

August 2nd, 1919.

OPINION NO. 874.

TAXATION: INHERITANCE TAX:

Pursuant to the provisions of a treaty between the United States and Great Britain, ratified July 26, 1900, the Territory of Hawaii may not impose an inheritance tax on the transfer of property by will or descent, to a citizen of Great Britain, larger in rate or otherwise, than that imposed on citizens of the United States.

Hon. Delbert E. Metzger,
Treasurer, Territory of Hawaii,
Honolulu, Hawaii.

Dear Sir: You have requested my opinion upon the amount of the inheritance tax due upon that portion of the estate of the late General Davis, which, under the will, was devised and bequeathed to his daughter, Mrs. Harris.

Mrs. Harris is a resident of Honolulu, married to a British subject. The question has arisen as to whether or not, by virtue of said marriage, which took place prior to the act of Congress approved March 2, 1907, Mrs. Harris is herself a British subject. Her citizenship becomes a fact of importance for the reason that a tax imposed by our inheritance tax statute upon a transfer to an alien is much greater than that imposed in the case of a citizen. In view of the provisions of the treaty hereinafter referred to, I do not believe it will be necessary to determine the citizenship of Mrs. Harris further than to say that I am rather strongly inclined to the opinion that she is a British subject notwithstanding the decision in *Shanks v. Dupont*, 3 Pet.

(U.S.) 142, 7 L. Ed. 666, and other cases following that decision.

We may concede her British citizenship, and she would still be liable to pay the inheritance tax only upon the same rate as would be imposed on a transfer to a citizen of the United States.

By the terms of a treaty entered into between the United States and Great Britain, ratified July 28, 1900, and still in force, it is provided:

“Art. 2. The citizens or subjects of each of the contracting parties shall have full power to dispose of their personal property within the territory of the other, by testament, donation, or otherwise, and their heirs, legatees, and donees, being citizens or subjects of the other contracting party, whether resident or non-resident, shall succeed to their said personal property, and may take possession thereof either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the citizens or subjects of the country where the property lies, shall be liable to pay in such cases. ”

The rule with regard to the effect of treaty regulations upon the power of the state to provide for inheritance taxes is laid down as follows:

“It seems to be conceded that the acquisition of property in this country by aliens is, to some extent, a proper subject for treaty regulation; and that when the United States has entered into a treaty with another nation, according to citizens of the former in the matter of acquiring, holding and transmitting property, and providing that they shall not be required to pay inheritance or succession taxes which citizens of the United States are not compelled to pay, the treaty will be regarded as the supreme law, and state statutes conflicting with it should yield.” Ross on Inheritance Taxation, Sec. 191.

The rule as here laid down is well supported by the following cases: Succession of Rexner, 48 La. 32 L.R.A. 177;

Succession of Sala, 50 La. Ann. 1009; 24 So. 674; in re Stixrude, 58 Wash. 339, Ann. Cas. 1912A.

I am of the opinion, therefore, and so advise you, that whether Mrs. Harris be considered a citizen of the United States and of the Territory of Hawaii, or as a British subject, the tax imposed in this case must be at the rate not greater than that imposed upon a transfer to a citizen of the United States and of the Territory of Hawaii.

Yours very truly,

HARRY IRWIN,
Attorney General.