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EVOLUTION OF HAWAIIAN LAND TENURES.

Read before the Hawaiian Historical Society, December 5th, 1892, by the
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WHEN the Hawaiian pilgrim fathers first landed on the lonely coast of Hawaii from their long and exhausting ocean voyage in their canoes decked with mats and rigged with mat sails, it was for them a new departure in government and social and industrial economy. Their past, with its myths of origin, its legends of struggle and wanderings, its faiths and customs and rites and ceremonies, its lessons of victory and defeat, its successes over nature, was still their present authority and paramount influence, as they feebly began a new social enterprise upon the desolate yet grand and beautiful shores of their new inheritance.

Their past still held them through its venerable sanctions, and yet they were free in the freedom of a new and unoccupied land to add to its accumulations and to improve on its lessons.

We may imagine that the remnant of the freight of their storm-worn canoes included a few household idols, a live pig or two, some emaciated chickens, a surviving bread fruit plant, *kou* and other seeds.

There were women as well as men in the company; the little children had succumbed to the hardships of the voyage which was undertaken to escape the indignities and confiscations incident to the status of a defeated party in tribal warfare.

These people, lean and half-famished, gladly and with fresh courage took possession of their new world. As soon as they recovered their strength they built a *heiau*¹ and sacrificed to their gods.

After a little exploration they settled in a deep valley sheltered by steep cliffs and watered by an abundant stream

¹ *Heiau*—temple.

of clear water abounding in fish and shrimps. At the mouth of the gorge was the sea where there were shellfish, crabs and a variety of fish. Fruits of various kinds flourished on the hillsides, some of which they were acquainted with, while others were new to them. They found varieties of the *kapa*² plant, and understanding the process of making its bark into cloth, they restored their wardrobes which had for the most part disappeared in the vicissitudes of the voyage. They also discovered the *taro*³ growing wild in mountain streams, which they hailed as an old friend, feeling that now their satisfaction with their new home was complete. The cultivation of this was begun at once as a field or dry land crop, as had been the practice in the home land, but as time went on and some crops failed for want of rain, irrigation was used, until at length, it may have been generations after, the present method of cultivating the crop in permanent patches of standing water became established. This result was greatly favored by the abundance of running water which was a feature of the country.

Children were born and grew up and intermarried, and the colony grew and prospered. Exploring parties went out from time to time and other watered valleys were found, and bays and reefs rich in fishing resources. As the community began to crowd the limited area of the valley which was their first resting place, one and another of these newly discovered and favored localities was settled, generally by a family consisting of the parents and grown up boys and girls. And now and then new companies of exiles from the southern islands found their weary way over the ocean, bringing perhaps later customs and adding new gods to the Hawaiian pantheon.

So Hawaii was gradually populated, and when its best localities were occupied Maui began to be colonized, and then its adjacent islands, until the whole group was stocked with people.

There may have been a few chiefs in the pioneer company who largely directed the affairs of the colony, and whose descendants furnished chiefs for the growing demands of the branch colonies. Among the new arrivals also from the

² *Kapa*—native cloth.

³ *Taro*—arum esculentum.

outside world were occasional chiefs who were hospitably welcomed and accredited as such and accorded corresponding position and influence.

It is also probable that in the very early period when chiefs were scarce the head men of some of the settlements which had branched off from the parent colony acquired the rank of chiefs, from the importance of their positions and the influence which their authority over the lands of their respective settlements naturally gave them. Such acquired rank descended to their children, in some cases doubtless with an increase of dignity due to marriages with women of chief rank ; and so some new families of chiefs originating from the common people, or *makaainanas*,⁴ were established.

This early period of Hawaiian history for a number of generations was a time of industrial enterprise and peaceful and prosperous growth. There was no occasion for fighting, for there was land and water enough for all and every one was busily employed. It was the golden age of Hawaii. There were *taboos*⁵ indeed, but only religious ones. No chief was powerful enough yet to proclaim *taboos* for political purposes, nor had the necessities for political *taboos* yet arisen. The arts prospered ; the Hawaiian canoe developed ; the manufacture of *kapa* flourished and made progress in the direction of variety of fabric and its esthetic finish and decoration ; royal garments of birds' feathers were manufactured ; implements of stone and of wood for mechanical and industrial work were invented and improved upon ; and great engineering enterprises were undertaken, such as the irrigating systems of Wahiawa, Kapaa and Kilauea on the island of Kauai, and great sea walls enclosing bays and reefs for fishponds, such as the one at Huleia, on Kauai, and at many other places all over the islands. The antiquity of some of these is so great that even tradition fails to account for their origin, as in the case of the parallel irrigating ditches at Kilauea, on Kauai, the digging of which is attributed by the Hawaiians to the fabled *moo*, or dragon, and the deep water fish-pond wall at the Huleia river on Kauai, which is supposed to have been built by the *Menehunes*,—the fabled race of dwarfs, distinguished for cunning

⁴ *Makaainanas*—Common people.

⁵ *Taboo*—repressive enactment.

industry and mechanical and engineering skill and intelligence. In reality they were the pioneers of the Hawaiian race who took complete industrial and peaceful possession of the country, and this early period is distinctly the age of the *Menehunes*, or skillful workers.

Principles of land tenure developed slowly through this period, probably from some form of the patriarchal system into a system of tribal or communal ownership. There was land enough for everyone, and holdings at first were based upon possession and use.

As in the irrigating customs of the Hawaiians—where there was an abundance of water, every *taro* grower used it freely and at all times according to his own convenience, and there were no regulations, but in those localities where the water supply was limited strict rules for its distribution grew up—so when the land was not all occupied, there was freedom in its use, it being easier to locate new holdings than to quarrel about old ones.

But as land irrigation developed, requiring permanent and costly improvements in the way of irrigating ditches and the building of terraces on the valley slopes for the foundation of *taro* patches, such improved localities acquired a special value, and the more real sense of ownership in land, which is based upon an investment of labor in the soil beyond the amount required for the cultivation of a crop, began. A quality of this ownership was necessarily permanence, because of the permanence of the improvements which created it.

Another element of tenure arose as the population increased and the best lands became occupied; the increasing demand gave them a market value—so to speak, which gave rise to disputes over boundaries. Although such feuds, sometimes attended with personal violence, favored the development of the later feudalism of the Hawaiians, yet the early period, containing many of the features of tribal government and land tenure common to the Samoans, Fijians, and Maories of New Zealand, probably lasted for a long time, with a gradual development of the principle of ownership in land and descent from parent to

child subject to the tribal control, until it was perhaps radically and violently interrupted by the turbulent times beginning in the 13th century, and lasting until the conquest of the group by Kamehameha I. This was a period of internecine warfare promoted by the ambition of chiefs for political power and personal aggrandizement, and was most favorable to the growth of feudalism, which rapidly took the place of the previous political status. As was inevitable under the new conditions, the importance and influence of the chiefs was greatly increased, to the immediate prejudice of the rights and privileges of the people, who were oppressively taxed in support of the wars brought on by the whim of their respective rulers, or to defend them from the attacks of ambitious rivals. The growing necessity for protection of life and property caused everyone to attach himself closely to some chief, who afforded such protection in consideration of service and a portion of the produce of the soil. Then the chiefs, as their power increased, began to levy contributions of supplies arbitrarily, until it came to pass that the chief was the owner of the whole of the products of the soil, and of the entire services of the people, and so it was a natural consequence that he became finally the owner also of the soil itself. These results, which were hastened by the constant wars of this period, were yet of slow growth. The small valley and district sovereignties one by one disappeared in the clutch of rising warrior chiefs who thus added to their dominions and power. As such principalities became formidable, it became necessary for the remaining smaller chiefdoms to ally themselves to some one of them. And so this process went on until each island was at length under the control of its high chief, and then finally the whole group passed under the sovereignty of Kamehameha I., and the feudal programme was complete.

During this period the control of land became very firmly established in the ruling chiefs, who reserved what portions they pleased for their own use, and divided the rest among the leading chiefs subject to them. The position of the latter was analogous to that of the barons of European feudalism; they furnished supplies to their sovereign, and in case of war were

expected to take the field with what fighting men their estates could furnish. These barons held almost despotic sway over their special domains, apportioning the land among their followers according to the whim of the moment or the demands of policy, or farming it out under their special agents, the *konohikis*,⁶ whose oppressive severity in dealing with the actual cultivators of the soil was notorious. Thus the occupancy of land had now become entirely subject to the will of the ruling chief, who not only had the power to give but also to take away at his royal pleasure. This despotic control over land developed in the direction of greater severity rather than toward any recognition of the subjects' rights, and it finally became an established custom for a chief who succeeded to the sovereign power, even peacefully by inheritance, to re-distribute the lands of the realm.

It is evident that this status was, for the time being, disastrous and destructive to all popular rights in land that may have previously existed. If there was formerly anything like succession in tenure from father to son and tribal ownership, such holdings were now utterly destroyed, and the cultivators of the soil were without rights of cultivation or even of habitation. "The country was full of people who were *hemo*, i. e. dispossessed of their lands at the caprice of a chief. Three words from a new to a former *konohiki*⁶ — '*Ua hemo oe*'⁷ — would dispossess a thousand unoffending people and send them houseless and homeless to find their *makamakas*⁸ in other valleys." (Alexander's reply to Bishop Staley.)

The re-distribution of lands upon the accession of a ruling chief was naturally carried out with great severity when his accession was the result of civil war between rival factions or the triumph of an invading army. In the case of a peaceful accession of a young chief to sovereign power, the re-distribution was mainly to his personal friends and companions and was less complete than in the case of a revolution of force. Very influential men of the previous reign would not be disturbed, both because it would be dangerous and impolitic to do so, and be-

⁶ *Konohiki*—land agent of chief.

⁷ *Ua hemo oe*—you are removed.

⁸ *Makamaka*—friend.

cause their assistance was desired. A curious survival of this feudal custom of re-distribution of power and land upon the accession of a new ruler is recognizable in the equally reprehensible sentiment of modern politics, expressed in the well-known words, "to the victors belong the spoils."

When Kamehameha I. conquered the group, excepting the Island of Kauai, which was accomplished only after the most desperate fighting, his success carried with it the fullest and severest application of this custom, and it meant to his defeated enemies loss of all political power and of the lands which were the basis of such power. The Island of Kauai, through the treaty of annexation between the King of that island, Kaumualii, and Kamehameha, might have escaped such misfortunes but for the rebellion of Humehume, the son of Kaumualii some years later, which, being suppressed, subjected the insurgent chiefs to the rigorous rule of confiscation of their lands and the annihilation of their political influence.

Thus Kamehameha became at last, through these feudal customs and by virtue of his conquest, the fountain head of land tenures for the whole group. The principles adopted by the Land Commission in 1847 opens with the following statement:—

"When the islands were conquered by Kamehameha I. he followed the example of his predecessors and divided 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, 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 these rights were not very clearly defined, but were, nevertheless, universally acknowledged."

During Kamehameha's long and vigorous reign, affairs became settled to an extent to which the country had been unac-

customed. Long and undisturbed possession of their lands by chiefs was a preparation for the development of a sentiment favorable to permanent individual rights in land. Such a sentiment had become well defined in the mind of Kamehameha before his death, and may be regarded as the seed germ of the system of land tenures which afterwards developed.

Many of those who have been interested in this subject have been accustomed to regard the idea of private rights in land in these islands as one of foreign introduction during the reign of Kamehameha III., at which time the remarkable change from feudal to private real estate control took place. But the landed reforms of that reign were the results of causes which had been long and powerfully at work. The century plant had slowly grown, but when its full time came it swiftly and abundantly blossomed.

At the meeting of chiefs at Honolulu, upon the arrival of the frigate *Blonde* in 1825 with the remains of Kamehameha II. and his wife, to consider the question of the succession to the throne and other matters, as reported in the *Voyage of the Blonde*, page 152 and following, Kalaimoku, the regent, in his address to the council, referred to the inconveniences arising from the reversion of lands to the King on the death of their occupants,—a custom partially revived under Kamehameha II., but which it had been the object of Kamehameha I. to exchange for that of hereditary succession. This project of their great King he proposed to adopt as the law, excepting in such cases as when a chief or landholder should infringe the laws, then his lands should be forfeited and himself *tabooed*. Several chiefs at once exclaimed,—“All the laws of the great Kamehameha were good; let us have the same!”

Lord Byron, Captain of the *Blonde*, presented the council some written suggestions in regard to the administration of affairs which are contained the following article: “That the lands which are now held by the chiefs shall not be taken from them, but shall descend to their legitimate children, except in cases of rebellion, and then all their property shall be forfeited to the King.” The account proceeds as follows, (page 157):—“These

hints, it will be at once perceived, are little more than a recommendation quietly to pursue the old habits and regulations of the islands. Kamehameha I. had begun to establish the hereditary transmission of estates, and Lord Byron's notice only adds the sanction of the British name to it."

This principle adopted previous to the reign of Kamehameha III. greatly influenced the progress of events.

When after the death of Kamehameha I. his son, Liholiho, came to the throne as Kamehameha II., the administration of the government was shared with him by Kaahumanu, the *Kuhina Nui*, one of Kamehameha's widows, and a woman of great force of character. It was the desire of Kamehameha II. to make a re-distribution of the lands of the realm according to custom, but Kaahumanu was opposed to it, and her influence together with the united strength of the landed interests which had become firmly established in the chiefs during the long reign of Kamehameha I. was too strong for him, and beyond a few assignments among his intimate friends, he relinquished his purpose. The distribution of lands therefore by Kamehameha I. remained for the most part as a permanent settlement of the landed interests of the kingdom to be afterwards modified in favor of the common people and the government, but never ignored.

During the period from the distribution of lands by Kamehameha I., about 1795, till the year 1839, the Sovereign held a feudal authority over the whole landed estate of the kingdom which included the right, as above set forth, summarily to cancel the rights in land of any chief or commoner. There was a growing tendency, however, during this period toward the provision in favor of the descent of lands from parent to child adopted by the chiefs upon the return of the *Blonde*, and the feudal right of the Sovereign over the land of the subject was more rarely exercised as time went on. Increasing security in tenure led to increasing activity in land transactions. Chiefs transferred lands to others and they became a marketable commodity; there was buying and selling,—some speculating. The Sovereign gave away and sold lands here and there.

9 *Kuhina Nui*—a premier or minister having a veto on the King's acts.

Foreigners became land holders. Still there was no permanence in the tenure, the enactment by the chiefs at the time of the *Blonde* being in the nature rather of an expression of an opinion than a binding law. The kingdom then was under the regency of Kaahumanu and Kalanimoku, and Kamehameha III., being still a minor, was not a party to this provision and it was not regarded as binding upon him.

The status of land matters at this time was similar to that which existed in England after the Norman conquest, but here the progress of events, owing undoubtedly to the influence of a foreign civilization, was far more rapid than there. The possession of land by foreigners with strong governments back of them, represented here by men-of-war and zealous consuls, had a stimulating effect upon this movement. It was a transition period; the strength of the feudal despotism was fast waning and there was as yet nothing of a positive nature to take its place. This uncertainty in regard to land tenure was a serious obstacle to material progress. The large landholders—the chiefs and some to whom they had given or sold lands, felt a degree of security in their holdings through the growing sentiment toward permanent occupation and hereditary succession; but this was insufficient to place land matters upon a satisfactory footing and to justify extensive outlays in permanent improvements. But that class of occupiers of land known as tenants, which class included a large proportion of the common people, was still in a condition which had scarcely felt the favorable influences which had begun to improve the status of the chiefs. They were hardly recognized as having civil rights, although they enjoyed freedom of movement and were not attached to any particular lands as belongings of the soil. If a man wanted a piece of land to live on and cultivate, he had to pay for it by a heavy rent in the shape of regular weekly labor for his landlord, with the additional liability of being called upon to assist in work of a public character, such as building a *heiau* or making a road or fish-pond sea-wall. With all this, the tenant was liable to be ejected from his holding without notice or a chance of redress. That this defenceless condition of the com-

mon people was rigorously taken advantage of by the landholding chiefs and their *konohikis*, we have the evidence of those living in this period, including some of the early missionaries, that it was a feature of the times that large numbers of homeless natives were wandering about the country. This want of security in the profits of land cultivation led many to attach themselves to the persons of the chiefs as hangers-on, whereby they might be at least fed in return for the desultory services which they were called upon to perform in that capacity. This practice of hanging-on or following a chief for the sake of food was a feature of the perfected feudalism, when insecurity of land tenure was at its height, and the word defining it—*hoopilimeaa*¹⁰—probably originated at that period.

In 1833, Kamehameha III., then twenty years old, assumed the throne, and soon became deeply interested in public affairs. In many ways the unsatisfactory status of land matters was pressed upon his attention. The growing sentiment toward permanence in tenure powerfully influenced the situation. The defenceless and wretched condition of the common people in regard to their holdings appealed to his humanity and to his sense of responsibility as their ruler. The inconsistency of his sovereign control of all the lands of the kingdom with any progress based upon the incoming tide of civilization became more and more evident every day. The increasing demand among foreigners for the right to buy and hold land was an element of importance at this national crisis and doubtless had much to do in hastening the course of events. The King not only consulted the great chiefs of the realm, who certainly were in favor of permanence in tenure for themselves, but he also conferred with foreigners on the subject. In 1836 Commodore Kennedy and Captain Hollins visited Honolulu in the United States Ships *Peacock* and *Enterprise*, and during their stay held conferences with the chiefs, in which the question of land tenure was discussed. In 1837, Captain Bruce of the British Frigate *Imogene* had several meetings with the chiefs in regard to matters of government, when, in all probability, land matters were considered. The influence of Mr. Richards, for a long time the

¹⁰ *Hoopilimeaa*—adhering for food.

confidential adviser of the chiefs, was undoubtedly very great with the King in leading his mind to the definite conclusion which he reached in 1839, in which year, on the 7th day of June, he proclaimed a Bill of Rights which has made his name illustrious, and the day on which it was announced worthy of being forever commemorated by the Hawaiian people. This document, though showing in its phrases the influence of Anglo-Saxon principles of liberty, of Robert Burns and the American Declaration of Independence, is especially interesting and impressive as the Hawaiian Magna Charta, not wrung from an unwilling Sovereign by force of arms, but the free surrender of despotic power by a wise and generous ruler, impressed and influenced by the logic of events, by the needs of his people, and by the principles of the new civilization that was dawning on his land.

The following is the translation of this enlightened and munificent royal grant :

“God hath made of one blood all nations of men to dwell on the earth in unity and blessedness. God hath also bestowed certain rights alike on all men and all chiefs, and all people of all lands.

“These are some of the rights which He has given alike to every man and every chief of correct deportment: life, limb, liberty, freedom from oppression, the earnings of his hands and the productions of his mind—not, however, to those who act in violation of the laws.

“God has also established government and rule for the purpose of peace; but in making laws for the nation it is by no means proper to enact laws for the protection of the rulers only, without also providing protection for their subjects; neither is it proper to enact laws to enrich the chiefs only, without regard to enriching their subjects also, and hereafter there shall by no means be any laws enacted which are at variance with what is above expressed, neither shall any tax be assessed, nor any service or labor required of any man in a manner which is at variance with the above sentiments.

“The above sentiments are hereby proclaimed for the purpose of protecting alike both the people and the chiefs of all these

islands while they maintain a correct deportment; that no chief may be able to oppress any subject, but that chiefs and people may enjoy the same protection under one and the same law.

“Protection is hereby secured to the persons of all the people, together with their lands, their building lots and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws. Whatever chief shall act perseveringly in violation of this declaration shall no longer remain a chief of the Hawaiian Islands, and the same shall be true of the governors, officers and all land agents. But if anyone who is deposed should change his course and regulate his conduct by law, it shall then be in the power of the chiefs to reinstate him in the place he occupied previous to his being deposed.”

It will be seen that this bill of rights left much to be done in defining the rights in land granted by it. It appears by the constitution enacted by the King, the *kuhina nui*, or premier, and the chiefs, the following year, that the feudal right of controlling transfers of land was still retained in the Sovereign, in the following words:—“Kamehameha I. was the founder of the kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I. was the head and had the management of the landed property. Wherefore there was not formerly, and is not now, any person who could or can convey away the smallest portion of land without the consent of the one who had, or has, the direction of the kingdom.”

The Bill of Rights promoted activity in land matters, and for the next few years difficulties arising from land disputes pressed upon the King, producing great confusion and even endangering the autonomy of the kingdom. In 1841, Ladd & Co., the pioneers in sugar cultivation in this country, obtained from the King a franchise which gave them the privilege of leasing any unoccupied lands for one hundred years at a low rental. This franchise was afterwards transferred to a Belgian colonization company of which Ladd & Co. were partners, under cir-

cumstances that made a good deal of trouble for the Hawaiian Government before the matter finally disappeared from Hawaiian politics. The intimidation of the King by Lord Paulet, captain of the British frigate *Carysfort*, under which the provisional cession of the country to England was made in 1843, was based largely upon a land claim of Mr. Charlton, an Englishman, which was regarded by the King as illegal, but which he finally endorsed under Paulet's threat of bombarding Honolulu. These troubles naturally developed among the Hawaiians an opposition against the policy of allowing foreigners to acquire land which, in 1845, reached the definite stage of political agitation and petitions to the Government.

During these years of undefined rights, the common people were protected in their holdings by law to a certain extent, but their tenure was based mainly upon their industrious cultivation of their lands, except as to house-lots, and the payment of rent in labor.

The question of the proportionate interests of the King, the chiefs and the common people in the lands of the kingdom was one of great difficulty. As we have seen, the Constitution of 1840 distinctly recognized such a community of interest, but Hawaiian precedents threw no light upon the problem of division. It had been a new departure to admit that the people had any inherent right in the soil, and now to carry out that principle required the adoption of methods entirely foreign to the traditions of Hawaiian feudalism.

In this transition time the necessity of an organized government separate from the person of the King, became apparent even to the chiefs, and this was carried out by three comprehensive acts in 1845, 1846 and 1847. The first, "to organize the Executive Ministry of the Hawaiian Islands;" the second, "to organize the Executive Departments of the Hawaiian Islands;" and the third, "to organize the Judiciary Department of the Hawaiian Islands."

As soon as the existence of a responsible government detached from the person of the King became an accepted feature of the political system, it was felt that in some way or other the

government ought to have public lands and become the source of land titles. At its inception the government, as a distinct organization, was possessed of no landed property; it may be said to have had a right to that portion of the King's interest in the landed property of the kingdom which he held in his official capacity, in distinction from that which belonged to him in his private capacity; but this was a mere theoretic right, dimly recognized at first, and only after innumerable difficulties and fruitless expedients was it finally developed and carried out in the great *mahete* or division of lands between King, chiefs and people in 1848. Elaborate laws were made for the purchase of land by the government from private landholders which do not appear to have added materially to the public domain.

The act to organize the Executive Department contained a statute establishing a Board of Royal Commissioners to quiet land-titles. This statute was passed December 10th, 1845. It was a tentative scheme to solve the land problem, and though not in itself sufficiently comprehensive for the situation, it was in the right direction, and led, through the announcement of principles of land tenure by the commission, which were adopted by the Legislature, to a better understanding of the subject, and finally in the latter part of 1847, to the enactment by the King and Privy Council of rules for the division of the lands of the kingdom, which, with the statute creating the Land Commission and the principles adopted by them, formed a complete and adequate provision for the adjustment of all recognized interests in land on the basis of the new departure in the principles of tenure.

At the time of the creation of the Board of Commissioners to Quiet Land Titles and up to the enactment of rules by the Privy Council for land division, the nation was still feeling its way through the maze of the difficult questions which were pressing upon it in this great reform in land matters. Each step which it made threw light upon the path for the next one. The rapidity with which this reform was accomplished must be attributed not only to the wisdom and fidelity of the advisers of the nation, but largely to the earnestness and patriotism of the King

and chiefs, who cheerfully made great sacrifices of authority and interest for the sake of a satisfactory solution of these questions.

The commissioners to quiet land titles, were authorized to consider claims to land from private individuals, acquired previous to the passage of the act creating the commission. This included natives who were in the occupancy of holdings under the conditions of use or payment of rent in labor, and also both natives and foreigners who had received lands from the King or chiefs in the way of grants. The awards of the board were binding upon the government if not appealed from, and entitled the claimant to a lease or a royal patent, according to the terms of the award, the royal patent being based upon the payment of a commutation of one-fourth or one-third of the unimproved value of the land, which commutation was understood to purchase the interest of the government in the soil.

The principles adopted by the Land Commission use the words King and government interchangeably, and failed to reach any adjudication of the separate rights of the King in distinction from those of the government in the public domain, or in other words they failed to define the King's public or official interests in distinction from his private rights, although they fully recognized the distinction. There was, however, an implied apportionment of these two interests through the proceedings by which an occupying claimant obtained an allodial title. The commission decided that their authority coming from the King to award lands represented only his private interests in the lands claimed. Therefore, as the further payment of the claimant as a condition of his receiving a title in fee simple from the government was one-third of the original value of the land, it follows that the King's private interest was an undivided two-thirds, leaving an undivided one-third belonging to the Government as such.

The commission also decided that there were but three classes of vested or original rights in land, which were in the King or government, the chiefs, and the people, and these three classes of interests were about equal in extent.

The Land Commission began to work February 11th, 1846, and made great progress in adjudicating the claims of the com-

mon people, but its powers were not adequate to dispose of the still unsettled questions between the King, the chiefs, and the government, though it must be admitted that it made progress in that direction. Neither were the chiefs ready to submit their claims to its decision.

After earnest efforts between the King and chiefs to reach a settlement of these questions, the rules already referred to were unanimously adopted by the King and chiefs in Privy Council December 18th, 1847. These rules which were drawn up by Judge Lee, embodied the following points:—The King should retain his private lands as his individual property, to descend to his heirs and successors; the remainder of the landed property to be divided equally between the government, the chiefs, and the common people.

As the land was all held at this time by the King, the chiefs and their tenants, this division involved the surrender by the chiefs of a third of their lands to the Government, or a payment in lieu thereof in money, as had already been required of the tenant landholders. A committee of which Dr. Judd was chairman was appointed to carry out the division authorized by the Privy Council, and the work was completed in forty days. The division between the King and the chiefs was effected through partition deeds signed by both parties; the chiefs then went before the Land Commission and received awards for the lands thus partitioned off to them, and afterwards many of them commuted for the remaining one-third interest of the Government by a surrender of a portion.

After the division between the King and the chiefs was finished he again divided the lands which had been surrendered to him between himself and the Government, the former being known thereafter as Crown Lands and the latter as Government lands.

This division, with the remaining work of the Land Commission, completed the great land reform, the first signal of which was announced by Kamehameha III. in his Declaration of Rights, June 7th, 1839. A brief ten years had been sufficient for the Hawaiian nation to break down the hoary traditions

and venerable customs of the past, and to climb the difficult path from a selfish feudalism to equal rights, from royal control of all the public domain to peasant proprietorship and fee simple titles for poor and for rich. It came quickly and without bloodshed because the nation was ready for it. Foreign intercourse, hostile and friendly, and the spirit of a christian civilization had an educating influence upon the eager nation united by the genius of Kamehameha I., with its brave and intelligent warrior chiefs resting from the conquest of arms, their exuberant energies free for the conquest of new ideas; with rare wisdom, judgment and patriotism they proved equal to the demands of the time upon them.

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