

Declaration to: Maui County Council
Cease and Resist Bill 28
March 6, 2024

Polynesian July 7, 1855

"And now a word in regard to communications. At present there is only one political journal in the English language issuing from the press on these islands. This fact almost converts into a matter of duty what we bad thought to do from choice. We allude to the opening a little wider of our columns to correspondence. On this subject no precise rule can be laid down, and we must retain all our discretionary power. We entertain, however, no wish to see things pass for what they are not from the want of opportunity to show them as they are. The institutions of a country, its laws and the system under which its laws are administered, are certainly as worthy of being kept free from impurities as are the yards and alleys of one of its towns." Ke Kahua as the place is known is a subject matter that appears to be a conflict of interest. We currently have a member of this body who was part of the transaction of this land with no clear title. Now as part of this body in consideration in this Bill 28 it will involve all of you ^{and become complicit to} to participate in its further creation. To support a project in its undoable state ie zoning, knowing that this is the body that can create its duality and have its highest authority, the Mayor, to promote it publicly seems almost scandalous. Kanaka maoli rights were violated by your own law enforcement officer, whether on or off duty. I watched the video and witnessed his participation. In the planning department it was told to the committee by the projects attorney that they had title, yet the

opposing attorney made clear the judge of the case did not make that determination. MEO claims the title comes from Lunalilo the people's King. I have seen a copy of the written, transcribed and probated will, also a couple of cases during the time of the Kingdom that clearly defines the handling of his land. This matter should not even come up in your records. I suggest you void this altogether to avoid liability. Moving it forward or filing it gives rise to your consideration and participation of a conflict not to mention war crimes. I pray you make the right decision so as to clear your town of any impurities.

Mahalo



Joyclynne Costa

The Story of Hawaiian Royalty

King Lunalilo Was Most Beloved of Monarchs

This history of modern Hawaii runs daily and Sunday exclusively in The Advertiser. This is the 32nd of the series.

William Charles Lunalilo
By KAPIKAUNAMOKU

It is difficult to ravel the enigma that was personified in the late King Lunalilo. As a young man he had been fostered by his maternal aunt the Princess Elizabeth Peleuli-I-Auliamanu II. His foster-mother worshipped the young prince and indulged his every whim.

With his cousins, the grandchildren of Kamehameha, and other youngsters of chiefly descent, he attended the school conducted by Mr. and Mrs. Amos Starr Cooke. In later days he found great delight in imitating the lectures and manners of these two tutors.

LUNALILO WAS A great mimic, and his parodies of the Cookes were often the source of hilarious amusement in Honolulu.

Lunalilo loved the bottle; he loved merriment, music, and laughter. The pomp of the royal court utterly bored him, and his escapades were a constant thorn in the pompous sides of the last two Kamehamehas.

HE KNEW HIS own abilities, and was quite aware of the inadequacy of most government officials, therefore he found his friends among the common people and among the sailors of the many foreign warships that often stood in Honolulu harbor.

When the last of the Kamehamehas died, Lunalilo was urged to proclaim his own sovereignty in accordance with the ancient custom of Hawaiian kings. Lunalilo refused and decided instead to entrust his lot and future with the common people whom he loved and who loved him. The people chose him, and the choice was overwhelming. It was unanimous.

WHEN LUNALILO assumed the kingship of Hawaii, he gave up the wayward attitude of his youth. He put aside his hours of merriment; he became a monarch in the very finest sense of the word. When he died he alone of all of the kings of Hawaii left his entire fortune to his beloved people. He founded the Lunalilo Home where the aged and impoverished of his people might live the remaining years of their lives in peace.

There is a tale told in Hawaii

and substantiated by the news-papers of that day as well as by the people who witnessed the phenomena.

WHEN THE remains of Lunalilo were to be removed from their temporary resting place at the Nuuanu royal mausoleum to his own tomb at Kawaiahae, King Kalakaua refused to fire 21 guns to honor the late king.

The heavens instead echoed his exalted birth in thunder, and 21 rolls of thunder crashed in the Hawaiian skies as the body of Lunalilo the Beloved slowly passed through the streets of his own Pacific capital and among the common people who owned his royal heart.

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In re Wong Sow on Habeas Corpus.

In the matter of the Estate of His late Majesty Lunalilo.

SUPREME COURT—IN BANCO

foreign Court to interfere when in a few days the parties can have that advantage, is not in conformity with the usages of nations. It is better and wiser to let foreigners stand by their agreements and settle them under their own laws and by their own tribunals. The law will not aid a man in the violation of a legal contract; but in the case under consideration the case is far stronger; his contract is to be performed at or near the port of destination; heavy expenses are incurred for him, not only in preparation for the voyage but in procuring a vessel for the home port.

Suppose, for illustration, that all these persons are discharged from the vessel and put on shore, the consequences to the charterers and the party from whom they have received heavy advances may be ruinous.

The Court is not invoked to aid in enforcing the contract, but in defeating it, but not even on its merits. Wong Sow comes into Court for relief, when it appears that he with many others induced the charterers of a steamer at very heavy expense to engage them a passage from Macao to Costa Rica, where they were entitled to their pay on arrival, and at this port, when the voyage is more than half accomplished, they attempt to leave the steamer and thereby prevent the charterers from receiving their passage money, and the contracting parties their heavy advances, and to commit this gross fraud, he invokes the aid of this Court. Let them all go to Costa Rica and seek redress there. It is a case for their Courts to decide and not for ours. Besides, we have a duty to perform to the government under which we live. If Wong Sow has a right to a discharge, all on board under similar contracts have the same right, and to land six hundred people here, without means of support, might be a serious evil, not only in raising serious diplomatic questions but in disturbing our domestic peace.

E. Preston for the relator.
C. C. Harris for the respondent.

APRIL TERM—1874.

Allen, Ch. J., Harris, J. (Judd, J., did not sit, having drawn the will and codicil.)

IN THE MATTER OF THE ESTATE OF HIS LATE MAJESTY LUNALILO, DECEASED.

A PERSON under guardianship as a spendthrift is not therefore incapacitated to make a will.

OPINION OF THE COURT BY ALLEN, C. J.

This case is presented on appeal from the decision of a Judge of Probate, who admitted the will, with the codicil of His late Majesty Lunalilo, to probate. The only question before us is as to the validity of the will.

It is admitted by the contestant that the alleged will was executed as required by the statute of the kingdom. It is also admitted that at the time of making the alleged will the testator was under guardianship as a spendthrift, and that all the statutory provisions had been complied with, and M. Bishop, the executor named in the alleged will, was one of the guardians of the testator.

It is contended that the will is void, because at its date the testator was under guardianship. The counsel for the contestants argue that Section 1463 of the Civil Code must be read in conjunction with Section 1354 and that the construction contended for is clearly within the spirit, if not within the exact letter of those enactments.

By Section 1463 it is declared that any person of full age and of sound mind, may dispose of his estate both real and personal by will.

In the matter of the Estate of His late Majesty Lunalilo.

The restriction of persons under guardianship is not made in terms, but it is contended that by virtue of Section 1350, the restriction is virtually made, as by it he is restricted from making any gifts, sales or transfers of real estate or personal estate during the guardianship, and if he does, the guardian can interpose and defeat them. But the statute gives the guardian no power to restrain the operation of a will which the ward may make.

A statute in derogation of the rights of persons must be construed strictly, and it is very evident that the Legislature when they passed the law that all persons of full age and sound mind might make a will, did not intend to add a restriction in a general law of guardians and wards. The word *gift* has not in the statute the same meaning as *will*; the one is a solemn instrument, executed with great formality, while the other is, to make it valid, by immediate transfer of the article.

It does not follow, therefore, because a person is under guardianship as a spendthrift, that he is incapacitated to make a will.

In the one case he is stimulated by his appetite and passions to dispose of his property for immediate personal indulgence, and hence the necessity for guardianship, while in the other he makes a disposition of his property to take effect after his death, and when the powers of his guardian terminate.

It is very evident that the Legislature were of opinion that the power of the person over his property in the former case was unsafe, while in the latter, its exercise was proper, otherwise there would have been a restriction in terms. The counsel contends that a will creates a trust, and a trust is regarded as a gift or conveyance of the property, the subject of the trust, to the persons who are its object, and therefore, the capacity to declare a trust is limited by the same rules as the power of disposing of property at law.

In the matter of the Estate of His late Majesty Lunalilo.

It is very true that a will may create a trust, but it must be executed according to the statute, and if so executed it is not in the nature of a contract. It differs from a deed of trust, for in the one case it does not take effect till after death, while in the other, to make it valid, it must be delivered in the life time of the grantor, who, being under guardianship, is restrained by law from doing it.

The counsel says: "Suppose that the testator had made a deed of gift in 1871 for a valuable consideration for advances, &c., to take effect after death, such a deed would have been construed as a will—it has been so ruled,—would such a gift have been valid under the statute?" It is very clear that it would not have been, for the reason that it would be in the nature of a contract to pay for advances to the spendthrift, to control which a guardianship was imposed.

The counsel suggests another example. He says: "Suppose in 1871 he had given a bond to A—consideration \$10,000 or more, or sufficient for his extravagant expenditures—to execute a will in his [A's] favor, would the executor be bound to pay the consideration?" "Most certainly he would," says the counsel, "if he was not incapacitated under the act of guardianship from making such bond." The counsel has undoubtedly given a sound answer to his question; but it is evident by the law regulating the guardianship that the ward had not power to make such a contract, or any other contract, and therefore the bond would be void.

It is always a consolation to have one's opinions sustained by high judicial authority. In the case of *Stave, appellant, vs. Damon and others*, 12 Mass. 487, the Court gave an opinion that "if a lunatic under guardianship be restored to his reason, he may make a will, although the letters of guardianship are unpealed." The same doctrine was maintained by the same learned Court many years afterwards

In the matter of the Estate of Hiram Maikai.

in the case of *Breed vs. Pratt*, 18 Pick., 115. The Court says that it is an act manifestly distinguishable from contracts and other acts to be done *inter vivos*, and involves no conflict of authority with the guardian. (See Redfield on the Law of Wills, Part I., 134, where the same rule of law is recognized.)

It is the judgment of the Court that the decree of the Probate Court, from which an appeal was taken, be affirmed, and that the proceedings in the case be remitted to the same Court.

L. McCully, for the executor, proponent.
Messrs. Stanley and Preston for contestant.
Honolulu, April 29th, 1874.

SUPREME COURT—IN BANKO.APRIL TERM—1874.

Hill, Ch. J., Harris and Judd, J. J.

IN THE MATTER OF THE ESTATE OF HIRAM MAIKAI, DECEASED,
INTESTATE,—ON APPEAL FROM THE DECISION OF JUSTICE
HARTWELL.

THE Probate Court will allow charges for legal services when such are necessary, and will allow them to the administrator himself, if he is a lawyer, in such cases as they would be allowed to an administrator employing a lawyer, but every case must be determined by its own circumstances.

Justice HARRIS delivered the decision of the Court as follows:

This is an appeal taken by the administrator, a lawyer by

In the matter of the Estate of Hiram Maikai.

profession, from a disallowance of his fees as a professional man, by Justice Hartwell, as follows:

Legal services in procuring letters of administration	\$25 00
Legal services in sale of real estate	25 00

The legal services in procuring letters of administration are filling up the form of a petition; filling up and filing a schedule of property, which in this case was extremely limited; filing an affidavit of publication, notice of hearing, a notice to creditors, and attending on the day appointed for hearing, and the fee, if to be allowed at all, would be reasonable.

The property of the deceased mainly consisted of two pieces of land, which were under mortgage to secure the payment of \$758, which brought at public sale \$915.

The widow of the deceased likewise paid into the administrator's hand \$72.25; which she probably paid under the idea of helping to pay the debt on the land, or under the impression that she must give up all that she had, and be allowed nothing for her own maintenance, during the time immediately subsequent to her husband's decease.

The deceased's father likewise paid in	\$ 20 00
The land as has been said above brought	915 00
<hr/>	
The debt upon it was, as has been said before	758 00
And the costs claimed for selling it were	235 70
<hr/>	

\$993 70
So the widow gave up the land, which was considered by the money lender, as it appears correctly, to be a sufficient security for the debt, and then gave up her little fund of \$72 to pay these enormous costs.
If such costs were necessary, in order to procure the sale of the land, it certainly would have been much better for the woman to have taken the \$20.00 which her father-in-law owed her husband and paid Lewers & Dickson's account of \$13.50 and let the mortgagee enter into possession of the

Henry Joseph Kaholokula
c/o P.O. Box 481
Volcano, HI [96785]
August 28, 2006

IN THE LAND COMMISSION OF KO HAWAII PAE AINA
AHA HOONA

IN THE MATTER OF THE HEIRS OF)	P - 2081. _____
LUNALILO)	
)	
)	AFFIDAVIT OF HEIRSHIP BY
BY)	Henry Joseph Kaholokula aka No`eau
)	Kaholokula
)	(Confidential)
Henry Joseph Kaholokula aka)	
No`eau Kaholokula)	
Heir to the estate of Lunalilo)	

**AFFIDAVIT OF HEIRSHIP BY Henry Joseph Kaholokula
(Confidential)**

Comes now, Henry Joseph Kaholokula being first duly sworn under oath and submits this Affidavit of Heirship on behalf of himself as an heir of Lunalilo

1. My name is Henry Joseph Kaholokula aka No`eau Kaholokula, and I live at P.O. Box 481, Volcano, HI [96785].
2. Through teachings of our family genealogist and stories written by our Kekahuna family, the importance of our family history was bestowed upon us.
3. Genealogies of Kanaka māoli-Hawaii is simple; at the same time highly complex.
4. Genealogy is reflected in generational terms such as Kupuna, Makua and Mo`opuna.
5. It also has a horizontal lineal relationship of hierarchy if the po`o or head is recognized. Terms such as Kaikua`ana, Kaikaina, Kaikunāne, and Kaikuahine.
6. Keawepoepoe ho`ao with Kumaiku and had Keeaumoku (k) and Alapaimaloiki (k). Alapaimaloiki is the Kaikaina of Keeaumoku.
7. Keeaumoku ho`ao with Namahana and had Kahiehiemalie aka Kalakua.
8. Alapaimaloiki ho`ao with Keliikanakaoole and had Apela Kahiapo (k).
9. Kalakua (w) is kaikuahine to Apela Kahiapo Kekahuna (k).
10. Kalakua ho`ao with Kala'imamahu and had Kekauluohi (w).

11. Apela Kahiapo Kekahuna ... ao with Kaohiki I'I and had Esther Kepura (w).
12. Kekauluohi is the Kaiku'ana of Esther Kepola Kekahuna.
13. Kekauluohi ho'ao with Kanaaina and had Lunalilo (k).
14. Esther Kepola Kekahuna ho'ao with William Alapai Kekahuna and had Kamala Kekahuna (w).
15. Lunalilo is the kaikunāne of Kamala Kekahuna.
16. I am the Mo'opuna of Kamala Kekahuna by the rights and privileges of Kanaka maoli relations of Ohana, Lunalilo is my Kupunakane.

This is the true genealogy of my grand-mother, and the legacy that comes with it shall only be carried by the knowledgeable. This mo'olelo ku'auhau is not for public viewing and there upon shall live the curse for those who do not respect it, within these inoa kupuna are the mana and kapu of our Na aumakua and is the bases of our lives and our history.

FURTHER AFFIANT SAYETH NAUGHT,

Henry Joseph Kaholokula

DATE 12-26-2006

Henry Joseph Kaholokula aka No'eau Kaholokula, mooku Ohana

[STATE OF HAWAII]

SS

[COUNTY OF MAUI]

On this ____ day of August, 2006 before me appeared Henry Joseph Kaholokula aka No'eau Kaholokula personally known to me or satisfactorily proved to me to be the person whose name is subscribed to this instrument and acknowledged that he/she executed this as his/her free act and deed.

Notary Public. [State of Hawaii]

My Commission Exp: _____

WITNESSED)

Mary J. Kaino

DATE : 12/26/06

WITNESSED

Mary J. Kaino

DATE 12/26/06

Imitted and subsequently ruled out; but in such cases the court should expressly declare to the jury, as was done in this use, that the testimony is to be entirely disregarded, and it is the solemn duty of the jury to regard the charge. This is not infrequently done in the course of a new trial, but it is a new doctrine that it should defeat the whole proceedings."

The only instruction refused to defendants was the fourth. On examination of the evidence sent up with the bill of exceptions we fail to see how it could have been given. The testimony of Crabbe and Kaa'i supports the verdict, and is sufficient in law if the jury have taken that rather than the testimony given for the other side. Not that taking either was a matter of discredit to the veracity of the witnesses supporting the other, for the subject was somewhat of the nature of an opinion as to what witness had "known" as certain premises. It cannot be said that the testimony on either side was of the most decisive and positive character, and it was plainly the province of the jury to find which of at put before them preponderated, and the Court may not such finding aside. The exceptions are overruled.

C. Brown and E. Preston for plaintiff.

A. S. Hartwell and S. B. Dole for defendants.

Honolulu, January 28, 1878.

SUPREME COURT—IN BANCO.

JANUARY TERM, 1878—IN EQUITY.

Harris, C. J., Judd and McCully, J.J.

THE WAILUKU SUGAR COMPANY vs. W. C. PARKE, ADMINISTRATOR OF THE ESTATE OF C. KANAINA, DECEASED.

ON APPEAL FROM THE DECISION OF MR. JUSTICE MCCULLY.

THE DEFENDANT'S INTESTATE conveyed a piece of land in fee in which he had only a life estate; the deed contained a covenant to execute to the purchaser all such further assurances as should be reasonably required;

HELD, that as the deceased's estate has no further title to convey, specific performance cannot be compelled. Plaintiff's remedy is at law for damages.

Upon full consideration of the arguments and authorities submitted to us, as well also of the principles and facts of the case, we are of opinion that the Court below properly dismissed the bill for specific performance, on the grounds set forth in its opinion, which we hereby adopt, and so confirm that judgment.

A. S. Hartwell for plaintiff.
E. Preston for defendant.
Honolulu, January 31, 1878.

BEFORE MCCULLY, J., IN EQUITY.

Bill for specific performance, setting forth that plaintiff, in 1876, purchased from Chas. Kanaina, since deceased intestate, for \$1,500, a certain parcel of land in Wailuku, Island of Maui, taking from him a warranty deed, which also contained a covenant for further assurance in the following terms:

Wailuku Sugar
vs.
Kanaina

"And I, the said Chas. Kanaina, for myself, my executors and administrators, do hereby further covenant with the said Wailuku Sugar Company, its successors and assigns; that I, the said Chas. Kanaina, my executors and administrators, at the request and at the charges of the said Wailuku Sugar Company, its successors and assigns, shall and will, from time to time, and at all times hereafter, execute and deliver and acknowledge, or cause to be executed, delivered and acknowledged, all and every such further and other acts, conveyances and assurances in the law for the better assuring to the said Wailuku Sugar Company, its successors and assigns, of the eminences in manner as above conveyed or mentioned and intended to be conveyed as by the said Wailuku Sugar Company, its successors and assigns, or its or their counsel learned the law, shall be reasonably advised or required."

That this piece of land was the property of his late Majesty Lunalilo until his death, and that his father, the said Kanaina, is thereafter, by will, entitled to a life estate only therein, and held as tenant for life at the date of the said deed, and at there is now a paramount title to said land in certain trustees holding the fee of Lunalilo's estate. That these trustees have proposed to the plaintiff and defendant herein release their title to this land to plaintiffs for the like sum of money, \$1,500, with interest from the date of the death of Kanaina.

It is made to appear in evidence that at the date of the purchase from Kanaina, the plaintiffs held the land under a lease, which has not yet expired, from the guardians of Wm. C. Lunalilo, of whom the said Kanaina was one.

A. S. Hartwell for the plaintiffs:

There is a paramount title in the trustees, and the deed on the defendant's intestate is now useless as against them, so far as anything is conveyed thereby. The covenant to do or cause to be done such other acts as shall or may be necessary to assure to the defendant the title

Wailuku Sugar Co. v. W. C. Parke, Administrator Estate C. Kanaina.

Wailuku Sugar Co. v. W. C. Parke, Administrator Estate C. Kanaina.

purporting to be conveyed, to wit, the fee, can only be enforced by payment to the trustees of the money required to extinguish this title. That covenant may be enforced in equity, and by the express terms of the deed if not otherwise may be enforced against the administrator alone. See Story's Eq. Jurisprudence, Sections 715, 737 (a), 749 (c); Rawle's Covenant for Title, pp. 195, 198, 648, 656; 2 Sugden on Vendors and Purchasers, 766.

The heir would not be a necessary party under our statutes and practice, if the deed did not expressly and solely bind the personal representatives. See Story's Eq. Pleadings, Sections 167 and 476; Civil Code, Section 1059.

The decree is not against the defendant *de bonis suis*, and if made, would be satisfied by him as in any case of a judgment debt, namely, by resort to the realty through the intervention of Court.

E. Preston for defendant.

PER CURIAM.

The issues presented are first, whether the action is properly brought against the administrator; and secondly, whether the equitable doctrine of specific performance is applicable to the facts of this case. I first consider the second question.

The strongest expression in the authorities cited by the plaintiff is that from Sugden on Vendors and Purchasers p. 766, 11th edition. "If the title prove bad and the defect can be supplied by the vendor, the purchaser may file a Bill in Equity for a specific performance of the covenant for further assurance—and a vendor who has sold under a bad title, will, under such a covenant, be compelled to convey any title which he may have acquired since the conveyance, although he actually purchase such title for a valuable consideration." But Rawle, Covenant for Title, in quoting the passage, remarks that it "is language which, unless carefully considered, might be misunderstood." It is to be observed that the title which a defendant may be compelled to give is one which he

ly have subsequently acquired. Sugden also states p. 767, "Under a covenant for further assurance a purchaser may, of course, require the removal of a judgment or other incumbrance," that is, may be compelled to pay out money to secure the vendor's title. The essence of the doctrine of specific performance we take to be this, that in cases where a compensation in damages for a failure in a contract would not, from the nature of the case, be adequate or equivalent to the execution of the contract, and where it is within the power of the defendant to do the specific thing agreed to be done, or as in the case of real estate to release a title which he has acquired, equity will compel him to do the thing agreed, or to convey the title which he possesses.

In the case before us the defendant has acquired no better title than when the conveyance was made, and on the other hand it is within the power of the plaintiff to acquire the title desired by payment of a certain sum of money. Does this come within the doctrine of specific performance? Judge Ory, Equity Jurisprudence, Section 716, says: "The ground of jurisdiction is, that a Court of law is inadequate to decree a specific performance and can relieve the injured party only by a compensation in damages, which in many cases will fall short of the redress which his situation might require. Whenever, therefore, the party wants the thing in question, and he cannot otherwise be fully compensated, Courts of Equity will grant him a specific performance." In Section 7, "Courts of Equity will decree performance of a contract for land, not because of the particular nature of land but because the damages at law which must be calculated upon a general view of land, may not be a complete remedy to a purchaser to whom the land purchased may have a pecuniary and specific value." Likewise in Section 726, respecting contracts to build: "There can be a full compensation at law in damages, and it has been said that no such covenant ought to be enforced specifically." In Section 74 (b), "If

Courts of Equity refuse to interfere, they inflict no injury upon the plaintiff; for no decision is made which affects his right to proceed at law for any redress by way of damages, to which he may be entitled."

Applying these principles to the case at bar, it will be seen that they do not support the plaintiff's prayer. The defendant's estate has no further title to convey. The plaintiffs may procure the title they desire by the payment of a certain sum of money, and if they thereby suffer a wrong, the remedy is not by this proceeding. The nature and extent of Kanaina's title were well known to all parties at the execution of the deed, namely, a life estate. The authority of Sugden, above cited, that the purchaser may require the removal of a judgment or other incumbrance, cannot be extended to requiring the holder of a life estate to purchase the fee. By the Revised Statutes of Massachusetts, Chapter 59, Section 6—deeds of conveyance are construed by the legal rights of the parties. If a tenant for life conveys by a deed in fee, it is construed as a deed for life. So if one tenant in common convey the whole estate it shall be intended of his part only, unless the contrary intent clearly appears. Without such a statute it must be considered here that under the form of a conveyance of the fee the plaintiff purchased what Kanaina owned, the life estate, with his covenant, that if he should hereafter become seized of any greater estate he should execute a release of it to them. He has not acquired such, but the plaintiffs may, and it is for them to do so, and seek their remedy in damages, if they have suffered them.

With this view of the main question at issue it will be unnecessary to consider whether this bill should be brought against the administrator of the heir.

The bill is dismissed with costs.

A. S. Hartwell for plaintiff.

E. Preston for defendant.

Honolulu, October 3, 1877.

Sec. 3.—Legislative and Other Duties of the President

all the powers "of the government of the United States and of any department or officer thereof." Moreover, its laws made "in pursuance" of these powers are "supreme law of the land," and the President is bound constitutionally to "take care that" they "be faithfully executed." In point of fact, congressional legislation has operated to augment presidential powers in the foreign field much more frequently than it has to curtail them. The Lend-Lease Act of March 11, 1941,²²⁵ is the classic example, although it only brought to culmination a whole series of enactments with which Congress had aided and abetted the administration's foreign policy in the years between 1934 and 1941.²²⁶ Disagreement with presidential policies in the context of the Vietnamese conflict led Congress to legislate restrictions, not only with respect to the discretion of the President to use troops abroad in the absence of a declaration of war, but also limiting his economic and political powers through curbs on his authority to declare national emergencies.²²⁷ The lesson of history, however, appears to be that congressional efforts to regain what is deemed to have been lost to the President are intermittent, whereas the presidential exercise of power in today's world is unremitting.²²⁸

The Doctrine of Political Questions

It is not within the province of the courts to inquire into the policy underlying action taken by the "political departments"—Congress and the President—in the exercise of their conceded powers. This comatose maxim is, however, sometimes given an enlarged application; so as to embrace questions as to the existence of facts and even questions of law, which the Court would normally regard as falling within its jurisdiction. Such questions are termed

²²⁵ 55 Stat. 31 (1941).

²²⁶ E. Corwin, *supra* at 184-85, 422-25, 435-36.

²²⁷ Legislation includes the War Powers Resolution; P.L. 93-412, 87 Stat. 535 (1969), 50 U.S.C. §§ 1541-1548; the National Emergencies Act, P.L. 94-412, 90 Stat. 1365 (1976), 50 U.S.C. §§ 1601-1651 (establishing procedures for presidential declaration and confirmation of national emergencies and providing for a biannual congressional review); the International Emergency Economic Powers Act, P.L. 95-222, 91 Stat. 1628 (1977), 50 U.S.C. §§ 1701-1706 (limiting the great economic powers conferred on the President by the Trading with the Enemy Act of 1917, 48 Stat. 415, 50 U.S.C. App. § 5(b), to times of declared war, and providing new and more limited powers, with procedural restraints, for nonwartime emergencies); and see the Foreign Sovereign Immunities Act of 1976, P.L. 94-98, 90 Stat. 2301, 28 U.S.C. §§ 1330, 1602-1611 (removing from executive control decisions concerning the liability of foreign sovereigns to suit).

²²⁸ We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584 (1952) (Justice Jackson concurring). For an account of how the President usually prevails, see H. Koh, *THE NATIONAL SECURITY CONSTITUTION: SHARING POWER AMONG THE BRANCHES* (1990).

Sec. 3—Legislative and Other Duties of the President

"political questions," and are especially common in the field of foreign relations. The leading case is *Foster v. Neilson*,²⁷ where the matter in dispute was the validity of a grant made by the Spanish Government in 1804 of land lying to the east of the Mississippi River, and in which there was also raised the question whether the region between the Perdido and Mississippi Rivers belonged in 1804 to Spain or the United States.

Chief Justice Marshall's opinion of the Court held that the Court was bound by the action of the political departments, the President and Congress, in claiming the land for the United States. He said: "If those departments which are intrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its right of dominion over a country of which it is in possession, and which it claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this, respecting the boundaries of nations, is, as has been truly said, more a political than a legal question, and in its discussion, the courts of every country must respect the pronounced will of the legislature."²⁸ The doctrine thus clearly stated is further exemplified, with particular reference to presidential action, by *Williams v. Suffolk Ins. Co.*²⁹ In this case the underwriters of a vessel which had been confiscated by the Argentine Government for catching seals off the Falkland Islands, contrary to that Government's orders, sought to escape liability by showing that the Argentine Government was the sovereign over these islands and that, accordingly, the vessel had been condemned for willful disregard of legitimate authority. The Court decided against the company on the ground that the President had taken the position that the Falkland Islands were not a part of Argentina. "[C]an there be any doubt, that when the executive branch of the government, which is charged with our foreign relations, shall, in its correspondence with a foreign nation, assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this view, it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong. It is enough to know, that in the exercise of his constitutional functions, he had decided the question. Having done this, under the responsibilities which belong to him, it is obligatory on the people and government of the Union."

²⁷ 27 U. S. (2 Pet.) 253 (1829).

²⁸ 27 U.S. at 303.

²⁹ 33 U.S. (3 Pet.) 415 (1839).



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(Copy)

SUPREME COURT, HAWAIIAN KINGDON.

In the Matter of the Will of } Order and appointment of
His late Majesty LUNALILO. } Trustees under the Will.

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WHEREAS His Majesty LUNALILO who was known before his accession to the throne of Hawaii under the name of William Charles Lunalilo, deceased at Honolulu on the third day of February, A. D., 1874, and

WHEREAS a document purporting to be his last will and testament with codicil was offered for Probate on the 5th day of March, A. D. 1874, before the Honorable Charles Coffin Harris, one of the Justices of the Supreme Court, a copy of said will is hereunto attached and made a part of this decree; and the Honorable Justice aforesaid did on the 9th day of March of the said year 1874 order and decree that the said will and its codicil be admitted to Probate and from the said order and decree of the said Honorable Justice appeal was duly taken and the matter of proof of the said will and codicil came on for hearing at the April Term of the Supreme Court in the year 1874 before the Honorable Elisha H. Allen, C. J. and a Jury duly impanelled and the said Jury did on the 17th day of April of the said year 1874 return a verdict as follows:

"O makou o na June, he 12, manuli o ko makou noonoo
"maikai ana ke hooholo nei penei:- Ua apono ia na mahele mua
"ekolu o ka Palapala Kauoha Pakui; ua Kapai loa i ka mahele
"eha o ka Palapala Kauoha Pakui." And

WHEREAS in pursuance of the said verdict on the 7th day of May A. D. 1874, it was ordered as follows:

That the Judgment of the said Justice (Harris) admitting the said Will and Codicil to probate, be and hereby is confirmed as to the Will, and as to the first three clauses or articles of the Codicil, and the fourth, being the final clause or article of

MS# MC Lunalito Box 1.1

~~MS # MC~~ Lunalilo Box 1.1

the said Codicil is not admitted to probate, and that Letters Testamentary be issued to Charles R. Bishop the Executor named therein.

(Sig.) ELISHA H. ALLEN.

" CHARLES C. HARRIS

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AND WHEREAS on the 15th day of March instant, the Honorable Alfred S. Hartwell, Attorney General of the Kingdom did by information, in writing filed, inform and give this Court to understand that His Majesty Lunalilo deceased without issue surviving and that His Majesty Kamehameha 5th had deceased previously to His said Majesty Lunalilo without issue surviving him and that Charles Kanaina, the father of His said Majesty Lunalilo, the Devisee mentioned in His said Majesty's Will deceased at Honolulu, on the 13th day of March, instant,

AND WHEREAS on exhibition of the Probate Records of the Supreme Court the said information has been confirmed,

NOW, THEREFORE: We the undersigned Justices of the Supreme Court by virtue of the authority in us vested by the aforesaid Will of His Majesty Lunalilo do nominate and appoint John Mott Smith, Edwin O. Hall and Sanford B. Dole, all of Honolulu, in the Island of Oahu as the three persons in whom the said real estate, mentioned in the third article of the aforesaid Will of His Majesty Lunalilo, shall vest, in accordance with the conditions and Trust in the said Will expressed.

AND WE DO ORDER that the said appointed persons shall file in the Supreme Court their acceptance or renunciation of the said Trust on or before Wednesday the 21st of March, instant.

AND IT IS FURTHER ORDERED that the Trustees appointed in pursuance of the said Will shall file in this Court their joint and several Bond for the faithful discharge of the duties imposed upon them by the said Will in the penal sum of TEN THOUSAND DOLLARS.

AND IT IS FURTHER ORDERED, That the said Trustees shall make return into Court of all their proceedings under the Trust on

or before the last days of July and of October of this present year and on or before the last days of January, April, July, and October of the year 1878, and thereafter on the last days ~~of~~ of July and January of each year until otherwise ordered.

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(Copy of Will)

MS# MC Lunalilo Box 1.1

KNOW ALL MEN BY THESE PRESENTS That I, WILLIAM CHARLES LUNALILO, of Honolulu, Island of Oahu, one of the Hawaiian Islands, being of sound and disposing mind and memory, and well knowing the uncertainties of human life, do hereby make, publish and declare this to be my Last Will and Testament in manner following, that is to say:

First: I give, devise and bequeath to my father, Charles Kanaina, of Honolulu, Island of Oahu aforesaid, all of the estate both real and personal, of which I may die seized and possessed, wheresoever situated, the personal estate absolutely, and to hold and possess the real estate aforesaid for and during the term of his natural life; and from and after his decease I give and devise the real estate aforesaid, to my cousin, His Majesty Kamehameha the Fifth, to be held and possessed by him for and during the term of his natural life, in case he should be alive at my father's decease.

Second: In case I should marry and have issue, then I do hereby give and devise all of my estate both real and personal to my said child or children, their heirs and assigns forever, from and after the decease of my father Charles Kanaina, aforesaid, as, in any event, I desire my beloved father to have the use of my property during his life time, in case he shall survive me.

Third: From and after the decease of my devisees above named, to wit: Charles Kanaina my father, and His Majesty Kamehameha the Fifth, and in case I shall die without issue lawfully begotten, I give, and devise all of the real estate of which I may die seized and possessed, to three persons to be nominated and appointed by a majority of the Justices of the Supreme Court or the Court of the highest jurisdiction in these Hawaiian Islands, to be held by them in Trust, for the following purpose, to wit: To sell and dispose of the said real estate to the best advantage at public or private sale, and to invest the proceeds in some secure manner until the aggregate sum shall amount to Twenty-five

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~~NSB~~ MC Lunalilo Box 1.1

Thousand Dollars, or until the sum realized by the said Trustees shall, with donations or contributions from other sources, amount to the said sum of Twenty-five Thousand Dollars, then I order the Trustees (to be appointed as aforesaid) to expend the whole amount in the purchase of land and in the erection of a building or buildings on the Island of Oahu, of iron, stone, brick or other fire-proof material, for the use and accommodation of poor, destitute and infirm people of Hawaiian (aboriginal) blood or extraction, giving preference to old people; upon such terms, rents or charges, as to the said majority of the Justices of the Supreme Court, or Court of highest jurisdiction in these Hawaiian Islands, shall seem proper; And I hereby authorize any two of the said Trustees (to be appointed as aforesaid), to act in all matters connected with this Trust, and I also authorize a majority of the said Justices as aforesaid, to require accounts from the said Trustees, to remove them from the said Trust, and their places to fill, at pleasure: But, in case, sufficient buildings shall have been provided for the use and accommodation of poor, destitute and infirm Hawaiians as aforesaid, then I hereby order and direct that the said Trustees shall apply the net rents, issues and profits arising from the principal sum realized from the said real estate, when sold as aforesaid, towards maintaining the said buildings in repair, in their improvement and towards the support and maintenance of the inmates aforesaid, as in the opinion of the said Trustees shall seem best.

Fourth: It is my Will that my remains be deposited in the same Tomb with my Father, Charles Kanaina, wherever he may be entombed or interred, and I desire my executor to see the foregoing provision carried out.

Fifth: I hereby nominate and appoint Charles R. Bishop of Honolulu aforesaid, to be my Executor of this my Last Will and Testament, hereby revoking all former Wills by me at any time made.

IN WITNESS WHEREOF I have hereunto set my hand and seal this June day of June A. D. One Thousand Eight Hundred and

MS # MC Lunalilo Box 1.1

Seventy-one.

(Signed) WILLIAM C. LUNALILO (SEAL)

The above written instrument, consisting of one sheet was, on the 7th day of June A. D. 1871, signed, sealed, published and declared by the said William Charles Lunalilo, as for his last Will and Testament, in the presence of us, who, at his request and in his presence and in the presence of each other have signed our names as witnesses thereto.

(Signed) A. FRANCIS JUDD

" JOHN H. PATY.

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WHEREAS, I LUNALILO, now King of the Hawaiian Islands, have made my Last Will and Testament in writing bearing date the seventh day of June in the year of our Lord one thousand eight hundred and seventy-one.

NOW THEREFORE I do by this my writing which I hereby declare to be a codicil to my said Last Will and Testament and to be taken as a part thereof, alter and amend the said Last Will and Testament, as follows: First: The articles of silver ware inherited by me from my mother, I hereby devise and bequeath, after the decease of my father to

Second: After the decease of my father I devise the premises at Waikiki, Oahu, known as my marine residence, to Queen Emma, her heirs and assigns forever.

Third: I hereby direct that my executor cause to be erected in the Kawaiahao Church Yard, in Honolulu, a suitable tomb in which I order that my remains be deposited, desiring also that upon the decease of my father his remains be placed there.

Fourth: My will is that Article Third of my said Will be modified as follows: if the avails of the real estate when sold, after the decease of my father, shall amount to more than Twenty-five Thousand Dollars, then and in that case, I direct my Trustees as aforesaid to be appointed, to invest the excess of the avails of the real estate over and above the said sum of Twenty-five Thousand Dollars, and to apply the net issues and income arising therefrom towards maintaining the said buildings, to be erected as in my Will directed, in repair, and in the support and maintenance of the inmates thereof, as in the opinion of the Trustees aforesaid shall seem best.

IN WITNESS WHEREOF I have hereunto set my hand and seal this Twenty-first day of January A. D. One Thousand Eight hundred and Seventy-four.

(Signed) LUNALILO (SEAL)

by A. F. JUDD

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Signed by A. F. JUDD

in the presence of
Lunalilo and by his
express direction.

Signed Richard Orie

" Robert Sterling

Hawaiian Islands,)
Honolulu, Oahu.) ss.

I hereby certify that the foregoing paper writing pur-
porting to be a copy of the Last Will and Testament and Codicil
of His late Majesty William Charles Lunalilo, King of the Hawaiian
Islands, is a true and faithful Copy of said Will and Codicil, the
same having been duly collated by me with the originals now on
file in the office of the Clerk of the Supreme Court of the Hava-
ian Islands.

IN WITNESS WHEREOF, I have hereunto set my hand and the
seal of the said Supreme Court at Honolulu this 19th day of March
A. D. 1877.

(SIGNED) JNO. E. BARNARD

(SEAL) Clerk Supreme Court.

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III

V. C. L. J. T. 229

Lunallito was born Jan. 31, 1875
Died February 3, 1874.



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Manuscript/Typescript no.: Funeral procession of
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Kae Kooolewa ana o Kekauhouhi

{ Na Lii Koa } { Na Lii Koa }

{ Na Koa me } { Na Koa me }

{ Ka pukuli } { Ka pukuli }

Na orea Kani

Ma Kae me

Kooper ^{L.}
Ta dyina ^{T.} Mawau Pakkisti
Ta Haole
Na Missionari

Kakan Kano

Kekauhouhi me Thukini

Lapiaakao me Kalani

Kanaiikumu me Hekualaula

Kasuwaha me Hekulena

Kaule me Halali

Janetka Tasonia

Alipohaku Kekauhouhi

Moses Lota

John Rorke

John Rorke, Tatorua - Kekauhouhi

Kekauhouhi Ma Kaei Kalama Dr Rorke

G. P. Luder - Koni Ana

P. C. Wyllie - Alapai

John Ricord - Pi

J. Du doit G. Brown Yer Miller

Sea Breezer Hooper

Na Lii Manawa

(Dr Garrison Yer Woolsey)

Hekauhouhi Peohokahole

Parisi - Kamea

G. W. Webster - Kekauhouhi

Loes - Laulani

Oliver - Kamea

Wesman - Kaujoli

Thomson - Hikone

Na Lii Opiogis

Na Lii Eae

Na Lii a o ke Cupussi

{ Na Samaka T. S. S. -

Na Lii Kae

Na Lii

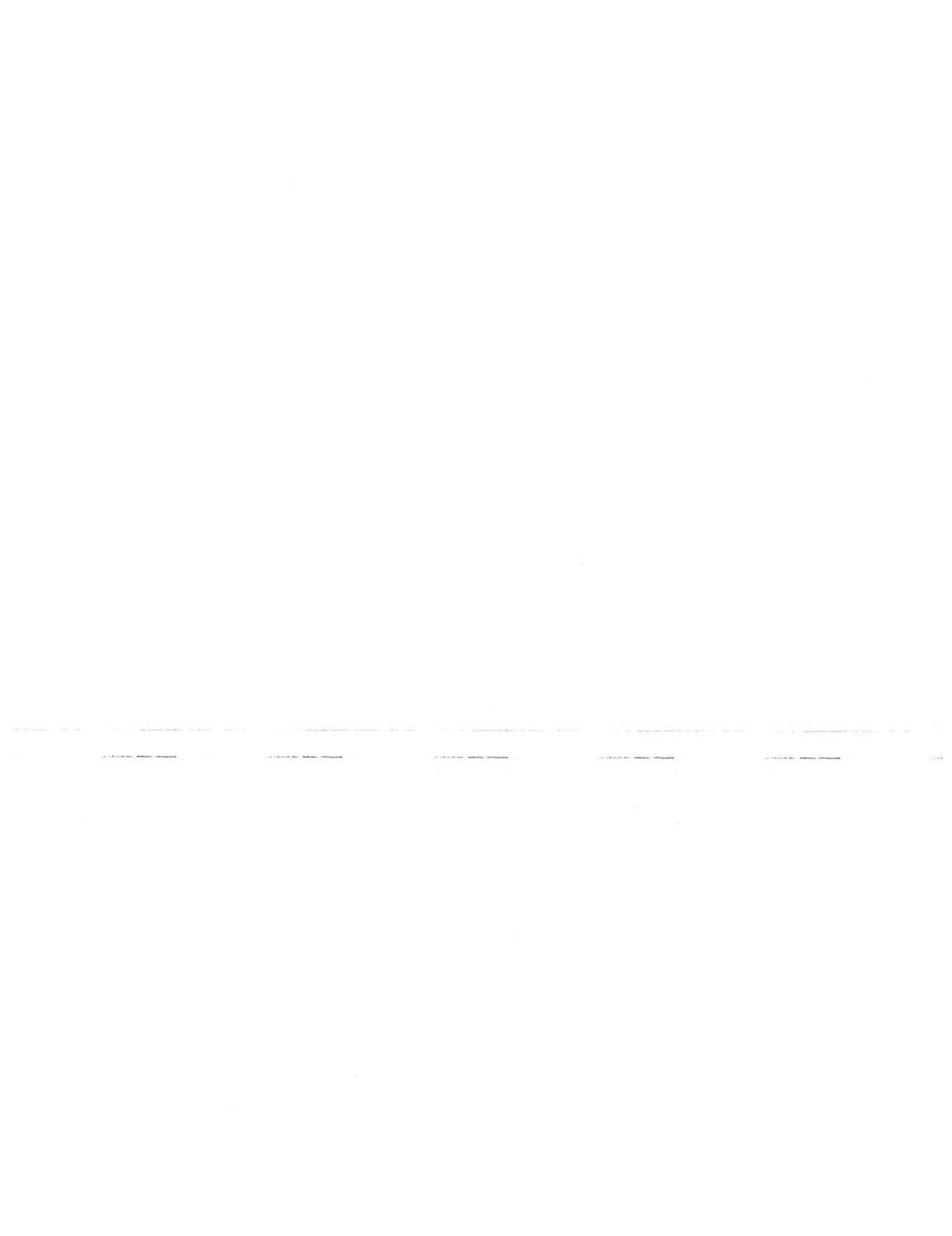
Funeral procession of Kamehameha III
Ke Kai Iuhi

Taken from the notes of the Buffawean-Sumner family

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LINDA LINGLE
GOVERNOR



RUSS K. SAITO
COMPTROLLER

BARBARA A. ANNIS
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES

ARCHIVES DIVISION
HAWAII STATE ARCHIVES
'IOLANI PALACE GROUNDS
HONOLULU, HAWAII 96813

I, SUSAN SHANER, State Archivist of the Public Archives of the State of Hawaii, do hereby certify that the attached document is a true and correct copy the Will of William C. Lunalilo on pages 47-[55] of Probate No. 2414, from Probate Records of the First Circuit Court [Series 007], Judiciary of Hawaii _____

on file in the STATE ARCHIVES, at Honolulu, State of Hawaii.

Witness my hand and seal this 15th day of June, 2007 at Honolulu, State of Hawaii.



SUSAN SHANER, STATE ARCHIVIST

Will of H. H. Wm L. Lemalle

Deposited for safe keeping, June 4/78.

To be opened after his decease by C. D. Bishop

This was returned to me by the Esq A. T. Gold with the
codicil at 10 $\frac{1}{2}$ o'clock A.M. Aug 3rd 1874. '58

(3)

I know all men by these presents that I,
William Charles Lunalilo, of Honolulu,
Island of Oahu, one of the Hawaiian Is-
lands, being of sound and disposing mind
and memory, and well knowing the un-
~~certainty of human life, do hereby make, just~~
lish and declare this to be my Last Will
and Testament in manner following, that is
to say:

First; I give, devise and bequeath to my
Father Charles Kanaina, of Honolulu, Island
of Oahu aforesaid, all of the estate both
real and personal, of which I may die
seized and possessed, whereover situated, the
personal estate absolutely, and to Hold and
possess the real estate aforesaid for and
during the term of his natural life; and
from and after his decease I give and devise
the real estate aforesaid, to my Cousin His
Majesty Kamehameha the Fifth, to be held
and possessed by him for and during the
term of his natural life, in Case he should
be alive at any Father's decease.

Second, In Case I should marry and
have issue, then I do hereby give and de-
vise all of my estate both real and personal
to my said child or children, their heirs
and assigns forever, from and after the
decease of my Father Charles Kanaina,

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aforesaid; as, in any event, I desire my beloved Father to have the use of my property during his life-time, in case he shall survive me.

Third:

From and after the decease of my devisees above named, to wit; Charles Kanaina my Father, and His Majesty Kamahameha the Fifth, and in case I shall die without issue lawfully begotten, I give and devise all of the real estate of which I may die seized and possessed, to three persons to be nominated and appointed by a majority of the justices of the Supreme Court or the Court of the highest jurisdiction in these Hawaiian Islands, to be held by them in Trust, for the following purpose, to wit; to sell and dispose of the said real estate to the best advantage at public or private sale, and to invest the proceeds in some secure manner until the aggregate sum shall amount to Twentyfive Thousand Dollars, or until the sum, realized by the said Trustees shall, with donations or contributions from other sources, amount to the said sum of Twentyfive Thousand Dollars, then I order the Trustees (to be appointed as aforesaid) to expend the whole amount in the purchase of land and in the erection of a building or buildings on the Island of Oahu, of iron, stone, brick or

C.C.

other fire-proof material, for the use and accommodation of poor, destitute and infirm people of Hawaiian (aboriginal) blood or extraction, giving preference to old people; upon such terms, rents or charges, as to the said majority of the Justices of the Supreme Court, or Court of highest jurisdiction in the Hawaiian Islands, shall seem proper; And I hereby authorize any two of the said Trustees (to be appointed as aforesaid), to act in all matters connected with this Trust, and I also authorize a majority of the said Justices as aforesaid, to require accounts from the said Trustees, to remove them from the said Trust, and their places to fill, at pleasure: But, in case, sufficient buildings shall have been provided for the use and accommodation of poor, destitute and infirm Hawaiians as aforesaid, then I hereby order and direct that the said Trustees shall apply the net rents, issues and profits arising from the principal sum realized from the said real estate, when sold as aforesaid, towards maintaining the said buildings in repair, in their improvement and towards the support and maintenance of the inmates aforesaid, as in the opinion of the said Trustees shall seem best.

49

Fourth: It is my Will that my remains be deposited in the same Tomb with my Father

Dollars, then and in that case, I direct my Trustees as aforesaid to be appointed, to invest the excess of the value of the real estate over and above the said sum of Twenty five thousand Dollars, and to apply the net income and income arising therefrom, towards maintaining the said buildings, to be erected as in my Will directed, in repair, and in the support and maintenance of the inmates thereof, as in the opinion of the Trustees aforesaid shall seem best.

In witness whereof I have hereunto set my hand and seal this Thirtieth day of January A.D. One Thousand Eight Hundred and Twenty four.

Lunalilo

Signed by A. T. Judd
in the presence of
Lunalilo and by his
express direction

by A. T. Judd

Richard Oliver

Robert Stirling

Bill of this day
being demandable

02

Ethel S. Kirby MPA
Erica Barnard
Lori White

Trial Order of Probate.

for the Supreme Court.

of the April Term 1814

In the matter of the Said Will and

Codicil of His late Majority Sonahlo^E

And from the order of M^r Justice Harris, of
the 12th day of March A.D. 1814, approving the
Said Will and the Said Codicil, Appeal was
taken by Charles Kanawha, contesting, to the
Supreme Court. And whereas, upon an issue of
fact, the jury by their verdict found that
the Said Codicil was good, and properly ex-
ecuted, except as to the fourth clause, which
the said jury found was not good, and upon
argument before the Supreme Court in Banco on
exceptions taken to the finding of said justice
as to the validity of the Will, the said Su-
preme Court overruled such exceptions -

In consideration of the premises aforesaid, and
of the Statute in such case made and provided,

It is ordered that the judgment of the said
justice admitting the Said Will and Codicil
to probate, be and hereby is confirmed as
to the Will, and as to the first three clauses

or articles of the Codicil, and the fourth
being the final clause or article of the
said Codicil is not admitted to probate.
and that Letters Testamentary be issued to
Charles R. Bishop the Executor named
herein.

Elisha H. Allen
Chas. C. Harris

Hanover, May 18th/44

Attest:

J. F. E. Barnard
Deputy Clerk
Supreme Court

Attest: Frank P.
John W. Brown, Esq.

In the matter of the
proof of the will
of Mrs. Mary Simonds
deceased

Frank P. Brown, Esq.

Filed May 21st 1844
with Frank P. Brown,
J. F. E. Barnard,
Attest: Frank P. Brown

