fee, ~~simple~~ the inheritance being limited, however, to the successors to the Throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha 3rd. —

In our opinion, the fifth clause of the Will of Kamehameha 3rd, was not necessary to pass the reserved — lands to Kamehameha 4th, any more than the first clause was necessary to pass to him the Crown. — He was entitled to inherit those lands, by force of the Act of 7th June, 1848, when he succeeded to the Crown in virtue of the public proclamation — made by his Predecessor, with the consent of the House of Nobles; and he was entitled as the adopted Son of Kamehameha 3rd, to inherit the

remainder of his estate, not devised to any one else, subject to Dower. —

We are clearly of opinion also, that Her Majesty Queen Emma is lawfully entitled to dower in the reserved — lands, except so far as she may — have barred her right therein, by her own act and deed. There is nothing in the Act of 9th June, 1848, which can be understood as taking away the Queen's right of dower in the lands therein named; nor is there any law of this Kingdom, which — renders the matrimonial rights of the wife of the King any less, or any — different, from those of the wife of any private gentleman. Such was, — unquestionably, the understanding of both Kamehameha 3rd, and his — Successor, as to dower in those lands, which are to be dealt with, in all respects, as private inheritable property,

subject only to the special Legislative Restriction upon the manner of their descent.

But His Majesty Kamehameha 4th was possessed of other property, both real and personal, at the time of his death, not affected with the special character attached to the reserved lands. The descent of that part of his estate, must be governed by the general law of inheritance and distribution; and Her Majesty Queen Emma is therefore entitled, as statutory heir, to one half of that property, after the payment thereout of such portion of the late Kings debts, as are not specifically charged, by mortgage or otherwise, upon the reserved lands. Debts of the latter class ought, clearly, to be paid out of the Estate encumbered therewith.

Let judgment be entered

accordingly, in favor of both ~~parties~~ the claimants.

G. M. Robertson

Honolulu

R. S. Davis

Supreme Court
In Probate
8/2411

In the matter of
the Estate of Her
Majesty Kamehameha
IV late deceased

Decision.

May 1864

16

P - 2411

POLYNESIANS FOR
Dec. 5, 12, 19, 1863

Transferred to Newspaper files

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6/65

weeks previous public notice of the date [illegible]

JOHN E. BARNARD,
Clerk Supreme Court.

41 4t P.C.A 5/7/1864

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SUPREME COURT—IN PROBATE.