

August 11th, 1927.

OPINION No. 1449

TAXATION: ASSESSMENTS: UNKNOWN OWNERS:

Before the Assessor can legally assess property to "Unknown Owners," he must use all reasonable means at his command to ascertain the name of the owners, and must at least consult the public records.

Paul J. Jarrett, Esq.,
Deputy Tax Assessor,
First Taxation Division,
Honolulu, T. H.

Dear Sir:

You have requested the opinion of this Department as to whether or not the assessment for taxation upon property owned by the late S. W. Nawahie is valid. The facts, as I understand them, are as follows:

S. W. Nawahie died in 1918. Up to and including January 1921 the assessment was made against the "Estate of S. W. Nawahie"; from January 1922 to date the taxes were assessed against "Unknown owners", as provided by Section 1343 of the Revised Laws of Hawaii.

Upon investigation I have found that on February 7th, 1917, Nawahie conveyed the property to Kamalani, which deed is of record in Liber 465, page 94. Shortly after the execution of this deed a suit was instituted to set aside the conveyance on the ground of undue influence. Pending this litigation Nawahie conveyed the property in trust to Peterson, on May 29, 1917, which deed is of record in Liber 478, page 458, and on October

19, 1920, Peterson, as Trustee, conveyed to Kamalani the same property. This deed is of record in Liber 582, at page 301. A suit was also instituted to set aside the trust deed, both matters going to the Supreme Court of the Territory. The petitioner in the first suit was sustained, but in the second suit the petition was dismissed on account of some technicality.

On March 25th, 1924, Kamalani conveyed the same property to Violet Malani. This deed is of record in Liber 729, page 62.

So that during the period of 1917, to date, three conveyances of this property have been put on record.

It is now contended by the counsel for the taxpayers that the assessments against "Estate of Nawahie" and "Unknown Owners" are both erroneous. We are principally concerned with the assessment against "Unknown Owners" because of the fact that the lien for taxes would extend practically over the period during which the property was so assessed.

Section 1343, as amended by Act 192, S. L. 1925, provides—

"The taxable property of parties or persons unknown and for whom no return is made, shall be assessed by the assessor to 'Unknown Owner' or 'Non-Resident', and may be levied upon for all unpaid taxes."

Under the general law, before property can be assessed to "Unknown Owners," the officers in charge of assessing the tax must perform their duty in endeavoring to ascertain the name of the owner, and that such owner was really unknown to them.-

"If the ownership of particular parcels of realty cannot be discovered, the statutes commonly permit their assessment to 'Unknown Owners', and the assessment will then be valid as if made to individuals by name. When an assessment is made in this form, it is

presumed that the officers performed their duty in endeavoring to ascertain who was the owner and that he really was unknown to them. But if the name of the owner was in fact known to the assessor, *or could have been discovered by an examination of the public records*, an assessment to 'Unknown Owners' cannot be sustained, and these statutes give no authority for an assessment to a named person 'and all owners and claimants known and unknown'; and such an assessment is void."

37 Cyc. 1004.

You will note from the foregoing citation that before an assessment can be made against "Unknown Owners" the assessor must at least examine the public records. If an examination of the records had been made by the assessor in this particular case, he would have found the conveyances referred to in the earlier portions of this opinion, as well as the two suits before the Supreme Court of the Territory.

The assessment against "Unknown Owners" in this particular case was, therefore, void. However, by Section 1347 of the Revised Laws of Hawaii, 1925, it is provided that—

"Each assessor shall at any time add to his assessment or tax list for the year or years when omitted, *any person* or property theretofore omitted from assessment and taxation * * *".

Under this section you are authorized to go back and re-assess property to the rightful owners as disclosed by the public records. These records show that tile title to the property was in Kamalani, and later in Malani.

In arriving at your assessment you are privileged to take into consideration the fact that the property in question is surrounded by private owners, and without right-of-way to the public highway. This, of course, has some effect upon the value. The question of the assessment against the Estate of Nawahie is not directly involved in this matter. However, the law on the subject is as follows:

"Personal property of a decedent's estate is to be assessed in the name of the executor or administrator. But real property, as a general rule, should be assessed to the decedent's heirs at law, by name, and it has been held that an assessment of real property is invalid if it is made in the name of the deceased owner or of the estate of the decedent * * *".

It is the opinion of this Department, and you are so advised, that the assessment against "Unknown Owners" for the years 1922 to date, of the property formerly owned by the late Nawahie, is void, but that you are privileged, under Section 1347, R. L. 1925, to go back and re-assess the same against the owners as shown by the public records.

You are further advised that after you have assessed the property the Territory has a lien for taxes for the years 1923, 1924, 1925, 1926 and 1927.

Very truly yours,

CHARLES B. DWIGHT,
Third Deputy Attorney General.

APPROVED:

WILLIAM B. LYMER,
Attorney General.