overlaps and interlayers are the most common things imaginable. It has been the practice heretofore to regard the person holding the earlier award to take precedence in the case of an overlap and the one holding possession in the case of an interlayer. Some doubts in high quarters have been expressed, however, on this matter.

As we have said above, the real reason for all this looseness lies in the fact that there was little money to pay out and little time to wait for the work. It may be added that there was not then a single thoroughly competent land surveyor on the ground. The grounds for this assertion may be stated hereafter. Civil engineers there were, and amateur surveyors, but no thoroughly competent land surveyor.

To hasten the “quieting of titles” it was enacted by the Legislature that all claims not presented before a certain date should revert to the Government. This date was postponed several times. The land commission itself was driven to the policy of awarding titles by ancient boundaries, without survey—that is to say, simply by the name of the ahupua'a or ili, leaving the owners to fix the boundaries as best they could. In that way it was enabled to close its labs at the time prescribed by statute, viz., on the 31st of March, 1885. The receiving of evidence was finally closed on the 30th of December previous.

Even then an act had to be passed in 1882 “for the relief of certain Konohikis,” enabling some such who had received land at the time of the mahele to receive an award from the interior department for the same, up to a certain date, beyond which the land, in unawarded, was to revert to the Government.

The question now comes up: Will these lands thus unawarded now be claimed by the Government? And, moreover, will similar lots in town be thus claimed? The view of the case taken at the time was this: “For the good of the community, land owners must be compelled to go through certain forms of law, failing in which the lands are forfeit.” Was or was not this, in the circumstances, a constitutional act?

No. 8.

The land in the Hawaiian Islands was considered at the time of the mahele as belonging to the nation. It was divided off according to principles deemed equitable and titles were given, emanating really from the Government, representing the nation, by the King as the executive power. This, I think, is the true theory of the then new departure in land matters. The power to whom were given the Crown lands was not the power that gave legality to the new titles. The Crown lands were set aside for the private emolument of the King. The Government lands were for the benefit of the whole, for the parties as a whole, that divided the land.

When, therefore, the rule was made, or law passed, that lands not awarded should vest in the Government, it would seem to have been perfectly in the power of those making the law so to enact. It hardly seems proper, therefore, at the present day to assume that such lands should revert to the Crown as “Crown lands.” They should revert to the Crown as the representative of the Government, not for the private use of the King, but for that which the King represents in his official capacity.

Where parties have been a long time in actual occupation of such lands, it would seem as if some liberal terms might be adopted which would facilitate the obtaining of a title, without waiving the right of the Government, against which the statute of limitations, i. e., of twenty years' occupation, does not hold.

The government lands about the year 1850 were put into the market throughout the islands. Previous sales had been made in a few localities, especially in Maka-wao and Manoa Valley. Agents were appointed in the different districts to receive applications, to attend to the surveys, and to report; also to collect the money for the land and forward to the interior office. The same desultory system of surveying was followed as in the case of Kuleanas. Probably, between the years 1850 and 1860, nine-tenths of the available government land was taken up. The agents were, some of them, the American missionaries, who considered it not inconsistent with their position to assist the people in obtaining lands in advance of mere speculators. A commission was allowed; in at least one case it was declined, all service being rendered gratis.

After all this selling of land the Government were perfectly in the dark as to what remained. A lull in the business took place, and when in after years some of the remnants were applied for, it was impossible to proceed with any confidence in disposing of them. In addition to this, a new policy came in, with another administration, of refusing to sell land, partly from the revival of the ancient theory that the King was the Government; partly from a feeling that a fixed revenue might be derived from the remainder; partly from the cropping out of the ever-prevalent dislike of seeing lands go into the hands of foreigners; and partly from the difficulty of proceeding intelligently to work.

For instance (and this is from actual experience), a tract of, say, 10 acres, in Palolo