

## CHAPTER LV.

BE IT KNOWN TO ALL WHOM IT MAY CONCERN  
THAT

The Council of the kingdom have come to a definite agreement to set apart all the Government property from one end of the Islands to the other for such Business of the Government, as shall be agreed upon, and for the payment of debts, in order that the debts of the Kingdom may be cancelled at once. They therefore nominated officers to receive and pay out monies according to specific directions.

We do therefore hereby constitute you, Doct. G. P. Judd, Timothy, Haalilio, and John Li, a Treasury Board for the Kingdom, and charge you to receive the Poll Tax, the Poalua money, and all money paid instead of the swine tax, also all money paid for criminal offenses, the harbor dues, and duties, the land Rents, and all tax money, and every kind of property which can be made use of in paying Government debts.

We also hereby charge the Governors and all officers, to give you timely notice respecting such monies, and such property, and then you will at your discretion, leave it for awhile or take it into your hands immediately.

We furthermore charge you to execute this business promptly and faithfully, and in the month of April 1843, render in writing a full account of all your doings.

In testimony whereof we have subscribed our names at Lahaina, Maui, on this tenth day of May 1842.

(Signed) KAMEHAMEHA III.  
KEKAULUOHU.

At this meeting of the chiefs the following persons were appointed officers of the Kingdom.

The Representative Body appointed Paki, Kanaina, Kaauiwai and Kapena, Assistant Supreme Judges.

The King appointed Dr. G. P. Judd, Recorder and Translator for the Kingdom.

Two or three other acts were passed which are not here translated as they were more in the form of advice and instruction than law, and would be of no special interest to Foreigners.

## NELSON S. ALEXANDER

Law Creating the Board of Commissioners  
To Quiet Land Titles.

(PASSED DECEMBER 10, 1845).

(See Vol. I, Laws of Kamehameha III, p. 107.)

SECTION 1. 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 2. 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 lands 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 3. It shall be the duty of said Board of Commissioners to select one of their number as president. They shall have power to employ clerks and copyists for the purposes in this article defined; they shall appoint the time and place of their sessions; shall at pleasure adjourn their meetings, and when necessary, postpone the business pending before them.

SECTION 4. The president of said Board shall, at least once in

each month, from the date of their first convention, report their proceedings to the Minister of the Interior—the number of claims then pending before them—the number to that date confirmed or rejected, and the reasons for confirmation and rejection of any particular claim to land, with all the evidences adduced to and reduced before them.

SECTION 5. It shall be the special duty of said Board to advertise in the Polynesian newspaper, during the continuance of their sessions, the following public notice, viz:

To all claimants of land in the Hawaiian Islands—The undersigned have been appointed by His Majesty the king, a board of commissioners to investigate and confirm or reject all claims to land arising previously to the — day of —, 18—. Patents in fee simple, or leases for terms of years, will be issued to those entitled to the same, upon the report which we are authorized to make, by the testimony to be presented to us.

The board holds its stated meetings weekly at —, in Honolulu, island of Oahu, to hear the parties or their counsel, in defence of their claims; and is prepared, every day, to receive in writing, the claims and evidences of title which parties may have to offer, at the —, in Honolulu, between the hours of 9 o'clock A. M. and 3 o'clock P. M.

All persons are required to file with the board specifications of their claims to land, and to adduce the evidence upon which they claim title to any land in the Hawaiian Islands, before the expiration of two years from this date, or in default of so doing, they will after that time be forever barred of all right to recover the same, in the courts of justice.

Dated — day of —, 18—.

SECTION 6. The said Board shall be in existence for the quelling of land titles during two years from the first publication of the notice above required, and shall have power to subpoena and compel the attendance of witnesses by discretionary fine; in like manner when in session for the hearing of arguments, to punish for contempt; and they shall have power to administer oaths to witnesses, and to perpetuate testimony in any case depending before them, which, when so perpetuated, shall be valid evidence in any court of justice created by the Act to organize the judiciary.

SECTION 7. The decisions of said Board shall be in accordance with the principles established by the Civil Code of this Kingdom in regard to prescription, occupancy, fixtures, native usages in regard to landed tenures, water privileges and rights of piscary, the rights of women, the rights of absentees, tenancy and subtenancy—primogeniture and rights of adoption; which decisions being of a majority in number of said board, shall be only subject to appeal to the Supreme Court, as prescribed in

the Act to organize the judiciary, and when such appeal shall not have been taken, they shall be final.

SECTION 8. All claims to land, as against the Hawaiian Government, which are not presented to said Board within the time, at the place and in the manner prescribed in the notice required to be given in the fifth section of this article, shall be deemed to be invalid, and shall be forever barred in law, unless the claimant be absent from this Kingdom, and have no representative therein.

SECTION 9. The Minister of the Interior shall issue patents or leases to the claimants of land pursuant to the terms in which the said Board shall have confirmed their respective claims, upon being paid the fees of patenting or of leasing (as the case may be) prescribed in the third part of this Act, unless the party entitled to a lease shall prefer to compound with the said Minister as in the succeeding section allowed.

SECTION 10. The Minister of the Interior shall have power in concurrence with the Privy Council, and under the sanction of His Majesty, to issue to any lessee or tenant for life of lands so confirmed, being an Hawaiian subject, a patent in fee simple for the same, upon payment of a commutation to be agreed upon by His Majesty in Privy Council.

SECTION 11. The patents and leases issued in accordance with the award of said Commissioners, shall be recorded at the expense of the patentee or lessee, as prescribed in the third part of this Act, in a book to be kept for that purpose by the Minister of the Interior.

SECTION 12. The said Board shall not have power to entertain any claim to lands set up by any private person or persons until the claimant shall have deposited with the Minister of Finance a bond conditioned to defray the costs and expenses incident to the proposed investigation, according to the rates of charge prescribed in the third part of this Act; which costs and expenses shall, after award rendered, be taxed by the president of said Board, and a certificate thereof shall be given to the claimant, who shall exhibit the same to the Minister of Finance, whose certificate of full payment, together with the award of the Commissioners, shall authorize the delivery of the awarded patent or lease to such confirmed claimant, by the Minister of the Interior, and not without.

SECTION 13. The titles of all lands claimed of the Hawaiian Government anterior to the passage of this Act, upon being confirmed as aforesaid, in whole or in part, by the Board of Com-

missioners, shall be deemed to be forever settled, as awarded by said Board, unless appeal be taken to the Supreme Court, as already provided. And all claims rejected by said Board, unless appeal be taken as aforesaid, shall be deemed to be forever barred and foreclosed, from the expiration of the time allowed for such appeal.

#### PRINCIPLES ADOPTED BY THE BOARD OF COMMISSIONERS TO QUIET LAND TITLES, IN THEIR ADJUDICATION OF CLAIMS PRESENTED TO THEM.

(See Vol. II, Laws of Kamehameha III, p. 81.)

When the Islands were conquered by Kamehameha I, he followed the example of his predecessors, and divided out 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; after 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.

The tenures were in one sense feudal, but they were not military, for the claims of the superior on the inferior were mainly either for produce of the land or for labor, military service being rarely or never required of the lower orders. All persons possessing landed property, whether superior landlords, tenants or sub-tenants, owed and paid to the King not only a land tax, which he assessed at pleasure, but also, service which was called for at discretion, on all the grades, from the highest down. They also owed and paid some portion of the productions of the land, in addition to the yearly taxes. They owed obedience at all times. All these were rendered not only by natives, but also by foreigners who received lands from Kamehameha I and Kamehameha II, and by multitudes still alive; of this there are multitudes of living witnesses, and a failure to render any of these has always been considered a just cause for which to forfeit the lands.

It is therefore certain that the tenure was far from being allodial, either in principle or practice; but even if living testi-

mony were wanting at the present time, the treaty established in 1836, between this Government and Lord Edward Russell on behalf of the British Government, would show the views then entertained on the subject by the contracting parties. It is there declared, "The land on which the houses are built is the property of the King." The same rights which the King possessed over the superior landlords and all under them, the several grades of landlords possessed over their inferiors, so that there was a joint ownership of the land; the King really owning the allodium, and the person in whose hands he placed the land, holding it in trust. But when he put it in the hands of a third person, that third person bore a similar relation to him that he did to the King. The superior always had the power at pleasure to dispossess his inferior, but it was not considered just and right to do it without cause, and dispossession did not often take place, except on the decease of one of the landlords, when changes were often numerous, and the rights of heirs and tenants comparatively disregarded, for the purpose of favoring a new class of persons.

Such was the nature of the tenures, and such the titles by which the lands were held, when in 1839 protection was declared both for person and property, in the following words: "Protection is hereby secured to the persons of all the people; together with their lands, their building lots, and all their property." (See Declaration of Rights, p. 10 of translation.) In section 6 of the same Act, p. 33, the nature of the protection given to landed property is in some degree defined. It is there declared that the landlord cannot "causelessly dispossess his tenant," and it is also stated what shall be considered a sufficient cause. The same law confirms what has been already stated in relation to the rights of His Majesty the King in all lands. Section 3 requires that every tenant of land, by whomsoever owned, shall work 36 days in the year for the King or Government, showing clearly that there is no individual who has an allodial title to the soil, that title remaining with the King.

It seems natural then, and obviously just, that the King, in disposing of the allodium, should offer it first to the superior lord, that is, to the person who originally received the land in trust from the King; since by doing so, no injury is inflicted on any of the inferior lords or tenants, they being protected by law in their rights as before; and most obviously the King could not dispose of the allodium to any other person without infringing on the rights of the superior lord. But even when such lord shall have

received an allodial title from the King by purchase or otherwise, the rights of the tenants and sub-tenants must still remain unaffected, for no purchase, even from the Sovereign himself, can vitiate the rights of third parties. The lord, therefore, who purchases the allodium, can no more seize upon the rights of the tenants and dispossess them, than the King can now seize upon the rights of the lords, and dispossess them. This appears clear, not only from the first principles of justice, but also from the Act of 1839, declaring protection for tenants as well as for landlords. That Act particularly recognizes but three classes of persons as having rights in the sale, viz: the King or Government, the landlords and the tenants. Indeed, section 9, chapter 3, of that statute positively forbids the lord who receives land in trust from the King to place another lord under himself, over the tenants. If, then, any landlord violate this law, he only divides his own rights; he cannot thereby diminish the rights of the King or Government, nor the rights of the tenants.

It being therefore fully established, that there are but three classes of persons having vested rights in the lands—1st, the Government, 2nd, the landlord, and 3rd, the tenant, it next becomes necessary to ascertain the proportional rights of each. Happily, evidence on this point is not wanting, though it may be the most difficult one to settle satisfactorily of any connected with land claims: The testimony elicited is of the best and highest kind. It has been given immediately by a large number of persons, of a great variety of character, many of them old men, perfectly acquainted with the ancient usages of the country; some were landlords, and some were tenants. There has been no contradictory testimony, but all have agreed on all essential points. Several foreign landholders under Kamehameha I, Kamehameha II and Kamehameha III, have been full in their testimony as to the rights of the King. Ancient practice, according to testimony, seems to have awarded to the tenant less than justice and equity would demand, and to have given to the King more than the permanent good of his subjects would allow. If the King be disposed voluntarily to yield to the tenant a portion of what practice has given to himself, he most assuredly has a right to do it; and should the King allow to the landlord one third, to the tenant one third, and retain one third himself, he, according to the uniform opinion of the witnesses, would injure no one unless himself; and in giving this opinion, the witnesses uniformly gave it against their own interests. According to this principle, a tract of land now in the hands of a landlord and occupied by

tenants, if all parts of it were equally valuable, might be divided into the three equal parts, and an allodial title to one then be given to the lord, and the same title be given to the tenants, if one third, and the other third would remain in the hands of the King, as his proportional right. It is altogether probable that since the Act of 1839, a few individuals may have acquired allodial ownership of landed property, either by purchase or by voluntary grant on the part of the King. Such ownership must be proved, or it cannot be acknowledged; for the King, representing the Government, having formerly been the sole owner of all the soil, he must be considered to be so still, unless proof be rendered to the contrary; and even possession of ever so long standing cannot be proof, any thing more than that which is specified above as belonging to the landlord, or to the landlord and tenant, as the case may be.

All the above principles and remarks apply most particularly and clearly to districts, plantations and farms, and to their owners. But between the ownership of lands for cultivation, and mere building lots, there are often broad lines of distinction. Mere building lots were never bestowed by the King or lords for the purpose of being given out to tenants, as was uniformly the case with lands suitable for cultivation. It follows, therefore, that (with some exceptions, which in all cases must be proved) in relation to building lots, there is no third class of persons having the rights of lords over tenants. The exceptions would be in those cases where individuals having received building lots from the King for their own particular use, those individuals have themselves for some considerations, expressed or implied, transferred such lots to third parties. Another exception exists in relation to building lots, especially if large, which were formerly within the defined boundaries of plantations and farms, and have since been occupied by persons owning no rights in the farms other than the building lots. Such lots must still be considered a part of the plantation or farm, in such a sense that the tenant must pay rent to the lord. This appears clear, not only from ancient usage, but also from the last clause of section 7, of chapter 3, old laws: "But possessions of house lots that are large like farm gardens, must aid the owners of the farms from which they are taken in payment of the yearly tax."

Although the above facts and principles are most perfectly clear and unquestionable, yet great evils have existed down to the present moment, owing mainly to the circumstance that several different classes of persons had undivided rights in the same



land, and each class was very liable to claim more than the due proportions. In such cases, lords, or persons of superior power or rank, have generally been the oppressors, and perhaps there are none of those classes, from the Throne down, who have not sometimes taken advantage of the powerless in this respect. Neither the laws of 1839 nor of 1840 were found adequate to protect the inferior lord and tenants, for although the violators of law, of every rank, were liable to its penalty, yet it was so contrary to ancient usage, to execute the law on the powerful for the protection of the weak, that the latter often suffered, and it was found necessary to adopt a new system for ascertaining rights, and new measures for protecting those rights when ascertained, and to accomplish this object the Land Commission was formed.

The decisions of an executive board would be so far surrenders of the Chief Executive Magistrate, who has approved the powers conferred upon that board, as to be an authorization from him to adjust all the past tenures in the manner most equitable, and if abstractly just, power to alienate for him any rights, which he as King could surrender in regard to these lands. The whole power of the King to confer and convey lands to which private equitable claim now attaches, is reposed in the Commission. What is the nature and extent of that power which the King has bestowed upon this board? It can be no other than his private or feudatory right as an individual participant in the ownership, not his sovereign prerogatives as head of the nation. Among these prerogatives which affect lands, are the following:

1st. To punish for high treason by forfeiture, if so the law decrees.

2nd. To levy taxes upon every tax yielding basis, and among others lands, if so the law decrees.

3d. To encourage and even enforce the usufruct of lands for the common good.

4th. To provide public thoroughfares and easements, by means of roads, bridges, streets, &c., for the common good.

5th. To resume certain lands upon just compensation assessed, if for any cause the public good or the social safety requires it.

These prerogatives, powers and duties, His Majesty ought not, and *ergo*, he cannot, surrender. Hence the following confirmations of the board, and the titles consequent upon them, must be understood subject to these conditions.

But the King's private or feudatory rights, understood by the natives, differ greatly from the above enumerated corporate

rights, understood in civilized and refined nations, and in which the commonwealth is rather represented by the person of the monarch than the monarch himself. By the ancient usage, the taxes went not to the body corporate, in trust for political uses, but to the King, as his private income or revenue, and this gave him a private proprietorship in all lands. This autocracy was, however, diminished by the King's liberal and voluntary surrender to his people in the Constitution, 8th October, 1840, in which the Government or body politic and the King are for the first time contradistinguished as follows: "He (the King) also shall have the direction of the Government property, the poll tax, the land tax, the three days monthly labor, though in conformity to the laws. He also shall retain his own private lands, and lands forfeited for the non-payment of taxes shall revert to him," in which clause is perceivable the line of distinction above adverted to. All that is essential to the common good in regard to lands, taxes on lands, and revenue from lands, is reposed in the King, as the head of a corporation aggregate; or in himself as a corporation sole, and from these is contradistinguished his own private lands.

In the spirit of this constitutional distinction, on the 7th of June, 1839, the Nobles, with the sanction of the King, passed some ordinances or rules "respecting applications for farms, forsaking of farms, disposing of farms, and the management of farms," having in view the encouragement of industry. In these the landlords are recognized as a distinct and *independent class* of local proprietors over such portions of their lands as are actually in cultivation, subject to the claims of their tenantry; and as to those lands not in actual use, it gives a community of ownership between the Government and landlords, by saying, "Those men who have no land, not even a garden, nor any place to cultivate, and yet wish to labor for the purpose of obtaining the object of their desires, may apply to the land agent, or the Governor, or the King, for any piece of land which is not already cultivated by another person, and such piece shall be given him."

This appropriation was to be with co-operation of the King and the landlords. In like manner the corporate right is recognized in what the same law declares respecting the "residuum lands," and "respecting landlords."

Yet the principle of suzerainship seems to have followed the King in those lands which are otherwise declared to be the proper possession of the landlords: for the "advice to the Governors and landlords" commences with, "It shall be the duty of

those to whom the King gives lands to see that they do not establish other landlords under themselves, over the people;" and in the 18th section, landlords are cautioned lest they "be dispossessed, according to the principles of the eleventh section," which makes the landlords' right of possession dependent upon industry and intelligence.

It would thus seem inferable, that as late as the 7th of June, 1839, and before the Constitution was given, the chiefs considered themselves tenants at special will of the King as the head of the nation, or in his corporate right. Also that that corporate right to dispossess them was only to be exercised for causes of a public nature, inconsistent with the public well being. To suppose that the landlords could be lawfully dispossessed by the King at will, for causes of private pique, or because of personal disfavor, would be to make the King the real or intrinsic owner of the land in his individual capacity, a doctrine neither sustained by the current of past legislation, nor the testimony which has already been elicited by the board. But to recognize his right of forfeiting the lands of the landlords for misuser or non-user, or for crime, is itself a recognition beneficial to the mass of the people, for whose happiness the corporation is instituted.

The Hawaiian rulers have learned by experience, that regard must be had to the immutable law of property, in things real, as lands, and in things personal, as chattels; that the well being of their country must essentially depend upon the proper development of their internal resources, of which land is the principal; and that in order to its proper cultivation and improvement, the holder must have some stake in it more solid than the bare permission to evolve his daily bread from an article, to which he and his children can lay no intrinsic claim. They perceive by contact with foreign nations, that such is their uniform practice, and that the rules of right under that practice are contended for, understood and likely to be applied, in regard to the lands otherwise held at their hands by a tenancy incomprehensible to the foreigner. They are desirous to conform themselves in the main to such a civilized state of things, now that they have come to be a nation in the understanding of older and more enlightened Governments.

Such we, the Commissioners, understand to have been the reason of the distinction in the Constitution of 1840, between Government lands and private lands of the King, and such we now understand to be the spirit of article 4th, chapter 7th, of the first part of the Act to organize the executive departments of the

Hawaiian Islands, founded upon the Law Report of May 21, 1845, in which it was recommended to prepare His Majesty's Government to consort in some measure with the recognizing powers. In consequence, it was enacted that the King is to appoint five Commissioners for quieting land titles, and thus confer upon them all his private and public power over the corporate property in lands claimed by private parties, which in the nature of things he can delegate.

The requisition to appoint such a board is found in the fourth article of the 7th chapter of the first part of an Act of the Legislature, passed on the 10th of December, 1845, which took effect on the 7th of February following. The statute of which said article is a part, is as a whole denominated "An Act to Organize the Executive Departments," indicating that the decisions of the board are not purely judicial, but executive adjudications. The Act as a whole in five parts, passed its final reading and received the approbation of His Majesty, on the 27th of April, 1846, and was promulgated on the 20th June following.

The Board of Commissioners, thus instituted, was organized in strict conformity with the law, which, having taken effect on Saturday, the 7th of February, the Minister of the Interior, on Monday, the 9th, in Privy Council, with the approbation of His Majesty, appointed and commissioned the undersigned, who at the same time, in the presence of the King and Council, took and subscribed the following oath of office:

"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 4th, of the 7th chapter of the first part of an Act entitled 'An Act to Organize the Executive Departments of the Hawaiian Islands,' passed at Honolulu, the 10th day of December, 1845.

" (Signed)

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WILLIAM RICHARDS,  
JOHN RICORD,  
J. Y. KANEHOA,  
JOHN II,  
Z. KAAUWAI.

"Subscribed and sworn to this 9th day of February, 1846,  
before me.

JOHN YOUNG,

Minister of the Interior.

On the 11th of February, the day following their appointment, the Commissioners organized as follows:

"NOTICE.

"At a meeting of the Board of Commissioners appointed to quiet land titles, having in view the proper organization required and allowed by article 4th of chapter 7th of the first part of an Act entitled 'An Act to Organize the Executive Departments of the Hawaiian Islands.'

"The members of said board having convened, it was

"Resolved, 1st. That William Richards, Esq., be, and he is, hereby chosen President.

"2d. That Joseph Henry Smith, Esq., be employed as one of our stated secretaries, at a compensation to be hereafter determined, derivable solely from the fees and perquisites resulting to the Government from the labors of the Board.

"3d. That said secretary be duly sworn to fidelity in the discharge of his duties as such. That he be, and is, hereby authorized to receive claims and evidences for our after consideration, from and after the first publication hereof. That he be required to endorse upon each claim the day and hour of its receipt by him. That he keep an office in Hale Kauwila, in Honolulu, for the transaction of his duties, and for the facility of claimants. And that he be charged with keeping the minutes of this board, and of its proceedings upon claims.

"4th. That claims submitted for settlement be taken up and acted upon according to the order of their presentation, and be settled according to order taken in each case by a majority in number of the board.

"5th. That the stated meetings of this board be held on Wednesday of each week, commencing at 9 o'clock, A. M., at the said office at Hale Kauwila, in Honolulu, for the transaction of business: The first meeting to be held on the 4th day of March next.

"6th. That these resolutions be published in the Polynesian newspaper, concurrently with the notice to claimants required by law, to the end that they may be apprised of these by-laws established by the board.

"Done at Honolulu, this 11th day of February, A. D., 1846.

" (Signed)

WILLIAM RICHARDS,

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JOHN RICORD,

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J. Y. KANEHOA,

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JOHN II,

"

Z. KAAUWAI."

Which resolutions were published in the Polynesian of the 14th February, 1846, together with the following notice, required by law:

"TO ALL CLAIMANTS OF LANDS IN THE HAWAIIAN ISLANDS.

"The undersigned have been appointed by His Majesty the King, a Board of Commissioners to investigate and confirm or reject all claims to land arising previously to the 10th day of December, A. D. 1845.

"Patents in fee simple, or leases for terms of years, will be issued to those entitled to the same, upon the report which we are authorized to make by the testimony to be presented to us.

"The Board holds its stated meetings weekly, at the Hale Kauwila, in Honolulu, on the Island of Oahu, to hear the parties or their counsel in defense of their claims, and is prepared every day to receive in writing the claims and evidences of title which parties may have to offer, at the office of Joseph Henry Smith, Esq., Secretary of said board, at Hale Kauwila, in Honolulu, between the hours of 9 A. M. and 3 P. M.

"All persons are required to file with the Board by depositing with its Secretary specifications of their claims to land, and to adduce the evidence upon which they claim title to any land in the Hawaiian Islands, before the expiration of two years from this date; or in default of so doing, they will after that time be forever barred of all right to recover the same in the courts of justice.

"Dated 11th day of February, 1846.

" (Signed)

WILLIAM RICHARDS,

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JOHN RICORD,

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J. Y. KANEHOA,

"

JOHN II,

"

Z. KAAUWAI."

1st. The field of the Commissioners is "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 the Act" of which Article 4th is an integral portion, to wit, 27th April, 1846.

2nd. The more minute powers of the Board for organization, and to carry out these objects, are specified and conferred; as the power to meet and adjourn, to appoint clerks, to summon parties and enforce mandates, to administer oaths, and to issue

commissions for taking testimony. These are auxiliary to the powers and objects of the Board respecting land titles, which it is created to confirm or reject definitely.

3d. The principles by which the Board are to be governed in deciding certain questions, (i. e.) "Prescription occupancy, fixtures, native usages in regard to landed tenures, water privileges and rights of piscary, the rights of women, the rights of absentees, tenancy and sub-tenancy, primogeniture, and rights of adoption," are to be those "Established by the civil code of the kingdom," which the general provisions of the Act to organize the Executive Departments, section 3d, defines as follows:—"Until the passage of the civil code, the principles of the foregoing Act, and the prescriptions of all the civil statutes now existing, not at conflict therewith, shall serve and be binding as a civil code for this kingdom, of which the courts of justice shall take notice, in administering the rights to which they are applicable."

A wide latitude is thus left to the Commissioners, who must, in passing upon the merits of each claim, first elicit from creditable witnesses, the facts or history of each; and thus assort or reconcile those facts to the provisions of the civil code, whenever there is a principle in past legislation applicable to the point under consideration; but when no such principle exists, they may judicially declare one, in accordance with ancient usage and not at conflict with any existing law, nor at variance with the facts, and altogether equitable and liberal.

4th. From the fact that His Majesty, the intrinsic proprietor, has reposed in this Board, such power of confirming or rejecting, the Commissioners must infer that he intended the utmost liberality to prevail towards the claimants, rather against the pecuniary interests of the body politic than against those of the claimants. But,

5th. The Commissioners do not understand that in virtue of such latitude, they are at liberty to disregard certain restrictions contained in the same Act, by the 4th Article of the 7th chapter of the first part of which they are created. For the same Legislature by whose authority they exist, has elsewhere limited them as follows:

1st. Aliens are not allowed to acquire any allodial or fee-simple estate in lands.

2d. No leasehold estate shall be considered validly acquired by any alien "until he shall have obtained a certificate of nationality, as in this" the first article of chapter 5th required.

6th. The Commissioners are only authorized by the Act to ascertain the claimant's kind and amount of title, and to award for or against that title, "wholly or in part." They are not authorized to grant leases or patents, or to receive the commutation allowed by section 10th. Yet since the government share in the land confirmed has intimate connexion with the amount of the claimant's title, the Commissioners must ascertain and report upon that share, for the guidance and information of the Minister of the Interior.

7th. Connected with each claim for land, is its configuration and superficial contents, without the ascertainment and demarkation of which, it were impossible to make an award, or to quiet the title as between neighboring proprietors. The Board is therefore under the necessity of causing each piece of land to be surveyed at the claimant's expense, before awarding upon it. This is clearly contemplated by the 12th section of the law, among the "expenses incidental to the proposed investigation."

The following benefits will result from these investigations and awards:

1st. They will separate the rights of the King and Government, hitherto blended, and leave the owner, whether in fee, or for life, or for years, to the free agency and independent proprietorship of his lands as confirmed. So long as the King or Government continue to have an undivided proprietary share in the domain, the King's and Premier's consent is necessary, by the old law, to real sales, or transfers from party to party, and, by parity of reasoning, to real mortgages also. This is because of the share which Government or the body politic has in the lands of the kingdom uniformly. To separate these rights, and disembarass the owner or temporary possessor from this clog upon his free agency, is beneficial to that proprietor in the highest degree, and also to the body politic; for it not only sets apart definitely what belongs to the claimant, but, untying his hands, enables him to use his property more freely, by mortgaging it for commercial objects, and by building upon it, with the definite prospect that it will descend to his heirs. This will tend more rapidly to an export, and to a permanency of commercial relations, without which there can never be such a revenue as to enable the Government to foster its internal improvements.

2nd. The patents or leases given to claimants, are for certain fixed and ascertained extents or dimensions of land. This must prevent after litigation in regard to boundaries. All parties having been cited before awarding, there can be no counter



claims to the same piece of land after award, except on appeal, and such appeal cannot be taken, except by a party who has presented his claims to the Board.

The patents and leases are recorded in duplicate, in the department of the Interior. This will enable the foundation of every one's right to be known to the Government, and inquiring parties. No pretended ownerships can exist without the means of undeceiving the public in regard to them. Subsequent purchasers and mortgagees need not be in ignorance of prior defects in the title, or of prior incumbrances.

The undersigned deem the foregoing prefatory remarks and explanations necessary to a clear understanding of the awards upon which they are about to enter, and indispensable to which awards, it is necessary to lay down the following general principles, to which they have arrived by critical study of the civil code, and careful examination of numerous witnesses; among whom are some of the oldest chiefs, possessing large tracts of land, which, equally with other lands, come under the adjudication of the Board, and under the principles here laid down.

The chiefs so situated, cannot have a personal interest in testifying to the facts leading to these principles, since they thereby clog their own rights, and become liable to pay the commutation to which the King and Government are entitled. Native proprietors and foreign residents are thus put upon the same footing in regard to their titles, in consistency with Article 2nd of the treaties concluded with Great Britain and France, 26th March, 1846.

1st. For the purposes of this Board in all cases where the land has been obtained from the King or his authorized agent without a written voucher, anterior to the 7th of June, 1839, the Board will inquire simply into the history of the derivation; and if the land claimed has been continuously occupied, built upon, or otherwise improved since that time, without molestation, the Board will, in case no contests exist between private claimants, infer a freehold less than allodial.

2d. In all such cases as above specified, when there are counter claims to the same piece of land, the Board will confine their inquiry to which of the claimants has the freehold, less than allodial.

3d. In all cases where the land has been obtained from the King or his authorized agent, or from any governor, chief or pretended proprietor, subsequently to the 7th of June, 1839, the Board will strictly inquire into the right of the King, or

chief, or landlord, to make such disposition of the land; and will confirm or reject, according to the right of such donor, grantor, or lessor, regardless of consideration, occupancy or after improvements.

4th. In all cases where the land has been legally and validly obtained from the lawful proprietor, by written grant, deed, or lease, the Board will construe the claimant's rights by the wording of the instrument.

5th. When rights were originally acquired either in writing or verbally, in a lawful manner, and from the *bona fide* owner, for a valid consideration or otherwise, and yet were never occupied, or have not been occupied by such claimant since the 7th of June, 1839, the Board will infer an absence of title. Especially in view of section 6, chapter 3, old law.

6th. The share of Government, or the body politic, to be commuted for with the Minister of the Interior, by any confirmed claimant wishing to obtain a fee simple title under chapter 7 of part first of the Act to Organize the Executive Departments, this Board understand, from the evidence adduced before them, to be one third part of the value of the land, without improvements, which third part of unimproved value, being paid by the confirmed claimant, should extinguish the private rights of the King in the land, and leave such claimant an allodium, subject only to the corporate rights of the body politic, to be exerted by the King under authorization of the laws, and through the agency of his officers created by the laws. The Board, in asserting this principle, do not mean, however, to restrict the power of His Majesty in Privy Council, to fix upon a less commutation, under section 10th of the article creating this Board, and subject to the private rights of tenants, if there be any on the land; for the King has no power to convey away the rights of individuals without their consent. They deem it their duty to state the maximum value of the interest retained in all lands of the kingdom at this date, which was never relinquished, and which the Government to this day has never received any valuable consideration for, even from the private chiefs from whom the claimants derive. Claimants cannot derive more than the original proprietor had, neither could the original proprietor grant more than they had to the present claimants. They had a possessory right under the crown, equal to two thirds undivided of the value of the land, provided there were no tenants; and in consideration of the undivided third of the King, they paid an annual rent, in produce of the soil, and in service. The foreign

claimants, deriving from these, have not, in all cases, paid the rent which was due from their grantors, and have lost sight of the corporate rights in their lands, pertaining originally to the government. That rent can be sold by the Minister of the Interior, for not exceeding one third of the unimproved value of the land as aforesaid, which would divest the land so commuted for of all interference, save that of the community, for the causes and in the way aforesaid.

7th. The titles of all lands, whether rightfully or wrongfully claimed, either by natives or foreigners, in the entire kingdom, which shall not have been presented to this Board for adjudication, confirmation or rejection, on or before the 14th day of February, 1848, are declared to belong to this government, by section 8th of the article creating this Board. Parties who thus neglect to present their claims, do so in defiance of the law, and cannot complain of the effect of their own disobedience.

Upon these principles, the undersigned proceed to take up the claims now before them in the order of their presentation.

(Signed)	WILLIAM RICHARDS,
"	JOHN RICORD,
"	J. Y. KANEHOA,
"	JOHN II,
"	Z. KAAUWAI.

Hale Kauwila, August 20, 1846.

#### RESOLUTION OF THE LEGISLATIVE COUNCIL.

The principles adopted by the Board of Commissioners to quiet Land Titles, under date of August 20th, 1846, having been read before the Nobles and Representatives of the people, in Legislative Council assembled, and having been carefully considered, it was,

*Resolved*, That the same are hereby approved; and it is enacted, that from the date hereof, all claims for landed property in this kingdom shall be tested by those principles, and according to them be confirmed or rejected.

KAMEHAMEHA.

KEONI ANA.

Council House, Honolulu, Oct. 26, 1846.

## CONSTITUTION.

GRANTED BY HIS MAJESTY KAMEHAMEHA III,  
KING OF THE HAWAIIAN ISLANDS, BY AND  
WITH THE ADVICE AND CONSENT OF THE  
NOBLES AND REPRESENTATIVES OF THE  
PEOPLE IN LEGISLATIVE COUNCIL ASSEMBLED, JUNE 14th, 1852.

### DECLARATION OF RIGHTS.

ART. 1. God hath created all men free and equal, and endowed them with certain inalienable rights; among which are life and liberty, the right of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

ART. 2. All men are free to worship God according to the dictates of their own consciences; but this sacred privilege hereby secured, shall not be so construed as to justify acts of licentiousness or practices inconsistent with the peace or safety of this Kingdom.

ART. 3. All men may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.

ART. 4. All men shall have the right, in an orderly and peaceable manner to assemble, without arms, to consult upon the common good; give instructions to their Representatives; and to petition the King or the Legislature for a redress of grievances.

ART. 5. The privilege of the writ of Habeas Corpus belongs to all men, and shall not be suspended, unless by the King, when, in cases of rebellion or invasion, the public safety shall require its suspension.

ART. 6. The right of trial by jury, in all cases in which it has been heretofore used in this Kingdom, shall remain inviolate forever.

ART. 7. No person shall be subject to punishment for any offense, except on due and legal conviction thereof, in a court having jurisdiction of the case.

ART. 8. No person shall be held to answer for any crime or offense (except in cases of impeachment, or for offenses within the jurisdiction of a police or district justice, or in summary