

THE MĀHELE ‘ĀINA (THE LAND DIVISION) AN OVERVIEW OF DOCUMENTATION FOUND IN THE CLAIMS AND AWARDS OF THE MĀHELE

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The records of the *Māhele ‘Āina* (Land Division), describing native Hawaiian residency, land use, access, and traditional and customary practices—including responsibilities associated with such *kuleana*—are among the most significant historical documentary resources available to those interested in Hawaiian history and land tenure. The “Land Division,” enacted by Kamehameha III, gave the *hoa‘āina* (native tenants) an opportunity to acquire fee-simple property interest (*kuleana ‘āina*) in land on which they lived and actively cultivated. Importantly, the application process required claimants to provide personal testimonies regarding their residency and land use practices. As a result, records of the *Māhele ‘Āina* present readers with first-hand accounts of residency and land use from native tenants, generally spanning the period from ca. 1800 to 1855.

For more than 60 years, the Indices of Awards (1929), has been the standard reference used to identify *Ali‘i*, *Konohiki* and *hoa‘āina* (native tenant) awardees of *kuleana* (private property rights). A careful review of the original handwritten records of the *Māhele* (including original field notes and communications; volumes of the Register and Testimony; the Mahele Award Books; and Royal Patent Books), reveals to us, that the Indices provides us with an incomplete record of residency, land use, and claims submitted before the Land Commission.

For example, the indices of awards provides us with records of some 273 numbered claims for *kuleana* in the districts of Hāmākua Poko, Hāmākua Loa and Ko‘olau, in the East Maui region. A careful review of the original Hawaiian claims recorded in the volumes of the Register and Testimony Books, includes documentation for at least 453 claims, representing more than 470 individuals. Of this total, 51 applications were made for land in Hāmākua Poko; 255 applications were made for land in Hāmākua Loa; and 147 applications were made for land in Ko‘olau. Thus, at least 180 more claims were registered than were awarded.

Like the records for the *kuleana* that were awarded, the additional claims, provide important documentation pertaining to a wide range of land use activities, spanning elevational zones extending from the near-shore fisheries to the forest lands. The records tie specific families to *ahupua‘a* and sites (i.e. features of the cultural-historical landscape and the nature of land use), and provide us with background information on how the claimants came to be in possession of the properties. Many of the claimants reported that their property rights of residency and land use dated back to 1819 and earlier (handed down from their parents and grandparents). Other claimants also stated that their rights were granted by pre-*Māhele Konohiki*, generally dating from the 1830s to the 1840s.

Upon realizing that many more claims for *kuleana* were made than were awarded, one might naturally wonder “why?” Aside from the fact that the concept of private land ownership was completely foreign to the native Hawaiian mind, other factors also contributed to the short-comings of the *Māhele*. Regardless, the records show that many native tenants did step forward in the process of application for private land rights. Several problems in perfecting claims stand out in the record. Among these problems was the occurrence of — (1) epidemics; (2) fear; (3) loss of applications; and (4) rejection of claims. These factors are further described by:

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- (1) Historical documentation from all of the Hawaiian Islands reports that many native residents (including applicants) died in between the time they registered their claims, and were to have provided testimony verifying the claims.
- (2) Some of the *Ali'i-Konohiki* awardees also made it a practice of instructing *hoa'āina* not to present testimony for *kuleana* (cf. Kamakau 1961:403; and J.S. Green, October 3, 1846 in *The Polynesian*).
- (3) In many areas, applicants provided testimony that their registration of claims were written out and submitted via authorized agents. It was later reported that the records had apparently not arrived in the office of the Land Commission (see testimonies of claims).
- (4) Commissioner, G.M. Robertson reported to the King (March 31, 1855), that the Commissioners to Quiet Land Titles rejected many claims for various reasons.

Inconsistencies in Historic and Modern Records of the Māhele 'Āina

Documenting the *Māhele* in 1848-1855 was a monumental task for the Land Commission and its agents². While the generations that follow the years of the *Māhele* are fortunate to have the records, it will be seen that there were many problems in recordation. These problems present us with some questions that will never be answered, and require us to make educated assumptions (based on standard practices of residency and land use, and requirements of the *Māhele* application process at the time), to better understand what the records tell us. Several important points should be considered when reviewing the existing translations of the *Māhele* records. These points include, but are not limited to the following observations:

(1) Transcription Errors:

Among the records of the Hawaii State Archives (HSA) is a collection of original handwritten notes from applicants for *kuleana* and field agents of the Land Commission. This collection is found in Series 294 of the HSA, and is the source information for the Register and Testimony volumes that make up the *Māhele* Books. Our review of selected records in Series 294 has revealed that Land Commission transcribers sometimes transposed applicant and land names, and Helu (the Land Commission Award or LCA Numbers) when first transcribing the records. Also, the spelling of names (people and places) is inconsistent. At times, errors are further compounded between Register, Testimony, Mahele Award Books, and Royal Patent Books.

Subsequently, the 1929 Indices of Awards adds further errors to the collection (transposing the spelling of names and Helu).

In the 1960s-1970s, the HSA archivists also undertook the significant task of translating all Hawaiian documents of the Register and Testimony books, in order to help make the records more accessible. The archivists used the original handwritten volumes of the Register and Testimony as their source of information, but unfortunately another layer of errors was added to the record—most of which are simple typographical errors. Because the translated texts are those which receive the most use in present-day land history research, a number of errors which are not a

² In October 2000, *Kumu Pono Associates LLC* made arrangements with the Hawaii State Archives, and contracted with Advanced Micro-Image, to digitize the entire collection of original records of the Register, Testimony, Mahele Award Books, and Royal Patents. The entire collection is now indexed based on records of the original books.

part of the original records are repeated as fact. The errors include discrepancies in the types of land use reported, and transposing of people and land names, and Helu.

We have found that a number of these errors are significant, and they are of direct relevance to interpreting the cultural, natural and archaeological landscapes of the land.

**(2) Documentation is Vague or not Given
(discussion on selected terms used in narratives):**

- (a) There are many claims in the Register and Testimony that provide no verbal description of cultivation or residence. Based on the requirement of the Law (the *Kuleana Act*, Dec. 21, 1849), this should not be interpreted as the absence of such features or land use, but instead, a weakness in the original process of recordation. The *Kuleana Act* specifically limited native tenant claims to ‘āpana (parcels or lots) of land which they actively cultivated, and on which they resided.
- (b) Of particular interest to the East Maui region, and a study of land use and water flow, are descriptions of *kahawai* (streams), ‘*auwai* (irrigation channels) and *lo’i kalo* (irrigated taro pond fields). In a number of claims a specific number of *lo’i kalo* and ‘*auwai* is given. In other claims, the Hawaiian word “*mau*” (many or some) is used to describe more than one *lo’i* or *kula* (planting field). In some narratives, *mau* is qualified by also giving the exact number of features being described, but not always. Where *mau* is used in text without a qualifying number, we have indicated “2 +” for the number of features listed. Thus, the total number of *lo’i* and dry land planting features used at that time of the *Māhele* was likely much greater than the numbers reported herein, indicate.

Lo’i, Kula, and Pō’alima

Generally, the Hawaiian word “*lo’i*” means that the parcel is an irrigated pond field. At the time of the *Māhele*, the Hawaiian word “*kula*” (open country or flat land) described a dry land parcel that was cultivated (unless otherwise qualified — e.g., “*kula holoholona*,” a pasture). While conducting the present investigation into records of the *Māhele*, it was found that when *kula* is used in association with *kalo* (e.g., “*kula kalo*” or “*kalo kula*”), the applicant is describing either a dry land cultivating field, or when near a stream flatland on which *lo’i* could be made and flooded, a wet land use was described. Because records are incomplete, the total number of dry-land and wet-land field features cannot be accurately given, and it is likely that there is a greater number of both types of agricultural fields, than the numbers presently indicate.

Also, in some cases, where Hawaiian and English texts for a claim were recorded (usually because the original claim was thought to have been, or was misplaced), the descriptions for the same *Helu* differed. One narrative will give “*Aina Lo’i*” (pond field land), and the corresponding narrative might state “*kalo land*” (with no indication of wet or dry-land use)³. (For example, see *Helu* 5514 of Anakalea – Native Testimony 5:460, and Native/Foreign Testimony 8:83.)

Another important term in Hawaiian land use is *pō’alima* (literally: fifth night, historically, Friday). In ancient Hawai’i, certain parcels of land were worked solely

³ Citing legal renderings, W.A. Hutchins (1946) discusses irrigated and dry land fields, and provides readers with a historical overview of the water rights (*pono wai*), and their disposition in *Māhele* and Grant lands.

for the *ali'i*; such parcels are also known as “*kō'ele*.” By the time of the *Māhele*, changes in land tenure and taxation laws, led to the establishment of the *pō'alima* parcel of land — literally called Friday Parcel because the pieces of land so designated, were worked by the commoners on Fridays to supply food resources to their *ali'i* (no one else was allowed to take the crops cultivated on the *pō'alima* for their personal use). In the districts of Hāmākua Poko, Hāmākua Loa and Ko'olau, a total of 129 *pō'alima* were discussed by the native tenants. Thus, the total number of cultivated lots (both wet land and dry land) is greater than the total given in the claims for *kuleana*.

(3) Access

There are scattered references to the native trails or historic “roadways” (e.g. *mauka-makai* trails, the larger *alaloa* and *Alanui Aupuni*) in the documentation provided in the volumes of the Register and Testimony for claims. This may in part be explained by the fact that trails were integral to residency and subsistence patterns, and the cultural landscape. The rights of native tenants to access, both within their *ahupua'a* and to the larger public byways, were prescribed in both traditional and historic laws. In the case of the *mauka-makai* trails, the record of land use also tells us that such trails existed in each *ahupua'a*. This is substantiated by the descriptions of various *kuleana* parcels (claimed by individual tenants) that cross several land use and elevational zones (for example near the shore, on the *kula*, and in the forest). Oral history interviews conducted with *kūpuna* and elder *kama'āina* across the islands also describe the occurrence of *mauka-makai* trails in each *ahupua'a*.

Communications and References Cited

J.S. Green in The Polynesian October 3, 1846

Editor Polynesian

...During his sojourn among us the last few weeks. Mr. Armstrong, assisted by a graduate from the Seminary, Lahainaluna, has measured most of the arable land in Makawao. He first surveyed the entire portion which we supposed saleable at the present time, and found some 1700 acres, exclusive of Mr. McLane's plantation. He then measured the land which each man had selected for himself. Some 33 farms have thus been surveyed, consisting of from 45 acres to 10 or 12. Nearly every man in the upper part of Makawao has obtained a small piece of land, and as soon as possible I hope to give each a deed of his little homestead. Homestead! What associations cluster around that word; and yet how strangely it reads in reference to Hawaiians! I pray that it may not long seem thus. But more of this anon.

More land I should have sold but for the ravages of the cattle from the plain below. It's now a long time, say two years, since the cattle, chiefly from Wailuhee [typeset error – i.e., Wailuku] and Waikepu [typeset error – i.e., Waikapu], began their depredations. Last autumn and winter they destroyed a considerable quantity of sugar cane for Mr. McLane. The damages he estimated at \$1,000 at the lowest calculation, and he would have lost a much larger quantity had he not, for a long time, employed men by day and by night to watch and guard his fields. Since, an arrangement has been made with the owners of the cattle by Dr. Judd. Some change for good has been effected. Still our fears are only partially quelled. Several acres of promising young cane have been destroyed, and some of the natives have lost

nearly all they had planted. Some twenty acres of cane, which I aided our people to plant, and which we have devoted to purposes of benevolence, lie exposed. It is easy to see that we all feel an interest in the question, "Will our neighbors of Wailuhee and Waikepu take care of their cattle?" If so, there is much ground to hope that the experiment we are here making will succeed. If the cattle are permitted to run as they now do, I have little hope of success. Is it right that we should thus suffer from the depredations of cattle? Already Hamakuapoko and Halimaile [Hāli'imaile], two excellent districts of dry land, are nearly destroyed, and the cattle are crossing over into Hamakualoa. Will not all owners of cattle set in accordance with the law of love, and without delay save us from the vexation and loss of their intrusion into our plantations?

A single other impediment to the sale of lands I will mention. An old *konohiki* by the name of Nawaa has taken it into his head that the King will be a loser by the sale of the lands. He, therefore, refuses himself to purchase, and dog-in-the-manger-like, he is doing what he can to prevent others from buying. He has been down to Honolulu twice, and on his return has told the people that the King has granted him the land, though he can show no writing. Since I have sold lands to his neighbors he is greatly enraged, calls them thieves, molests them all in his power, and breaks their containers when they go for water to a spring which he claims as being on his lands, though he has refused to purchase.

Some of the reasons why, in my opinion, lands should be sold without delay to the people, I design to give you in good time... J.S. Green. Makawao, Sept. 3, 1846. [See Register Map No. 186 (Metcalf, 1848), which lays out the lots mentioned herein.]

Kuleana Act — The foundation of law pertaining to native tenant rights, sets forth the following:

August 6, 1850

An Act confirming certain resolutions of the King and Privy Council passed on the 21st day of December 1849, granting to the common people allodial titles for their own lands and house lots, and certain other privileges.

Be it enacted by the Nobles and Representatives of the People of the Hawaiian Islands in Legislative Council assembled;

That the following sections which were passed by the King in Privy Council on the 21st day of December A.D. 1849 when the Legislature was not in session, be, and are hereby confirmed, and that certain other provisions be inserted, as follows:

Section 1. Resolved. That fee simple titles, free of commutation, be and are hereby granted to all native tenants, who occupy and improve any portion of any Government land, for the land they so occupy and improve, and whose claims to said lands shall be recognized as genuine by the Land Commission; Provided, however, that the Resolution shall not extend to Konohikis or other persons having the care of Government lands or to the house lots and other lands, in which the Government have an interest, in the Districts of Honolulu, Lahaina and Hilo.

Section 2. By and with the consent of the King and Chiefs in Privy Council assembled, it is hereby resolved, that fee simple titles free of commutation, be and are hereby granted to all native tenants who occupy and improve any lands other than those mentioned in the preceding Resolution, held by the King or any chief or

Konohiki for the land they so occupy and improve. Provided however, this Resolution shall not extend to house lots or other lands situated in the Districts of Honolulu, Lahaina and Hilo.

Section 3. Resolved that the Board of Commissioners to quiet Land titles be, and is hereby empowered to award fee simple titles in accordance with the foregoing Resolutions; to define and separate the portions belonging to different individuals; and to provide for an equitable exchange of such different portions where it can be done, so that each man's land may be by itself.

Section 4. Resolved that a certain portion of the Government lands in each Island shall be set apart, and placed in the hands of special agents to be disposed of in lots of from one to fifty acres in fee simple to such natives as may not be otherwise furnished with sufficient lands at a minimum price of fifty cents per acre.

Section 5. In granting to the People, their House lots in fee simple, such as are separate and distinct from their cultivated lands, the amount of land in each of said House lots shall not exceed one quarter of an acre.

Section 6. In granting to the people their cultivated grounds, or *Kalo* lands, they shall only be entitled to what they have really cultivated, and which lie in the form of cultivated lands; and not such as the people may have cultivated in different spots, with the seeming intention of enlarging their lots; nor shall they be entitled to the waste lands.

Section 7. When the Landlords have taken allodial titles to their lands the people on each of their lands shall not be deprived of the right to take firewood, *aho* cord, thatch, or ti leaf from the land on which they live, for their own private use, should they need them, but they shall not have a right to take such articles to sell for profit. They shall also inform the Landlord or his agent, and proceed with his consent. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, and running water, and roads shall be free to all should they need them, on all lands granted in fee simple. Provided, that this shall not be applicable to wells and water courses which individuals have made for their own use.

Done and passed at the Council House, Honolulu this 6th day of August 1850.
[copied from original hand written "Enabling Act"⁴ – HSA, DLNR 2-4]

Closure of Work by the Land Commission

The work of the Land Commission was brought to a close on March 31, 1855. The program, directed by principles adopted on August 20, 1846, met with mixed results. In its' statement to the King, the Commissioners to Quiet Land Titles (George M. Robertson, March 31, 1855) summarized events that had transpired during the life of the Commission:

...The first award made by the Commission was that of John Voss on the 31st March 1847.

The time originally granted to the Board for the hearing and settlement of all the land claims in the kingdom was two years, ending the fourteenth day of February, 1848. Before the expiration of that term it became evident that a longer time would be required to perform a work... Accordingly, the Legislature on the 26th day of August 1847, passed an Act to extend the duration of the Board to the 14th of February,

⁴ See also *Kanawai Hoopai Karaima no ko Hawaii Pae Aina* (Penal Code) 1850.

1849, adding one year to the term first prescribed, not however, for the purpose of admitting fresh claims, but for the purposes of hearing, adjudicating and surveying those claims that should be presented by the 14th February, 1848. It became apparent to the Legislature of 1848 that the labors of the Land Commission had never been fully understood, nor the magnitude of the work assigned to them properly appreciated, and that it was necessary again to extend the duration of the Board. An act was accordingly passed, wisely extending the powers of the Commissioners "for such a period of time from the 14th day of February 1849, as shall be necessary for the full and faithful examination, settlement and award upon all such claims as may have been presented to said Board." ...[T]he Board appointed a number of Sub-Commissioners in various parts of the kingdom, chiefly gentlemen connected with the American Mission, who from their intelligence, knowledge of the Hawaiian language, and well-known desire to forward any work which they believed to be for the good of the people, were better calculated than any other class of men on the islands to be useful auxiliaries to the Board at Honolulu...

...During the ten months that elapsed between the constitution of the Board and the end of the year 1846, only 371 claims were received at the office; during the year 1847 only 2,460, while 8,478 came in after the first day of January 1848. To these are to be added 2,100 claims, bearing supplementary numbers, chiefly consisting of claims which had been forwarded to the Board, but lost or destroyed on the way. In the year 1851, 105 new claims were admitted, for Kuleanas in the Fort Lands of Honolulu, by order of the Legislature. The total number of claims therefore, amounts to 13,514, of which 209 belonged to foreigners and their descendants. The original papers, as they were received at the office, were numbered and copied into the Registers of the Commission, which highly necessary part of the work entailed no small amount of labor...

...The whole number of Awards perfected by the Board up to its dissolution is 9,337, leaving an apparent balance of claims not awarded of say 4,200. Of these, at least 1,500 may be ranked as duplicates, and of the remaining 2,700 perhaps 1,500 have been rejected as bad, while of the balance some have not been prosecuted by the parties interested; many have been relinquished and given up to the Konohikis, even after surveys were procured by the Board, and hundreds of claimants have died, leaving no legal representatives. It is probable also that on account of the dilatoriness of some claimants in prosecuting their rights before the Commission, there are even now, after the great length of time which has been afforded, some perfectly good claims on the Registers of the Board, the owners of which have never taken the trouble to prove them. If there are any such, they deserve no commiseration, for every pains has been taken by the Commissioners and their agents, by means of oft repeated public notices and renewed visits to the different districts of the Islands, to afford all and every of the claimants an opportunity of securing their rights... [Minister of Interior Report, 1856:10-17]

Hutchins, W.A.

1946 *The Hawaiian System of Water Rights.* Honolulu: Board of Water Supply, City and County of Honolulu.

Indices of Awards

1929 Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands. (Copy in Hawaii State Archives)

Kamakau, S.M.

1961 *Ruling Chiefs of Hawaii.* Honolulu: The Kamehameha Schools Press.

Kingdom of Hawaii

1850 *Kanawai Hoopai Karaima no ko Hawaii Pae Aina.* (Penal Code)