

The Great Mahele

An Overview of the 3 Classes Having Rights in Land

The Great Mahele

Western Property Law's Assimilation into
Hawaiian Property Law

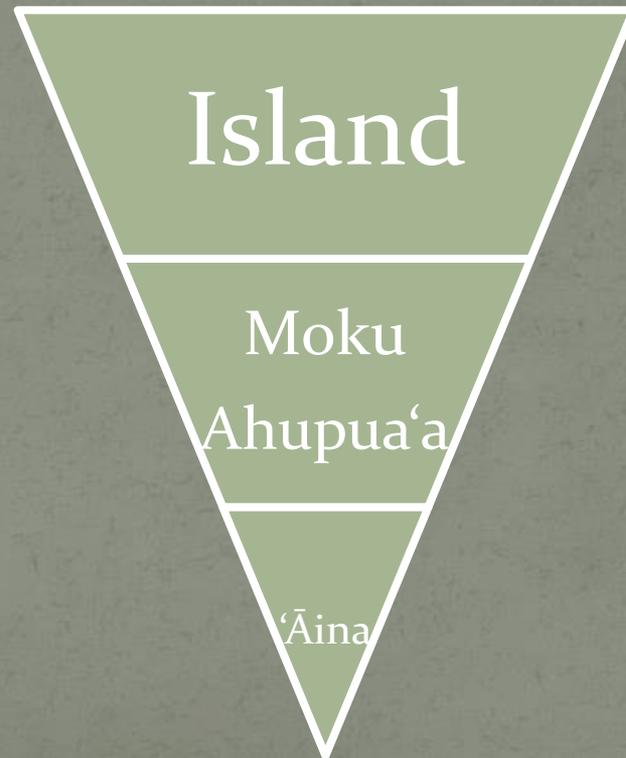
Evolution of Land Rights

Societal Structure

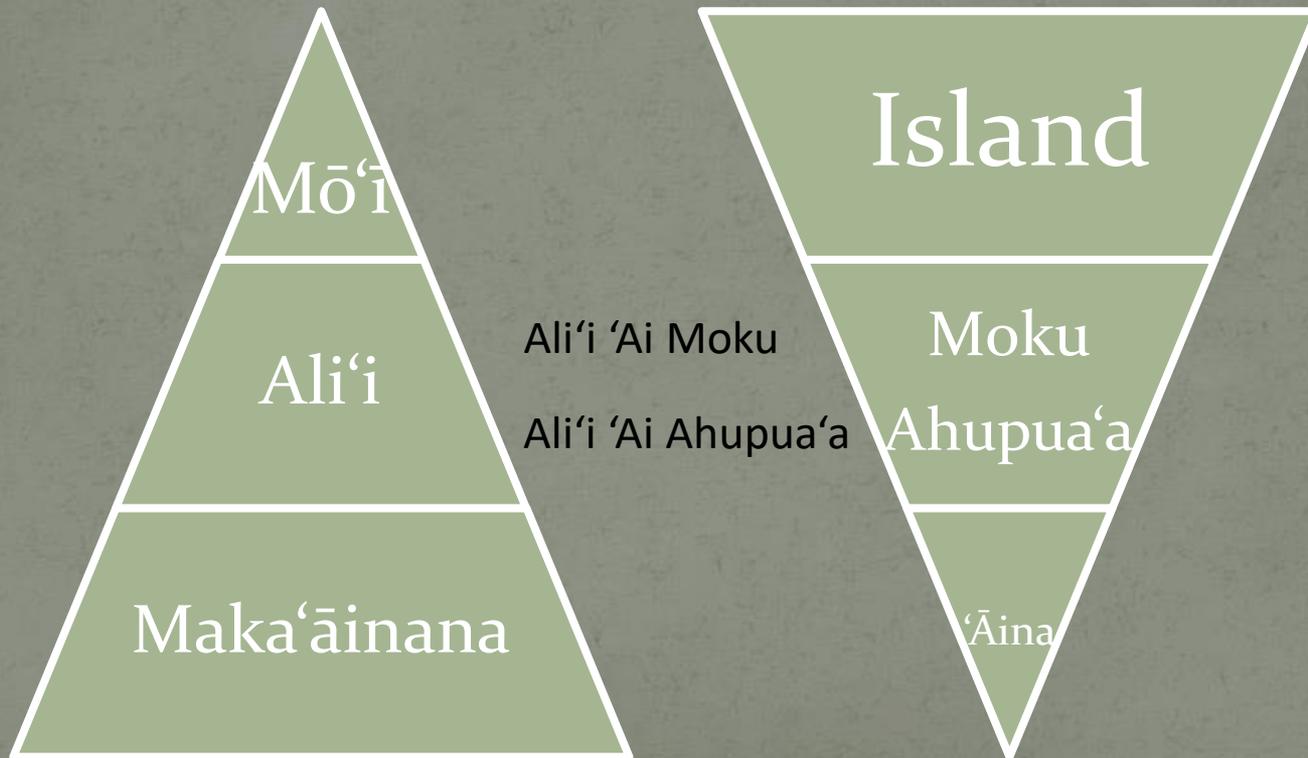


Land

- Ahupua'a System
-



Kalai'aina



Kalai'aina



1778

Arrival of Foreigners: Lease

L.E.

L

1778

5 Kona Uncles

L.E. L

Limited
H.S.

1778 1810

Personal & Real Property Between Classes

L.E.

L

Limited
H.S.



1778

1810

1839

The Mahele is like 'Iolani Palace



2 Systems

2

L

1

L.E.

Limited
H.S.



1778

1810

1839

2 Systems

Traditional: Kalai‘aina

Introduced: Lease

2 Systems

LEASING

TRADITIONAL

Establishing Rights in Land

1839 Declaration of Rights & 1840 Constitution

What is being Divided?

- What does Mahele mean?
 - To Divide
- What is being divided?
 - Rights in Land
- Who has rights in land?

Rights in Land - “Undivided Interests”

- Source of “Undivided Interests”

- “The origin of the present government, and system of polity, is as follows. *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.”

Constitution of 1840

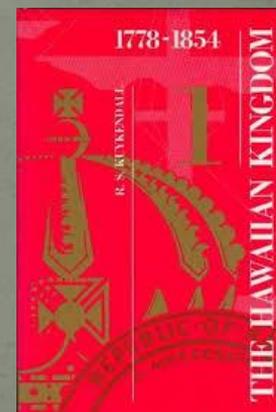
- Refinement of the idea of “Undivided Interests”

- “It being therefore fully established, that there are but three classes of persons having vested rights in the land, -1st the government, 2nd, the landlord, and 3rd, the tenant, it next becomes necessary to ascertain the proportional rights of each.”

Principles of the Land Commission (1846)

What get's codified?

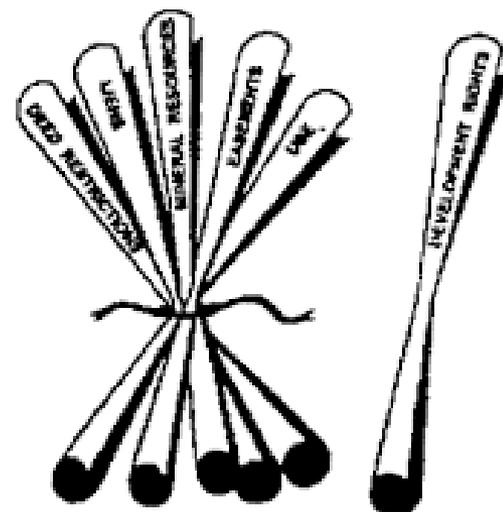
“We find in 1840 the first admission by the king and chiefs that the common people had an actual ownership interest, as distinguished from a mere right of use, in the lands of the kingdom.”



What gets codified?

- “We find in 1840 the first admission by the king and chiefs that the common people had an actual ownership interest, as distinguished from a mere right of use, in the lands of the kingdom.”

BUNDLE OF PROPERTY RIGHTS



1839: Though it was not his own private property...

1. Government

2. Konohiki

3. Native Tenants

2 Systems

LEASING

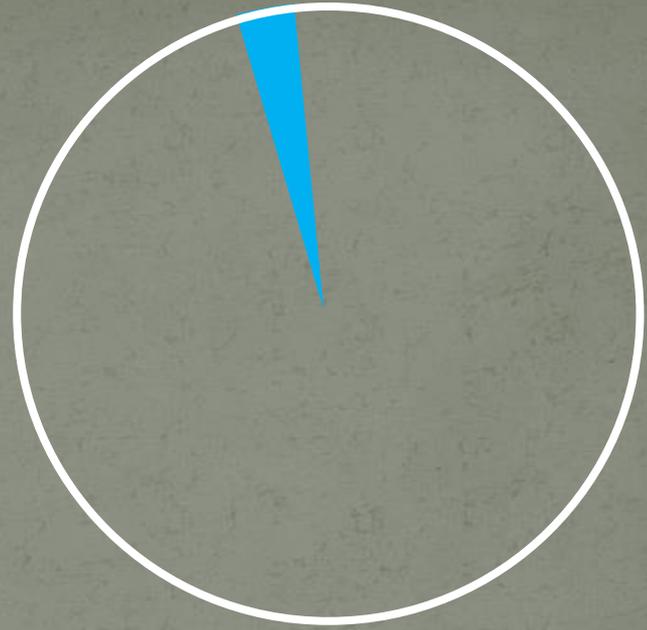
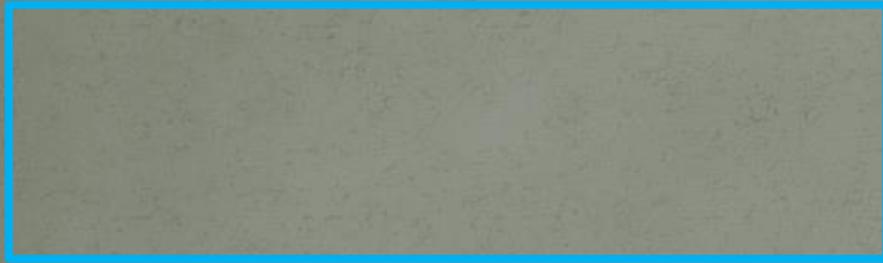
1. Government

2. Konohiki

3. Native Tenants

What is being Divided?

- What does Mahele mean?
 - To Divide
- What is being divided?
 - Rights in Land
- Who has rights in land?
 - 1 Government
 - 2 Konohiki
 - 3 Native Tenants
- Where is this articulated?
 - 1839 Declaration of Rights
 - 1840 Constitution
 - 1846 Principles of the Land Commission
- How were the undivided rights in land divided?



1846

Dealing with the Introduced System: Leasing

Land Commission Awards: Oral Gifts

LEASING

1. Government

2. Konohiki

3. Native Tenants

2 Systems

2

L

1

L.E.

Limited
H.S.



1778

1810

1839



LCA: Oral Gifts

LEASING

Establishment of the Land Commission

“...to be a board for the investigation and final ascertainment or rejection of all claims of private individuals, whether natives or foreigners, to any landed property acquired anterior to the passage of this act.”

“The Commission was authorized to consider possession of land acquired by **oral gift** of Kamehameha I, or one of his high chiefs, as sufficient evidence of title to authorize an award therefore to the claimant.”

Harris v. Carter 7 Haw. 421; 1888

ARTICLE IV.—OF THE BOARD OF COMMISSIONERS TO QUIET LAND TITLES.

SECTION I. His Majesty shall appoint through the minister of the interior, and upon consultation with the privy council, five commissioners, one of whom shall be the attorney general of this kingdom, to be a board for the investigation and final ascertainment or rejection of all claims of private individuals, whether natives or foreigners; to any landed property acquired anterior to the passage of this act; the awards of which board, unless appealed from as hereinafter allowed, shall be binding upon the minister of the interior and upon the applicant.

SECTION II. The said commissioners shall, before acting, take and subscribe an oath to be administered to them by the minister of the interior, in the following form:

We and each of us do solemnly swear that we will carefully and impartially investigate all claims to land submitted to us by private parties against the government of the Hawaiian Islands; and that we will equitably adjudge upon the title, tenure, duration and quantity thereof, according to the terms of article fourth of the seventh chapter of the first part of an act entitled “An act to organize the executive departments of the Hawaiian Islands,” passed at Honolulu. — day of —, 18—.

Subscribed and sworn to, this — day of —, 18—.

Before me, —, —,

Minister of the Interior.

Which oath, having been sworn to, shall remain on file in the interior department.

SECTION III. It shall be the duty of said board of commissioners to select one of their number as president. They shall have

L.C.Aw. #1

- “There can be no doubt therefore, that the title is in the Government, unencumbered except by the residence of Voss’ lease, which will expire on the 31st day of March AD, 1865, up to which time the lessee, should pay to the Government, the real Lessor, the rent of \$35...”

(Claim No. 1) John Voss.

This seems to be a clear case, coming under the jurisdiction of this Board, being founded upon a Lease executed by Mr. Williamson, Governor of Ohio, who sets up no counter claim to the ownership, admitting that the Lease was an executive, official transaction, and that the Land in question though bought by himself, was paid for with Government money, entrusted to him for official uses. This statement is corroborated by the evidence of Mr. Judd, at present this State's Minister at Brussels. There can be no doubt there.

LEASE

1840, when your meadow, and appropriated to his private use: a power universally exercised for the good & convenience of the lands of the people, and which resides in every Government, even without declaratory statutes. Yet although this right is unquestionably inherent, it is never exercised in any enlightened and free Government, without awarding just compensation for what was taken.

Chapter 8th of the laws passed 11th November 1850, contemplates just remuneration in such cases. This is likewise contemplated by Art. 1st Chapter Part 1st of the act to organize the executive departments, now constituting part of the declared civil code of this Kingdom, and as such, a measure of what should be considered just by us. These several statutes should not, legally speaking, be considered *ex post facto*, for Chief Justice Marshall, in the Supreme Court of the United States

LCA 2937 William Harbottle

C. N. 2937. William Harbottle. Part 1. Sec 1.

The present claim is for different lands which are situated in the Islands of Oahu, Hawaiian Islands: all of which were received by Claimant from his Father in the Year 1832 the

Freehold Less than Allodial

The Claimant William Harbottle the Claimant, a freehold title to these lands less than allodial, which he may commute for a fee-simple title in accordance with the law subject to the full reservation of all other rights which may be within these lands so awarded, and described in the meter & bounds by A. J. Turner Surveyor as follows:

L.C.Aw. #433

- R.P. on L.C.Aw.
 - # 1111
- Type of Estate
 - Life-Estate
- “...and we do therefore award to

Freehold Less Than Allodial

words a Life Estate in said land, which he may commute for a fee simple title as prescribed by law.”

1793

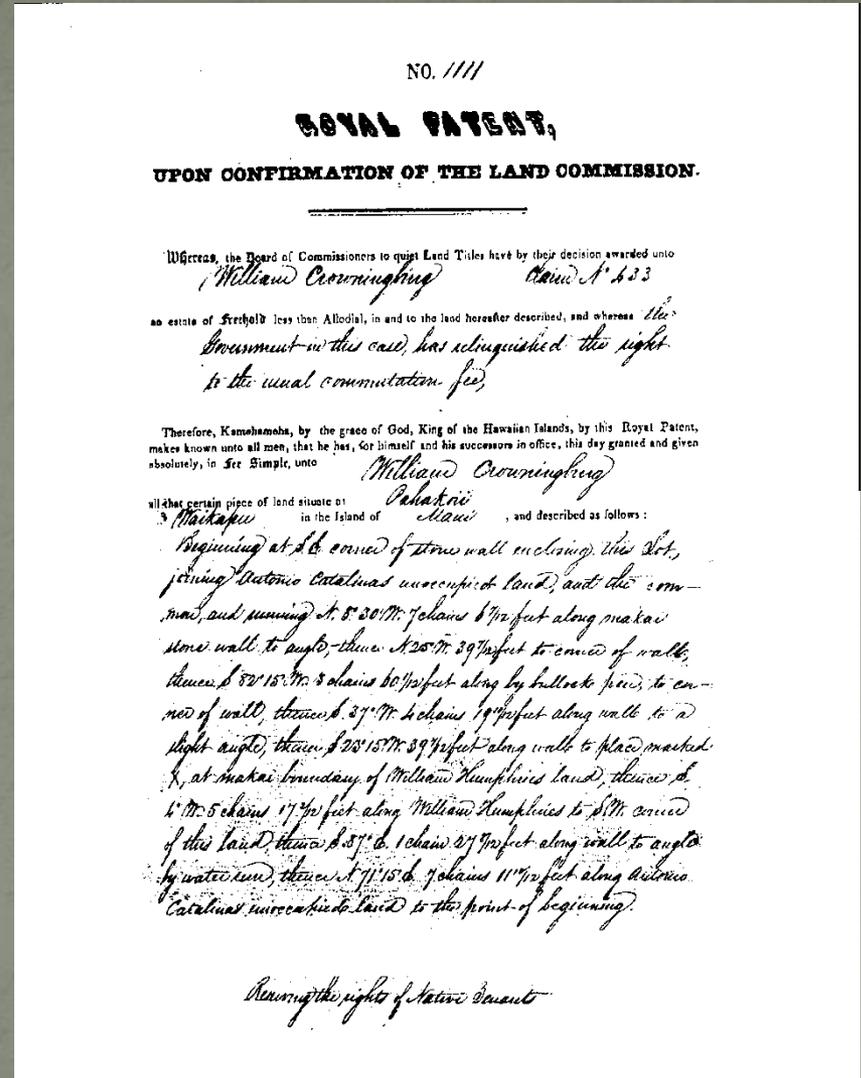
Claim No. 733 William Browningburgh

This is a Claim to a Pen in Waikupanui Island of Maui, known by the name of Pohatooi.
From the Evidence it appears that the claimant, owning in right of his Wife, a small land in Waikupanui by the name of Titi-piti, exchanged the same with Pepe-hoehoe, in the Year A.D. 1832 for Pohatooi; the Land now Claimed; and that he has continued to occupy the same in peace down to the present time.
This Title is made Clear by the first Rule of the Tribunal; and we do therefore award to the aforesaid Claimant, William Browningburgh, a Freehold title less than allodial; or in other words a Life Estate in said Land; which he may commute

young woman named Jane, was running on a north
7 Ch. 6 7/8 ft. along E. wall to angle - thence N. 25° West 7 1/2 ft.
to N.E. Corner of this lot - thence S. 82° 15' W. 3 Ch. 60 ft.
along N. wall to angle - thence S. 37° W. 1 Ch. 19 1/2 ft. along
wall to angle - thence S. 53° 15' W. 29 3/4 ft. along wall to
Wm. Humphreys land - thence S. 4° W. 5 Ch. 17 3/4 ft.
along Wm. Humphreys to S.W. Corner of this land -
thence S. 87° E. 1 Ch. 27 3/4 ft. along N. Catalina's to
angle of wall - thence direct to place of Commencement.
Including an area of Acres 5 ^{9/100}
Sep. 29. 1847. Wm. Hall for

RP on L.C.Aw. #1111

- Whereas, the Board of Commissioners to Quiet Land Titles have by their decision awarded unto William Crowningburg Claim No 433 **an Estate of freehold less than Allodial**, in and to the land hereafter described and whereas...
- Therefore, Kamehameha by the grace of God, King of the Hawaiian Island, **by this Royal Patent** makes known unto all men, that he has, for himself and his successors in office, this day granted and given absolutely in fee simple, unto William Crowningburg all that certain piece of land...



L.C.Aw. #807

- “...to have and to hold the same during the term of two hundred and ninety nine years from the 5th day of October in the year of our Lord One Thousand Eight Hundred & twenty six, free of all quit rents, fees or charges, during the above term. But this award is upon the following express condition... namely that at the expiration of the aforesaid term the land, with all houses, tenements, Buildings, and improvements thereon, shall revert to the Sandwich Island Government; without any cost or charge on the same.”

152

Claim No. 807 Andrew Aitua

This is a claim to a House lot, situated in Honolulu Island of Oahu.
From the evidence taken in this claim, it appears that Richard Charlton, some time in the Year 1827, acting by virtue of a certain lease of lands from the said Mooka to the said Charlton, for the term of 299 Years, from 5th day of October in the Year 1826, gave to the Claimant this lot of land as a dwelling place; that the Claimant soon after built a house upon the lot, and has had undisputed possession of the same ever since.

LEASE

statement, consider this lot as forming a parcel of said Leasehold.

We do therefore award to the Claimant Andrew Aitua, his heirs, executors and assigns, the lot of land described in the annexed Survey, to have and to hold the same during the term of Two hundred and Ninety Nine Years from the fifth day of October in the Year of our Lord one thousand Eight hundred & twenty six, free of all quit rents, fees or charges, during the above term. But this award is upon the following express condition, contained in the aforesaid Lease, namely that at the expiration of the aforesaid term the land, with all houses, tenements, Buildings, and Improvements thereon, shall revert to the Sandwich Island Government; without any cost or charge on the same.

L.C.Aw. #690

- ...In other words, the said Kekuanaoa and Kalole, conveyed to the said Elizabeth, a fee-simple title in said lot, which was more than they had any right or power to convey, as they thereby conveyed away the rights of the King or Government in the lot...and the Land Commission have no power to grant such a title in conformity with the deed aforesaid, unless the Government first relinquish their rights in said lot...

Claim No 690 - Louis Graves.

This is a claim made by Louis Graves, Jr, and on behalf of his daughter Elizabeth Graves, for a house lot situated in Honolulu, Island of Oahu.

From the Evidence submitted to the Board, it appears, that his Exc^{ts} Mr. Kekuanaoa, & Kalole his Wife, in consideration of the sum of one hundred dollars paid the said Kekuanaoa, by the said Louis Graves, conveyed this lot to Elizabeth Graves and her Hawaiian heirs for ever, on 25th day of July A.D. 1846. In other words, the said Kekuanaoa and Kalole, conveyed to the said Elizabeth, a fee simple title in said lot, which was more than they had any right or power to convey, as they thereby conveyed away the Rights of the

FEE-SIMPLE

convey to the said Graves and her Hawaiian heirs for ever, a small house lot in Honolulu, & whereas a claim has been presented to the Land Commission, by the said Elizabeth, for a fee simple title for the same, and the Land Commission have no power to grant such a title in conformity with the deed aforesaid, unless the Government first relinquish their rights in said house lot: - Therefore be it Resolved: that the Government, as a special favor to Governor Kekuanaoa, do hereby relinquish all Rights they may have in said land; and authorize the Land Commission to confirm the Conveyance of Mr. Kekuanaoa, and award the said Elizabeth a Fee simple title for the same.

I hereby certify the above to be a correct copy of a Resolution this day passed in the

Louis Gravier – LCA 692

- ...We do therefore award to Louis Gravier a Freehold Title less than allodial, **or in other words** a Life Estate in the land of Paukauila in the district of Waialua...
- The claimant may commute the freehold awarded to him into a fee-simple title as prescribed by law...

has always been the intention of the land, and that the claimant has been under him, possessing and enjoying no greater right, than any other tenant. This sentence is far from supporting the present claim, but H. C. Geo. Nihikanooa, having at the solicitation of the President of the Board, Conceded that a freehold title less than allodial might be awarded to the Claimant. We do therefore award to Louis Gravier a Freehold Title less than allodial, or in other words a Life Estate in the land of Paukauila in the district of Waialua aforesaid, according to the limits and bounds set forth in the annexed survey made by J. B. Keane on 10th Dec. of A.D. 1818. This award is upon the express condition, that the Claimant is to respect the rights of native Tenants to the fullest extent, and until this reservation, the Claimant may commute the Freehold awarded to him into a Fee Simple title as prescribed by law.

"Note of Survey of Paukauila in Waialua Oahu" Commencing at Point on E. side of Waialua Bay, called Pohakuaiaia, being the N. West Corner of this land, and running S. 68° 45' E. 3 Ch. 36 7/8 ft. along rocky edge of bay to point by same name. Thence following around mauna end of bay at high water mark to mouth of stream at Maunua S. corner of Kaawaha Bay. Thence S. 22° E. 11 Ch. 52 7/8 ft. across Kila Kila to stake at boundary line between this and Maunuaia. Then following along the very irregular boundary line between this and Maunuaia to mouth of Kila Kila creek along bottom of Kila Kila creek up to its intersection with Kila Kila. The S. E. corner of this land. Then following along down boundary line between this and Kila Kila to pile of stones on Maunua side of Kila Kila near houses at Talaia. Then along boundary line between this and land called Talaia to Maunua. S. corner of Kaawaha Bay. Commencing an area of Acres 6.5.

WAIALUA, OAHU

331

WAIALUA, OAHU

Awardee	L. C. A.	Book	Page	R.P.	Book	Page	Location	Area	AP.
Awaawa	2673	5	340	1489	5	553	Paalaa	3.15 Acs	2
Barker, Robt. S.	2942	3	95	8233	35	559	Kapaapaa, Kawaiiloa	15.04 "	3
Ehu	2676	5	298	1481	5	537	Paalaa	5.08 "	5
Emerson, John S.	387	3	75	1951	8	83	Kawaiiloa	10.81 "	2
Gravier, L.	692	1	480	.....	....	....	Paukauila, Kawaiiloa	615.0 "	3
Gulick, Peter I.	397	3	78	1940	8	43	Kawaiiloa	24.56 "	1
Haia Huki	2714	5	121	878	4	415	Kawaiiloa	1.73 "	3
Halo	2281-B	5	346	2890	13	243	Paalaa	1.40 "	3
Haupu	8095	8	277	1486	5	547	Paalaa	1.47 "	2
Hianana	8166	5	119	3029	13	541	Kawaiiloa	4.90 "	2
Hika	2920	4	743	895	4	449	Paalaa	1.58 "	3
Hokuaulani	8205	8	104	3475	15	117	Kawaiiloa	4.26 "	6
Hookala	7722	5	304	.....	....	....	Kawaiiloa	2.88 "	3
Hoopii no Kukoa	2712	5	300	.....	....	....	Paalaa	2.71 "	1
Hua	7375	5	288	893	4	445	Paalaa	1.23 "	1
Iaea	3454-B	8	665	3420	14	633	Kawaiiloa	2.91 "	3
Kaaiawa	7418	5	307	1471	5	517	Kawaiiloa	3.48 "	4
Kaakau	2008	5	297	2643	12	169	Paalaa	1.16 "	1
Kaanana	2849	8	116	8087	34	521	Kawaiiloa	2.48 "	4
Kaanui, G.	9951	8	111	6296	23	761	Paalaa	2.77 "	3
Kahakai	2926	8	122	1474	5	523	Kawaiiloa	3.15 "	4
Kahakualoa	2910	5	281	899	4	457	Paalaa	2.34 "	2
Kahalau	4305	8	114	5474	21	603	Kawaiiloa	5.94 "	2
Kahanonui	8422	5	285	2886	13	235	Paalaa	1.00 "	2
Kahelekihoi	4321	5	302	3419	14	631	Kawaiiloa	2.84 "	3
Kahiko	2795	5	292	904	4	467	Paalaa	1.31 "	2
Kaholokai	4307	5	308	1461	5	497	Kawaiiloa	0.92 "	2
Kahoohalahala	2939	4	745	906	4	471	Paalaa	2.35 "	3
Kahoohano	{2855	5	128	3476	15	121	Kawaiiloa	1.33 "	3
	{2940								

412

Life Estate - Reversion

- Resolved. That the **life estate** of Louis Gravier in **Paukauwila** having expired by his decease, the same be placed in the hands of Mr. J. B. Emerson to be disposed of to natives under the instructions and subject to the approval of the Minister of the Interior.

and empowered to pay upon the order of the Minister of the Interior a sum not exceeding \$300 for the purposes above specified.

Upon presentation of a letter of Mr. Donswratt, Clerk to the Collector General of Customs, it was,

Resolved, that the Collector General be authorized to pay to Mr. Donswratt, Clerk, from this date a salary of \$1000 per annum for his services in the Custom House and that the Minister of Finance be instructed to allow this amount to the Collector of Customs upon the settlement of his account.

Resolved, that the life estate of Louis Gravier in ~~Paukauwila having expired by his decease, the same~~ be placed in the hands of Mr. J. B. Emerson to be disposed of to natives under the instructions and subject to the approval of the Minister of the Interior.

Resolved, that Mr. Elias Bond of Kohala be and is hereby appointed the special agent of the Government to dispose of Katala and Ainaikamii lands in Kohala, Hawaii, and such other lands in said district as the Minister of the Interior may from time to time instruct him to sell to the natives in lots of from one to fifty acres at a minimum price of 50 cents per acre.

Mr. Bates laid on the table certain returns from the Department of Finance

Mr. Miller, H. B. W.'s Council General, waited upon the King in Council and read some reports with regard to Mr. Alexander Adams and his lands.

Dealing with the Traditional System

LEASING

1. Government

2. Konohiki

3. Native Tenants

TRADITIONAL

LCA: ORAL GIFTS

- Where to find?
 - Originals – Hawaii State Archives
 - Microfilm – Hawaii State Archives
 - Digital Copies – Hawaii State Archives
 - Transcriptions – www.avakonohiki.org
- Kind of Information in the document
 - Placenames
 - People
 - How got land
 - No Surveys (see RP on LCA)