

W. M. G. Colebrooke—Two Unpublished Memoranda

Introductory

IT is not often that a colonial reformer is afforded the opportunity of commenting in fair detail on the affairs of a Colony he had once reported on. Such an opportunity came Colebrooke's way in 1840—when Philip Anstruther, the Colonial Secretary of the Ceylon Government, then on holiday in England, sent an unsolicited but quite comprehensive review of the affairs of Ceylon to the Colonial Office.¹ Lord John Russell then Secretary of State for War and the Colonies thought it fit to send this document to Colebrooke for his comments. The latter sent back two memoranda, the longer one dated 31st December, 1840 reviewed Anstruther's, while the shorter one—recommendations “for improving the Administration of Justice in Ceylon”—had been drawn up in December, 1832, but was sent to the Colonial Office only in January, 1841.

Colebrooke's memorandum of 31st December, 1840 dealt with the issues Anstruther had touched upon, and he submitted his comments “in the order in which the subjects occur [red]” in the latter's document. His comments, however, are rather disjointed, and the memorandum itself appears to be very much like a patchwork quilt, and like that article it is useful without being in anyway very elegant. It is useful because of the fresh light it throws on Colebrooke's ideas.

So far the Utilitarian strand of Colebrooke's outlook has received all the attention, at the expense of other, and equally important, aspects.² Recently, the influence of his experience in Java during Sir Stamford Raffle's administration there has been referred to.³ This document provides evidence of two other influences, that of Evangelicalism (there was a great deal of this in his reports of 1831/2) and that of the theories of Edward

1. C.O. 54:185 Philip Anstruther's memorandum of November 23rd 1840. This document is printed below, pp. 16-33.

2. Sec. ed. Mendis, G. C. *The Colebrooke-Cameron Papers*, 2 vols. (O.U.P. 1956).

3. Ludowyk, E. F. C. *The Story of Ceylon*, (London, 1962), p. 167.

Gibbon Wakefield on land policy and settlement. The Evangelical influence is seen in his strong support of Anstruther on issues such as the sale of temple lands and the dissociation of the state from its connection with Buddhism, and in his exhortation in the concluding paragraph of the memorandum that the "utmost encouragement and protection should be afforded to those who are engaged in the religious and general instruction of the people ..." The Wakefieldian influence is discernible in his recommendations on the settlement of villagers both in plantation regions and elsewhere; and in his suggestion that part, at least, of the revenue from land sales should be used for this purpose.

Colebrooke's memorandum of December 31st 1840 has other points of interest. It gives the reader a clearer idea of the relative importance he attached to his several recommendations on social and economic reform in 1832. He believed that the increasing prosperity of the Colony in 1840 was due primarily to the abolition of *rajakariya*, a conclusion at variance with the facts, but one which shows the importance he attached to this measure. Again, despite all the evidence to the contrary, he believed that the cinnamon industry, reformed and reorganized could still remain the staple of the island's economy, and that sugar and coffee were "likely to be valuable exports if the foreign and slave grown sugars should not be admissible into England on equal duties". His hopes for the cinnamon industry were optimistic in the extreme, obviously because he had made no effort to check his facts. Worse still, his suggestion that Ceylon sugar and coffee should enjoy the benefits of a protective tariff in the British market would indicate that he had not kept abreast of developments at home, where the principle of protection was under very effective and systematic attack by the increasingly influential Free Trade lobby.

All this is proof of Colebrooke's remarkable receptivity to the more progressive ideas of his day, but these were absorbed in a soft and diffused form and were never gathered together in a logical whole. There were advantages in this as his remarks on judicial reform would indicate. He was never Cameron's equal in intellect; indeed the latter's grasp of Utilitarian legal theory was remarkable and he applied it in his Charter of Justice of 1833 with cold precision, logically and consistently. Nevertheless, Cameron's legal reforms for all their worth were not rooted in the experience of Ceylon, and in the long run they tended to create a lawyer-ridden society and an extortionate process of justice. Colebrooke's Utilitarianism was a more tolerant and humane variety (Bentham might have refused to

call it Utilitarianism) less liable to errors of this nature. Precisely because his ideas were more diffused Colebrooke could see the need to provide the people with a form of justice suited to their needs, and in harmony with their experience and traditions. His recommendations "for improving the Administration of Justice in Ceylon" were devoid of the legal niceties and theoretical trappings of Cameron's report on "the Judicial Establishments and Procedure in Ceylon,"⁴ but they possessed the supreme merit of commonsense.

Cameron was ever the Benthamite jurist, cold, precise and logical in approach; his report was a fine piece of Benthamite judiciary construction. Not for nothing did Leslie Stephen describe him as "a disciple and ultimately perhaps the last surviving disciple of Bentham".⁵

Perhaps the most lasting contribution of the Benthamites to Ceylon was the judicial system established in 1833 on Cameron's recommendations. The Charter of Justice of 1833 marks the beginning of the modern judicial system in Ceylon. James Stephen, then Permanent Under-Secretary at the Colonial Office, commented that "this Ceylon Charter was a pure innovation. . . based on speculation (chiefly those of Bentham)".⁶

"A pure innovation. . . based on speculation." In retrospect this would appear to be a very apt description because one of the great weaknesses of the judicial system established in 1833 was the fact that it was not rooted in the country's past. It did not give the people what they needed most, a system that would "investigate disputes and administer justice . . . in a plain and summary manner". In 1842 James Stephen claimed that he had sought to persuade Cameron to pay more attention to this problem, but the latter had paid little heed to the suggestion, preferring instead to rely on the advice of Bentham himself.⁷ Colebrooke's recommendations in 1832 focussed attention on this theme, and drew attention to the Landraad courts of the Dutch administration in the Maritime Provinces of Ceylon.⁸

4. Mendis, I, pp. 121-185.

5. *The Dictionary of National Biography*, III, p. 741.

6. C.O. 54:191. James Stephen's minute of January 20th 1842.

7. *ibid.* In 1842, Sir Colin Campbell commented that the "The condition of the system of Justice is a subject of universal complaint and with the greatest reason. The delays and practical denial of justice both in civil and criminal matters [are] unparalleled in any country. In civil matters this arises from the peculiarities of the Charter increased by rules of practice far more calculated to benefit proctors than to ensure a speedy decision . . . there is no summary form or procedure for small or simple cases . . . [The] consequence is that justice is in effect almost denied to the poor and this is the direct result of a Charter the avowed principle of which is 'to favour the poor by giving the same Judge to decide the poor man's case and the rich.'"

C.O. 54:196. Campbell to Stanley, 56 of April, 18th 1842.

8. Indeed Cameron's Judicial Charter takes no account of his own reflections on this point. See, Mendis I, 172-3.

Two other points need emphasis. First, Colebrooke's comments would indicate that the gansabhavas were by no means effete and moribund in 1832; they might, in fact, have been given greater prominence in the new judicial system by someone with a greater reverence for the past and traditional institutions than Cameron. Second, his comments on the jury system in Ceylon concentrate on one of its more prominent weaknesses—the classification of juries according to castes; it was a defect which somehow escaped Cameron's attention and thus survived for a decade after 1833.

**Memorandum of Sir W. M. G. Colebrooke sent to Lord John Russell
31 December 1840**

MY LORD,

In compliance with your Lordship's request conveyed to Mr. V. Smith's⁹ letter of the 5th inst. I proceed to offer such observations as have occurred to me on a perusal of Mr. Anstruther's report upon the present condition of Ceylon.

Referring to the reports made by me as Commissioner in 1831 and 1832 after my return to England it is gratifying to me to observe the improvements which have been effected and the prospects which are held out of increasing prosperity in that island, a result which is primarily to be attributed to the Order of His Late Majesty in council of the 12th April 1832 for the abolition of all gratuitous labour and services which had been exacted from the native inhabitants.

The remarks which I have now to offer will be submitted in the order in which the subjects occur in Mr. Anstruther's judicious report.

I entirely concur with him that it is very important to discourage the notion of exclusive privileges on the part of the Gentlemen who hold civil employments in the island.

In the present state of the Colony the Government should be able to avail itself of every means whereby the services of competent persons may be acquired to administer the Civil Departments of the Government and to fill the offices of (Provincial)¹⁰ Judges and magistrates. The former

9. Vernon Smith, at this time Parliamentary Under-Secretary at the Colonial Office.

10. Colebrooke, inadvertently perhaps, had used the word Provisional, but the Colonial Office changed it to the more appropriate, Provincial.

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systems of maintaining what was called the "Civil Service" failed to effect this object satisfactorily and it thereupon was judged expedient to abandon it.

The settlement of European Colonists in the island renders it desirable that the higher appointments should henceforth be provided for either by sending out competent persons from this country or promoting the functionaries in the other colonies and that preferment should in like manner be held out to the Civil Servants of Ceylon when appointments elsewhere may be acceptable to them and which they might be qualified to fill.

I consider the heads of the Departments where they do not retire upon pensions ought to be adequately remunerated.

Some may be induced to acquire property in the island and this I consider to be entirely unobjectionable.¹¹ The native inhabitants have a fair claim to public employment and it would be equally unjust and impolitic to prefer to them inexperienced persons of European birth in the various subordinate stations which they may be competent to fill.¹²

Revenue:

I entirely concur in Mr. Anstruther's representation that an adequate revenue may be derived from moderate customs duties and I think it is to be regretted that the measures recommended in 1832 for the sale of the Cinnamon Gardens and the gradual reduction of the export duties on cinnamon were not adopted by the local Government at the time.

In regard to so valuable a production of which under good management Ceylon might export nearly the whole supply required in the general market, I think it is not impossible that persons of capital in this country might be induced to speculate and if the Government could realise a fair price for such of the Gardens as have been reserved a fund might be formed from this source to meet an immediate reduction of the export duty on cinnamon and the terms of agreement might be entirely adjusted when the rate of duty was declared.

11. Colebrooke had recommended this line of policy in 1832; but by 1840 its evils were all too obvious. In the years of Stewart Mackenzie's administration, the senior civil servants, not to mention military officers and some of the clergy (including the Archdeacon, the Revd. James, J. M. S. Glennie) invested in coffee and sugar properties and concentrated on their planting activities to the neglect of their official duties.

12. He had recommended this strongly in 1832 but neither the Colonial Office nor the Ceylon Government were inclined to accept it.

Some portions of the Gardens might also gradually be disposed of in small allotments suited to the means of native purchasers who understand the cultivation and preparation of cinnamon—and especially if reserves were made for the settlement of villagers where this class of persons might be induced to form communities, where skillful labourers might at all times be procured by the Planters. Any persons in this country who might enter into such a speculation should take measures to effect a reduction of the retail prices in the home market and some reduction of the Export duties in Ceylon ought not to be delayed.

Land Revenue:

On this subject I adhere to my former opinion that the land tax¹³ should be redeemable and I am glad to find that this measure has been in progress. Mr. Anstruther does not appear to have seen my observations on Mr. Cameron's report which are on record in the Colonial Office and on which Lord Goderich decided on approving the redemption of the tax and I would ask now to refer your Lordship to my minutes on the subject. I anticipate very great advantage from this redemption and I hope that every means will be taken to promote it.

I recommended that the tax should be made redeemable in twenty years by annual instalments but the local Government appears to have encouraged its redemption in eight years. The native landholders are thus enabled to relieve themselves from much vexatious interference and capitalists will be attracted who will improve the colony while a more effective revenue will be raised with greater economy through the customs.

Customs:

I think the 10% duty on goods imported from India ought to be gradually reduced as the trade with the neighbouring continent would thereby be encouraged and the Revenue ultimately augmented.

The import duty upon grain was first levied by the Madras Government in 1796, when the landholders resisted the augmentation of the Land Tax according to the continental mode of assessment. I think a gradual reduction of the duty desirable. The labourers who come over from the continent to cultivate Coffee and Sugar subsist altogether on imported grain which they prefer to that grown in the Island and so heavy a tax on their

13. Strictly speaking this was a Grain Tax; there was no Land Tax on commercial crops, not even on Coconut.

subsistence increases the price of labour and retards the settlement and improvement of the island. From the want of good roads the inhabitants of the coast and especially of the towns can import grain more cheaply from Coromandel and Malabar than they can obtain it from the interior of the island.

The regulation of duties and the reduction of the Salt monopolies in Ceylon and the continent as recommended by me should be a subject of negotiation with the Court of Directors and the Government of India. I refer in this subject to my reports and to a correspondence which was laid before Parliament in April 1834 relative to the Salt-Trade and especially to my letter to the Secretary of State of the 20th November, 1833.

The fiscal restrictions on the trade of Ceylon and continental India are equally unjust and unpolitic with those which once subsisted between Ireland and England and the removal of them should be attended with the same beneficial consequences which have been experienced here.

In regard to Sugar and Coffee which are now extensively cultivated I agree with Mr. Anstruther in the opinion that they are likely to be valuable exports if the foreign and slave grown sugars should not be admissible into England on equal-duties. I learn that a Company has been formed in this country who have already invested a large capital in the island for the purpose of raising these productions and I should recommend that an attempt be made to induce them to extend their views to the cultivation of cinnamon.

The duty on arrack ought to be fully sustained.

Expenditure :

I recommend that the annual heavy contribution of £ 24,000 to the military chest imposed in addition to other military charges should be relinquished as involving an undue pressure on the resources of the Island until these may be more fully developed.¹⁴

14. The military contribution of £ 24,000 was first imposed in 1837 at a time when the revenues of the government showed a small surplus largely because of a series of successful pearl fisheries. From then on till the mid-1840's the revenues of the government showed a perennial deficit and both Mackenzie and Sir Colin Campbell made regular appeals for the abolition of this military contribution but though the Colonial Office viewed these requests sympathetically the Imperial Treasury would make no concessions.

See, Tennent's *Report on the Finance and Commerce of Ceylon*, October 22, 1846 in *Reports on the Finances and Commerce of the Island of Ceylon*, (H.M.S.O. 1848), pp. 89-91.

The opening and repairs of roads and other public works of importance which were formerly executed with great injury to the inhabitants by Corvees must result in such relief to the local finances whereby the values of the lands will be augmented and their settlement promoted.

The improvement of the communications throughout the island will directly tend to increase the military security of it as a British possession and facilitate the reduction of the Garrison.

For the due preservation of the roads where they are liable to great and sudden injury from the effect of tropical rains I recommend that European soldiers should be allowed to retire on small pensions to be paid by the colony who should be stationed along the principal roads under engagement to execute all minor repairs.

The funds arising from the sale of Crown Lands will be inconsiderable until the country is rendered more accessible; and for the measures stated in my general report with a view to the protection and the encouragement of the native population who assert a claim to such lands though abandoned and waste I recommend that these funds be applied to the settlement of villagers in situations to be chosen as the most favourable for that purpose.

The sites for such villages should be reserved and after being cleared laid out and surveyed with the lands adjacent the allotments should be publicly sold.

As in my general report I recommended that the municipal regulations or bye-laws [sic] of the native villages should be recognised except where opposed in principle to the Laws of England to which a gradual approximation should be encouraged. I recommend that in the new villages and the lands adjacent including those possessed by European planters the English Common Law and Statutes applicable to the colonies should be recognised subject to future modification.¹⁵

These village communities should have the power to elect their municipal officers and should be held responsible for the police of their divisions.

15. In the margin an official of the Colonial Office made the comment that "This would surely involve difficulties incalculable;" At the bottom of the page he added the remark that "The great prosperity of the Principal settlements in the East Indies (Calcutta, Madras and Bombay) is undoubtedly in a material degree attributable to the superiority of the laws recognised in them and the confidence in their just administration by the Supreme Court."

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Such independent settlements would be attractive to the island and continental peasantry who are employed in the plantations and would facilitate the improvement of the colony by means which would effectively protect the rights of all classes and provide for the gradual introduction of improved habits.

The time has arrived when I think it is desirable that the Government should withdraw from all connections with the Buddhist Establishments of the interior and where it may be practicable to induce the applications of the funds of the establishment for the purpose of the education in the English language; the natives would thus be enabled to acquire the knowledge by which alone can be prevented the rapid declension of the higher classes and whereby all might qualify themselves for an improved State of Society which must be the consequence of the formation of European settlements in the island.¹⁶

With this view I entirely concur with Mr. Anstruther that an authority should be given for the alienation of Temple lands which are so well calculated for the formation of coffee and sugar plantations when the appropriation of the proceeds would be necessarily considered.¹⁷

I also concur with Mr. Anstruther as to the importance of having proper surveys of the lands executed and published with useful statistical information.

I regret to observe that although slavery is approaching fast to extinction—from slaves being hardly worth the cost of their subsistence—the number of slaves has not been diminished by redemption as recommended in my general report. From the very inconsiderable charge of four shillings and six pence for a slave in Ceylon this measure ought not be delayed and with a view to it an immediate registration should be made

16. cf. Mendis I, pp. 36-38.

It was in 1840 that the issue of the state's connexion with Buddhism under the terms of the Kandyan Convention first became a major issue.

17. At this time Mackenzie had introduced Ordinance 2 of 1840 which sought to prevent the transfer of lands into Mortmain and to permit the sale of Temple Lands with the Governor's assent. In his memorandum of November 23rd, 1840 Anstruther frankly admitted that this Ordinance was "much connected with the interests of the planters . . . Vast quantities of waste forest land are possessed by Temples as a sort of appendage to trifling spots of cultivated fields. These lands are of extremely little value to the possessors but are well suited to the cultivation of coffee and sugar, indeed nearly the whole of one of the finest provinces, Saffragam [sic] is thus locked up and reduced useless: if they could be alienated they could be speedily sold to the great advantage of the Public . . ."

Mackenzie's Mortmain Ordinance, though it eventually won the approval of the Colonial Office was never actually implemented.

of all persons held in slavery, where any title can be proved a registration fee to be imposed on each slave except where voluntary enfranchisement may take place.

In regard to the laws and their administration I cannot avoid recurring to the recommendation in my general report that the Governor should be withdrawn from participation in the discussions of the legislative council the ill-effects of which are noticed by Mr. Anstruther and by appointing the Lt. Governor to the Vice-Presidency in the legislative and executive councils this object may be effected by a simple instruction to the Governor that he should in future withdraw from the deliberations of the former, sending home with his observations the ordinances which may be passed or Bills rejected by him copies of all communications relative to them and the minutes of the proceedings of the Councils.¹⁸

Under this arrangement the Governor would be disposed to consult the executive council in regard to such measures as he might desire to recommend and which in respect to ordinances he should do by message to the Legislative council.

It is very important that a revision of the Criminal and Civil Codes should be effected in consent with the Judges and Law Officers of the Crown and that all laws which are repugnant in their principles to the laws of England should be abrogated. Such a law as that which recognizes a plurality of husbands ought at once to be repealed.

In regard to the administration of the law I transmit to your Lordship some observations on the Judicial Charter which I drew up in December 1832 but which I did not then submit wishing a fair trial should be given to the plan recommended by Mr. Cameron.

Mr. Anstruther who has perused these observations and expressed his general concurrence in them has inserted some marginal notes.

Strengthened by his opinion of the measures now required I recommend that Assistant Judges should be appointed in the Districts, to which situation the native assessors should be nominated where competent, that

18. The reference here is to the clash between Mackenzie and George Turnour the Acting Colonial Secretary on issues relating to the Anglican Establishment in Ceylon.

vide C.O. 54:179. Mackenzie's despatch to Russell, 69 of April 26, 1840.

See also, Anstruther's memorandum pp. 25-7, below.

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the local courts should make circuits of their districts and that the village juries under some modification should be directly associated in the administration of Justice.

With the object of giving efficiency to this ancient and popular institution I recommend that all persons who are qualified to be Jurymen should be duly registered and that juries of twelve whose verdict should be unanimous should be empanelled. According to ancient practice still observed in the villages all landholders attend, some of whom may be connected with the parties and may be witnesses in the case and as the 'ordeal' which was formerly a part of the system has been abolished some revision of the institution is required.¹⁹

I recommend also that Jurymen should cease to be classed according to caste and that all qualified persons should be registered and required to serve indiscriminately. This qualification in itself is highly appreciated by the native inhabitants.

The establishment of courts of conciliation in which the Assessors or the Headmen when qualified might preside—would also be very desirable and in order that the inhabitants might be induced to elect the most competent persons to be the heads of the villages, I recommend that such a court should be established in every village where the resident headmen should be deemed fit to hold it.

I recommend that a Grand Jury should be appointed at each of the principal stations where the assizes are held.²⁰

The value of this institution like that of the Petit Jury is not to be estimated alone in relation to the administration of Justice however important in this respect but in countries where the Government is administered without any direct responsibility to the people these institutions afford the most unexceptionable means and motives to them to improve their own character, an effect which has been fully recognised by the Judges in Ceylon.²¹

19. A marginal comment by an official of the Colonial Office, probably G. Gairdner, reads as follows: "The unanimity of twelve men in a Jury Box is in fact a mere compromise of opinion in order to reach some common conclusion and that compromise is formed not by the strongest reason but by the strongest will. Yet each man swears that he will give a true verdict—that is the verdict which he believes to be true. Should such a system be introduced where it does not at present exist? Could any [illegible] reconcile us to the existence of it here short of those many concurrent causes which have given to it a [illegible] in our minds?"

20. This suggestion was not viewed with much sympathy by the official who reviewed this memorandum. He made the marginal note that "Surely a responsible public prosecutor is to be preferred to this [illegible] irresponsible ignorant tribunal."

21. This argument did not convince Gairdner (?) who observed, in a marginal note, that he did not "understand this effect."

The different qualifications for the Grand and Petit Juries without impairing the latter, would hold out a convenient distinction to those classes who might object to be indiscriminately associated with the latter and as it would be an important function of the Grand Juries to make presentments to the courts of all public nuisances to visit the Jails and they would possess the means of ameliorating the condition of the people and improving these institutions in which they would have to interest themselves.

The association of the people of all classes who are not disqualified to deliberate on questions of the highest interest to Society, in the administration of the laws for the protection of life, liberty and Property hold out unquestionably a means of raising them in their own and the general estimation which no other Institution can afford and precisely because these functions are exercised gratuitously without withdrawing them from the ranks of society and in a manner to guard as far as human institutions can do against the undue influences which prejudice might occasion either in the Europeans or the natives.

I cannot conclude these observations without recommending that the utmost encouragement and protection should be afforded to those who are engaged in the religious and general instruction of the people and with this view that chapels and school-houses should be erected in the new villages proposed to be settled and allowances granted in aid of the establishments that may be formed by the societies which are instituted with this object or engaged in the conversion and instruction of the native inhabitants in our possessions abroad.

**Recommendations of W. M. G. Colebrooke for improving the
Administration of justice in Ceylon—drawn up in
December 1832 but communicated in January 1841**

For the future administration of Justice in Ceylon it has been proposed by Mr. Cameron that courts of original jurisdiction should be established consisting each of a Judge and three Assessors—the Assessors being chosen as the Jurymen are now in the Maritime Provinces.

This constitution of the Courts is improved and extended from the example of the local judicatures in the Kandyan Provinces where Native Assessors take a part in the Proceedings with the European Judge (Judicial Commissioner) at Kandy or the “Agents of Government” in the Provinces.

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It is justly remarked that these Assessors are selected from too small a class being Native Chiefs or Dissaves (sic) or Headmen designated "Mottales and Korales."

This class of chiefs are not in general so conversant with the laws and customs of the country as the Headmen of Villages who preside in another court to which reference is frequently made (especially in cases of dispute relating to land between the inhabitants of one village or of different villages). This Court composed of the Landholders of a village or contiguous villages is called "Gansabe" or the Village Court. I attended the proceedings of one which assembled near to Kandy, in a case of disputed Boundary which had been referred to it. The case had been appealed to the Governor against the judgement of the Judicial Commissioner and the Assessors in Kandy.

The Judicial Commissioner and some of the Government Agents have spoken of this Institution in terms of respect and of the confidence reposed in it by the people.

Accordingly it has been a practice although not expressly enjoined, to refer to it certain cases.

The Gansabe (sic) resembles the Indian Panchyat or Village Court of five but without the same limitation as to numbers. As the people are attached to their hereditary possessions in Ceylon and are extremely jealous of all encroachments on them, they retain by means of this Institution an important influence over all decisions concerning their lands, the utility of which the Higher Courts in which the chiefs are assessors, are disposed to recognise. The Dutch in their judicial arrangements for the Maritime Provinces established the Landraad Courts which in some degree resembled those now established in the Kandyan Provinces, except that the Landraad was a Court of Appeal in which the Native Judges decided by majority of votes.²²

All cases were in the first instance brought before the "Landregent" or European magistrate or before the Native Chief of a District, where no European resided. There was an appeal from his judgement to the Landraad—or assembly of chiefs in which the regent presided.

22. On the working of the landraaden see, Pieris, R. (ed.) "Administration of Justice and Revenue on the Island of Ceylon under the Dutch Government." (The Cleghorn Minute) *J.R.A.S.(C.B.) New Series, III, Part II*, p. 134. See also, *Ceylon Government Archives, Dutch Records No. 206*. The Minutes of the Council meeting of June 24th 1789 which contain a detailed set of instructions for the Landraaden. Disava de Coste's *Memoir on the Disavany of Colombo (1770)* particularly chapter III, and the Council resolutions and proclamations it refers to throw much light on the working of the landraaden.

These courts were expressly ordered "to investigate disputes and administer justice to the Natives in a plain and summary manner," and the regulations were revised in order to supersede the more expensive and tedious process "which had been introduced by the Proctors" and which has since prevailed also in the Provincial Courts established by the British Government.

By these regulations of the Landraad no reference is made to the Village Courts, but as the Dutch Government undertook to form a registry of the Lands, the object doubtless was to enable the Landraad to decide with accuracy in all cases of dispute about Land which are rendered complicated by the sub-division of property and the various tenures under which it is held.

The Registers (Thombos) were not completed and were subsequently neglected by the British Government and a law was made to render ten years undisturbed possession a valid title to land.

The principal advantage which the people derived from these minor jurisdictions was in a summary decision of numerous petty cases without the trouble and expense attending the reference to a distant court where the means of detecting fraud and imposition were not so great.

The institution of the Jury Trial is a great improvement in the administration of Criminal Justice, but the juries having been classed according to caste and having given their verdicts by a simple majority they are less efficient than they might have otherwise been. The Jury chosen has generally been of the caste of the person accused and where the Prosecution has been of another caste a jury has sometimes been taken from a third caste. The distinction of "Burgher," "Vellale," and "Fisher" Jurors has given a sanction to the prejudices of the people and tended to confirm them. The Burghers or Native Dutch partake of these prejudices and have been reprimanded in open court for the partiality of their verdicts. Although prejudices of caste prevail strongly throughout the Kandyan Provinces—in the village court composed of land holders the only distinction I observed was that men of superior caste were accommodated with higher seats.²³

23. On these problems see, Perera, E. W. "The Jury System in Ceylon: its origins and incidence." *Ceylon Literary Register*, 3rd Series, III, pp. 1-6. Digby, *Forty Years in a Crown Colony*, I, pp. 120 ff. *Report of the Proceedings of the Legislative Council—1843 Sessions*, pp. 121-156.

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The advantages which are acknowledged to have resulted from the Institution of Native Juries in the Maritime Provinces have been impaired by the recognition of these arbitrary distinctions. If a man is qualified as a jurymen he should be regarded as qualified to sit with others of a different caste, for if the exercise of these functions has tended to raise the character of the people it has been in proportion as they have learned to appreciate those moral distinctions which are at variance with caste.

The Courts proposed by Mr. Cameron will possess many advantages over those which have been hitherto established especially as it is proposed that the assessors should not be exclusively chiefs or men of superior caste. I would recommend however that the proceedings of the District Court should be conducted in a summary manner and that the Institutions to which the people are attached should not be superseded.

The practice prevailing in some Districts of allowing the inhabitants of villages to nominate their headmen ought to be regulated and extended throughout the country—and by allowing the people to refer their petty disputes to his decision assisted by a village jury—they would in many cases be satisfied without appealing to the regular courts. That such a jurisdiction would be generally satisfactory to the people is abundantly proved—and in cases where parties might be dissatisfied, they would have the opportunity of appealing to a higher Tribunal.

There is one principle in the Dutch system which it might be useful to revive. I allude to the amicable adjustment of disputes which it was the duty of Judges to enjoin on the parties and to endeavour in all cases to effect by arbitration before the trial came on. Whatever tends to compose differences, to arrest animosities and to save the time and money of the people must tend to the public benefit. In consequence of the more tedious and expensive system introduced by the British Government in the Maritime Provinces there has been a great increase of quarrels and assaults—the people in remoter parts of the country often settling their petty disputes by strife without referring to the courts at a distance. When they have confidence in the headmen they will sometimes refer their differences to his arbitration.

Anstruther's Memorandum of November 23rd 1840

9 Holles St. Cavendish Square,
London, 23rd November, 1840.

SIR,

Understanding that the Right Honorable the Secretary of State would not be unwilling to receive from me a Report of the present condition of Ceylon, I have drawn up a Memorandum upon the condition of that Colony, which I fear is very imperfect but which I beg to submit for his Lordship's consideration.

I have &c.

Signed/P. Anstruther.

The Under Secretary of State,
Colonial Department.

Although many years have now elapsed since the date of the Commissioners' Reports upon Ceylon,²⁴ the state of the Colony is now very much altered, mainly indeed in consequence of their recommendations: and though it can hardly be denied, that the administration has been most materially improved in almost every particular, still there are very many subjects requiring the attention of the Home Government.

Public Service:

Perhaps the most important subject is at this moment the condition of the higher branches of the Public Service or as it was formerly called the Civil Service. I wish to avoid as far as possible the designation for it tends to foster among the gentlemen to whom I refer notions of exclusive privileges and a title to promotion on ground of seniority, which has among other things tended much to bring the Public Service to its present wretched condition in point of efficiency. No Governor can do justice to the Colony with the very inadequate support which he now receives; and the necessity of some amendment has become most pressing; but the discussion of the

24. The reference is to the reports of Colebrooke and Cameron.

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best means of effecting any amendment has led me into so tedious an enquiry that I have transferred the whole to a separate paper²⁵ as the only mode of bringing this Report within such a Compass as I could expect your Lordship to find leisure to look into.

Revenue. General Remarks:

Although the Revenue of Ceylon is at this moment somewhat cramped, owing to the bad state of the Cinnamon Trade, and the suspension of the Pearl fisheries, I think there can be no doubt of its proving most ample in a few years under the new System of uniform and moderate custom duties.

The great resort of Europeans to Ceylon and the large expenditure by them in the cultivation of Coffee and Sugar, and if the Duties are placed on a similarly liberal footing Cinnamon, will speedily render it one of the richest of our Colonies. It must now flourish under almost any circumstances but it deserves the most careful attention of the Government at this period when its advances are so rapid, and among other points I would earnestly urge that it should not at this moment be burdened with a charge which it cannot bear—viz. the contribution of £ 24,000 to the Military Chest which compels a rigid and ill-timed economy, and prevents the execution of the most important public works. How for instance can it be expected, that speculators will purchase Waste Lands if not only, there is no prospect of new Roads and Canals being opened, but there are not funds to keep up those which are already made?²⁶

Land Revenue:

The Land Revenue does not in Ceylon bear the same large proportion to the whole, that it does in India. It increased very materially after the abolition of compulsory labor. Mr. Cameron one of the Commissioners of Enquiry gave in after his return a paper advocating that, as the least burdensome mode of raising a Revenue, a theory in which with the utmost respect for his talents I cannot concur.

25. This "memorandum on the present condition of the Ceylon Civil Service" (November 23rd 1840 in C.O. 54:185) made a considerable impression on the Colonial Office: indeed it convinced the officials there that civil service reform in Ceylon was urgently needed.

26. James Stephen commenting on these remarks of Anstruther's noted that "There is no other colony except Malta and Gibraltar which contributes anything to its military defence. except that here and there as in Jamaica local allowances are made from the Colony to indemnify the Troops against the increased expenses of living. I do not know the ground on which Ceylon is made the exception unless it be that there is no popular legislature to remonstrate against it."

C.O. 54:185. James Stephen's minute of November 23rd 1840 on Anstruther's memorandum.

There is an operation now in rapid progress, which perhaps has hardly attracted the notice of the Secretary of State, important in many respects, not only as a financial measure, but also as connected with our Indian system of Revenue which is conducted upon very opposite principles, viz. the redemption of the Tax upon cultivated Land.

Every exertion has been made to encourage the Natives to redeem it upon the most moderate terms, and latterly with great success; that source of Revenue is therefore likely to cease in a few years and I am persuaded with great advantage to the Colony.

About the period of my Appointment to the present office, I believe that this revenue, being levied in kind, yielded almost nothing, after payment of expenses; it was subsequently much improved by receiving it in money, and again by commuting it for a fixed annual payment, but still it is a Revenue levied with difficulty. I believe that by encouraging agriculture as well as by getting rid of the Revenue establishment kept up for its collection the Government will indirectly gain more than it will lose by its redemption, and I trust it will have a most important effect in encouraging the resort of Settlers from the Continent of India. The great defect of Ceylon is a scanty population but emigration from India is yearly becoming extensive, and I believe that it will become very much more considerable when attention is drawn to the circumstance of Ceylon being exempted from a Tax, which in India eats up so enormous a portion of the produce of the land.

A few years ago a general revision of the Customs duties was effected. A Minute of the Executive Council which was sent home, will shew the immense reduction made upon many articles—the principle adopted with some exceptions is a general Export Duty of $2\frac{1}{2}$ per cent and Import duties 4 per cent ad valorem on Imports from Europe ten per cent ad valorem on Imports from India.

The success of the measure has far exceeded my most sanguine anticipations, not only in the Revenue being in no way diminished even at first by the General reduction of duties made, but also in the facility, with which ad valorem duties are levied, a measure in adopting which I received no encouragement from any of the Customs House Authorities.

But there are some Duties still requiring alteration; although I was convinced that the measure adopted was founded upon sound views, the alterations were so sweeping and hazarded so considerable a Revenue, that

I was afraid to touch the Import duty upon grain, yielding if I recollect right about £ 25,000 per annum. I regret that I did not. An ad valorem duty upon grain, I consider very objectionable, but if the present fixed duty were diminished one half—I think it is now equal to about 15 per cent in average years—the Revenue would not be materially affected even at first, and great relief given. Had I been consulted I would have advised this being attempted before abandoning the fish Tax, for though a wise and beneficial measure the whole revenue is lost, whereas the measure I now recommend being a reduction, there would probably be no ultimate diminution of revenue. The fish tax also had already been greatly reduced.

There is also at this moment a strong feeling if I may judge from the public papers against the high duties said to be imposed upon Imports from India to Crown Colonies.

I have never perceived any disposition on the part of the Indian Government to look upon Ceylon with favour, but rather the reverse, and those who make complaints that the East India Company's subjects are treated as foreigners, seem to forget that in other cases they claim to be treated in some measure as foreigners, for instance in being exempted from the prohibitions connected with our Navigation Laws, but in the case of grain, the staple commodity, a considerable concession might be made with advantage to Ceylon.

Duties upon Imports from India.

The complaint which I have noticed refers more particularly to the duty of ten per cent upon Imports from India; a few years ago, the European Merchants, wished to make out that their Trade was ruined by bringing the duties even so low as 10 per cent.

I do not think we could afford to equalize the duties on European and Indian goods, but we could make some considerable concession, if we were secured an equivalent, particularly, by the admission of our salt to Bengal, a measure which I am persuaded would be even more beneficial to the Indian Revenue than ours—for salt can nowhere be procured so cheaply as in Ceylon, and above all not in Bengal.

Cinnamon.

I except from my general approval of the duties, the duty upon Cinnamon. This is one of the few instances in which the late Governor Sir R. W. Horton acted in opposition to my views and the consequences have proved most unfortunate.

He was persuaded that the monopoly of Cinnamon was very beneficial, while on the contrary I entertained the opinion (which I expressed to the Commissioners of Enquiry) that all their meditated reforms would not avail unless that monopoly were abolished); the consequence was that the measures for its abolition were never heartily carried out.

I understand the present high duty to be defended upon two grounds.

1st That Ceylon has a natural monopoly and therefore the Government may level any duty it pleases.

2nd Cinnamon is so peculiar an article that a reduction of duty would not lead to any increase of consumption.

The first assumption is not without its exceptions, and those exceptions promise every year to become more important.

The second is an assumption that Cinnamon is so peculiar an article that it is a solitary exception to an otherwise universal rule in Political Economy.

What information I have been able to obtain does not lead to the conclusion that it does constitute an exception, and those who are of that opinion have never produced any evidence beyond their own assertion and a theory of a distinction between the articles of luxury and articles of necessity which I think has very little foundation.

My opinion will I fear be thought somewhat startling and may diminish any little weight to be attached to my recommendations, but I do not recommend its being just now fully acted upon.—It is that there is no good reason why Cinnamon should be subject to a higher duty than anything else, and therefore the Government ought to look to a gradual reduction until that is effected which need not be in less than from 10 to 20 years.

The original instructions from the Treasury for the abolition of the monopoly were very wisely conceived with this exception—and at the time I approved also of the rate of duty.

Sir R. W. Horton approved of the duty thinking it would secure a monopoly.

Reduction of Cinnamon Duty.

I advise most strongly the immediate commencement of a gradual reduction of duty—The immediate reduction ought to be considerable, and made extensively known, as well as the ultimate views of Government.

I fear that no measures now practicable can recall to this Article of Produce that attention and disposition to engage in its production which the first news of the monopoly being abandoned excited—any reaction will now be much more gradual, and for some years it is not improbable that the Cinnamon Revenue will be even less productive than it now is.

Sale of the Cinnamon Gardens.

But if there is the smallest prospect of such a reduction being effected no time should be lost in sending out orders to suspend the sale of the Cinnamon Gardens; they are now selling, I understand for almost a nominal value.

If they had been sold in compliance with the first Treasury Instructions, high prices would have been given and still they would sell much higher than they are now selling, under an assurance of the duty on their produce being reduced. This is not the first time that a mistake of this sort has been made in Ceylon—The Government of Mr. North lost to Ceylon a most valuable Trade in Arecas by imposing enormous duties under a belief that a natural monopoly existed, and his successors nearly ruined the Tobacco Trade in the same way. The duties on both articles are now reduced to $2\frac{1}{2}$ per cent, but too late I fear ever to repair the mischief that has been done.

Customs.

I have no doubt the Customs Revenue must increase annually; the Trade has greatly augmented since the imposition of the new scale of Duties; the exports of coffee and sugar promise to be most important, if the restrictions against foreign and Slave grown produce are continued; and the Imports must increase at the same time.

Arrack.

Of the other branches of Revenue the duty on the consumption of arrack is very productive; it increases annually and will continue to do so with the increase of population and the expenditure of Planters.

Salt is also very important. It is a branch of Revenue frequently objected to, but I do not think that it bears heavily upon any one, or that

so considerable a sum could be raised in any other way, so little oppressive; some measure should if possible be devised for allowing it to fish-curers free of duty.

It may be a question too, whether the Revenue would suffer, by a reduction of price, my impression is that it would, that is to say the present rate of duty is not such as to check consumption, but the question deserves further consideration.

Before I left Ceylon, I had made an arrangement in concert with that most excellent public servant, the late Mr. Gisborne for altering in some respects his mode of collecting the salt duties, by rendering it less of a monopoly and making salt more available as an article of internal trade, the principal feature of which was to abandon the monopoly of the retail and consequently to save the expense of transport to the Provinces where salt is not produced, and the expense of Store houses in those provinces. The plan has I believe entirely miscarried—I still think it was right in principle and with proper management ought not to have miscarried.

Salt is naturally found in many parts of Ceylon, and manufactured at a very low price in others—It is an object of great importance to Ceylon that it should obtain a market for salt in Bengal, if this were done it would soon become a most important article of Trade, affording employment to thousands in the poorest and least fertile districts, and I am convinced with great advantage to the Indian Revenue.

I am not able to point out any new sources of Revenue, and indeed I hardly think after a few years have passed they will be needed.

The Revenue from the Pearl Fisheries ever has been, and I fear ever will be but casual—looking back even to the earliest records, I find that one or two good fisheries were always succeeded by an unproductive interval of 15 to 20 years. The late fisheries were spread over a greater number of years, and were quite as productive on the whole as any of the former fisheries, principally from our having succeeded in abolishing the monopoly of an influential body of Natives, but we quite failed in our endeavour to substitute a continued succession of small fisheries for occasional great ones.

Expenditure

Civil Engineers:

I do not think that any diminution of the expenditure can be looked for—the necessity of going before the Legislative Council will cause estimates to be carefully looked into and less hastily sanctioned than heretofore; large sums have been laid out in the Civil Engineers Department, but not more than is called for by the growing wants of the Colony, but that Department requires carefully to be looked to and rigidly controlled. A very great proportion of the money laid out of late years has been inefficiently applied and wasted—I hope the Civil Engineer Mr. C. E. Norris will render his Department more efficient in future.

Public Servants:

Some increase of expenditure I think must be looked for, for the payment of public servants whose salaries are in many instances too low to secure efficient service—also probably for Police. In a very few years the Revenue will be amply equal to every demand and indeed now it would with economy meet the expenditure, in spite of the depressed state of the Cinnamon Revenue were it not for the contribution of £ 24,000 per annum to the Military Chest imposed upon the Colony. Since that contribution was imposed, two regiments have been given up, and yet it is not relinquished—although I believe no other Colony contributes so large a proportion to the Military expenditure as Ceylon.

At present the contribution is absolutely ruinous to the Colony by preventing the execution of public works urgently required and cutting off the Funds required to keep up the roads already made. At the same time the object had in view will not be answered, for if the surplus Revenue is not sufficient to meet this demand debt must be incurred, and an application to Parliament for Relief will become inevitable.

The public service too suffers by compelling such a degree of economy in the payment of Public servants that the character of the service is materially deteriorated and ten times the salary saved is lost through diminished efficiency in the collection and less economy in the expenditure of the revenue.

It is undeniable that there was great room for economy and reduction prior to 1833, and no one saw this more strongly or enforced reduction more zealously than I did, but it has been carried much too far.

Proposition for its modification.

If Her Majesty's Government will not consent to relinquish this contribution altogether I beg to submit for consideration an arrangement which would impose upon the Colony the heaviest burthen practicable to be enforced without resorting to ruinous economy or incurring debt. My proposition is to fix a minimum of expenditure, to defray which the revenue should be applied in the first place, and to appropriate whatever surplus revenue there shall be after defraying this minimum charge, half towards the liquidation of the contribution to the Military Chest and the other half to the pressing demands of the Colony.—Without some such relief serious injury must accrue to the future prospects of the Colony. In a Colony nearly as large as Ireland waste lands to a great extent are selling daily—already complaint begins to be made that it is difficult to find Land fit for sugar and coffee near the high roads—and how can a planter be expected to purchase Lands to which there is no reasonable prospect of a road being opened?

Councils.

The newly established Councils are yet new to their duties and will doubtless work better upon further experience.

The Legislative Council has I think operated usefully so far as it has yet gone, it will prove of considerable use in securing the better consideration and examination of estimates—as well as for the improvement of the system of Legislature. I do not think that any alteration is needed.

The composition of the Executive will I think be improved by the substitution of the Auditor General, for the Government Agent in Kandy—but the advantage of that alteration depends much upon the intentions of H. M's Government. If it is desired that the Governor should live a considerable portion of the year in the interior, and that he should always act with the advice of any two Members of Council then the Government Agent at Kandy being one, with the Colonial Secretary who would probably be at the same station with the Governor would afford the means of always having two of the Executive Council in Kandy without calling any one from his duties for that purpose, but if the Executive Council is to sit principally as it has hitherto done in Colombo then the Auditor is preferable; in the former case the Governor would have at Kandy a Council somewhat different from that at Colombo—much also must depend upon the intended functions of the Council, a point upon which I understand

considerable doubts have recently been entertained in Ceylon and it is one upon which I am myself in some doubt. There has been some variation in the wording of the Governor's instructions on this subject. The first instructions to Sir H. W. Horton²⁷ on the change of system, commanded that the Council should be consulted in all things and appeared to intend that the Executive Council should rather resemble the Councils at the Indian Residencies; the later instructions are less imperative.

From the institution being in some degree new the system is unsettled: in general the Council has been little consulted and appears to have been less used as a Council of advice than in some other Colonies. If it is intended that the Executive Council at Ceylon should resemble that at New South Wales I think it would be useful if some volumes of the records of Council there, or in some of the other similar Crown Colonies should be sent out as a guide.

In reference to some late occurrences at Ceylon I would observe that as a general rule it is inconvenient and unseemly that the Members of the Executive Council and particularly the Colonial Secretary should vote in the Legislative Council against the Governor.²⁸

The Governor ought, as far as possible, to avoid taking a personal part in the debates in the Legislative Council, but when such differences do arise it is a subject deserving the attention of the Secretary of State for there must be something wrong somewhere.

All matters coming before the Legislative Council ought to be previously discussed in the Executive and the opinion of the majority (the Governor voting) should, as a general rule be binding upon the minority, so far at least that they should be precluded from voting against the Governor or Government measure, any dissentient Member will have recorded his opinion in the Executive Council for the Secretary of State's information.

A Governor would not in general act wisely in bringing forward a measure opposed by a majority of the Executive Council, but I think nothing but the strongest necessity would render it prudent in the Executive Councillors voting against even such a measure.

27. see, Mendis I, pp. 305-319. The King's Additional Instructions to Governor Horton. March 20th 1833, particularly paragraphs 36 to 39.

28. The reference is to the clash between Mackenzie and George Turnour, the Acting Colonial Secretary on issues relating to the Anglican Establishment in Ceylon.

See, C.O. 54:179. Mackenzie to Russell, 69 of April 26, 1840.

See also, Colebrooke's memorandum of December 31st 1840, p. 10 above.

I am inclined to think that it would be well if some system were arranged for the Executive Council being consulted upon all matters of any importance as a matter of regular routine, instead of their being now and then summoned for a special purpose.

I observe that in New South Wales the Governor appears to come before the Executive Council pledged to no opinion and appears to hear first the opinions of the Council before forming his own.

I am bound to say that with the most anxious desire on my part that the business of the Colonial Secretary's Office should be transacted as speedily as possible I found it impossible to ensure references being answered as punctually and quickly as I desired.

If all matters were to come before the Executive Council this delay would be increased; on the other hand business is more rapidly and easily disposed of by the Governor and Colonial Secretary alone when they agree upon any measure, but useful opinions will some time in that case be lost, and there is an awkwardness in going to the [Executive] Council only when they differ.

It is hardly necessary to add, what these remarks will prove, that I do not clearly see my way in this matter. I see that the present arrangement is attended with difficulties, which I apprehend have much increased since I left the Colony—and I am unable to suggest a satisfactory remedy. Where a Governor is well-fitted for his office and has acquired an intimate knowledge of the Colony, perhaps he would execute his duties more efficiently without a Council—but this is hardly possible considering how frequent Governors are changed, and a new Governor hardly ever has any previous acquaintance with the Colony. In this respect I think Ceylon, having a very large native population with peculiar laws, language and interests, differs much from any other Crown Colony and is more in the situation of the Indian Presidencies. I think it would often be of great use to the Secretary of State if he had it in his power at all times to learn the opinion of the Executive Council on all matters brought before him—it may happen (indeed I think I may say it has happened) that the Governor makes a proposal to which the Secretary of State sees no objection, but to which he would object if he heard what might be said on the other side. In any case by seeing the opinions of the Executive Council upon every proposal made, the Secretary of State would have fuller information and would

decide with greater confidence. I recollect that a few years ago Lord Glenelg said, in reference to a number of Legislative enactments sent for H.M.'s sanction, that every objection appeared to have been suggested and so fully discussed that he had no difficulty in deciding—whereas if this had not been done they must have been referred back for information. This was the result of a rule I always followed (and which seems in my absence to have been abandoned) of getting the reports of all the principal functionaries conversant with the subject upon any proposed Ordinance, and the most valuable of these opinions were considered and sent home—these views might I think be applied to propositions made by the Governor to the Secretary of State.

Laws

Criminal Law.

The state of the law, civil as well as criminal, requires serious attention. In regard to criminal law nearly all punishments are arbitrary—The Charter refers to a Code of Criminal Law to be enacted, and till such a code is framed it is in some degree imperfect. I had considered the subject with the late most able Justice Stoddart and I do not think that it would be very difficult to prepare such a code as is required in Ceylon—but our other numerous avocations and the great difficulty under which I labored from the want of any competent Law Officer of the Crown, in consequence of which the duty of drawing the Legislative Enactments devolved upon me, put it out of our power to undertake it—A general Police Act is also much needed.

The preparation of any digest of the law in Civil matters presents much more serious difficulty—It is very difficult indeed to say what the law is upon any question or where it is to be looked for—there is the Roman Dutch law, old custom, Local laws, separate Codes for the Hindoo and Mussulman population, and in the interior the Kandian law—many of these, the Judges of the Supreme Court (the Judges in appeal) have no means of knowing.—I doubt if any one Judge or law Officer of the Crown is perfectly acquainted with the numerous and intricate local laws relating to the tenures of land: many of the laws are injurious and ought to be altered—for instance in certain districts a man may render himself virtually a slave by mortgaging his services till he repays with exorbitant interest some loan which he can never hope to repay.

There is a most injurious tenure of land: Viz—Entail in equal subdivision upon all male heirs—a tenure very injurious to agriculture but which, with the consent of the Crown might be legally abrogated. The title of Government to waste land is becoming doubtful through decisions contrary to the genius of all eastern law, which recognises the Sovereign as the original proprietor of the soil,—and throws the onus of proving a title upon those claiming against the Crown.²⁹

The Kandyan laws too recognise a plurality of husbands as far as any definite law of marriage exists at all.

To draw up any collection of the laws as they now exist, and still more when they are collected, to revise the whole and prepare one uniform (as far as practicable) and rational code, will be a task of considerable difficulty, yet it seems urgently necessary. I think however the Judicial establishment, now is strong enough to make the attempt, both the Judges of the Supreme Court, and the Law Officers of the Crown have some leisure time, particularly the former.

The laws of inheritance too require revision or at least serious consideration, for some persons I believe would consider them incapable of amendment—The subdivision of property in consequence of the state of the law is carried to an extent I believe quite unprecedented; there are thousands of landed proprietors whose interest in the land could not be valued at six pence—for instance the owner of 1/16th or 1/32nd of a Coconut tree, the full value of which is from six to eight shillings—a state of property most prejudicial to the interests of agriculture.

Prospect of Ceylon.

I will now advert to the future prospects of the Colony in respect to which a very great change has taken place within the last few years. I

29. The reference is to certain decrees issued by the District Judge of Tangalle on matters relating to waste lands. Where previously all lands to which private individuals could not prove a competent title were considered to be the property of the Crown, the District Judge of Tangalla in 1837 held that it was necessary for the government to prove its title to such land. This decision was confirmed in D.C. Tangalla cases 659 and 675 of 1838 where the Maha Mudaliyar—at that time an Illangakoon—laid claim before the District Court of Tangalla to about 8000 acres of land supposedly the property of the Government and including the Kahanaduwa lewaya in the Giruwe Pattu of the Tangalla District. The Maha Mudaliyar intended to take advantage of the rule laid down in 1837 to compel the Government to prove its title against him. The Court decided in his favour, and set aside the claims of the Crown to these lands.

The correspondence on this issue is available in C.O. 54:180, Mackenzie to Russel, 121 of 31st July 1840. For a fuller treatment of this subject see, my article "Studies in British Land Policy in Ceylon I:" "The evolution of Ordinance 12 of 1840 and 9 of 1841," in *The Ceylon Journal of Historical and Social Studies*, VII, 1 pp. 28-42.

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think there is now every reason to expect that Ceylon will become the most important of our Colonies, she has every advantage, more it appears to me, than any West India Island ever possessed—A climate on the whole healthy—abundance of free labor at a cost comparatively trifling as opposed to Slave labor, tho[ugh] much higher than in any part of India as yet.—There is the most unusual advantage of a product of great value peculiar to itself (if only it be not prevented by restrictive duties from making use of this most important advantage)—I mean Cinnamon—The soil and climate is proved beyond dispute to be peculiarly favourable to Coffee, and its cultivation is attended with very great profit. Most of those who have hitherto embarked in the cultivation have realised great profits and now recent experiment is said to have established the fact that the cultivation of sugar will be attended with still greater success—with enormous tracts of uncultivated land, Ceylon appears capable of itself to supply any deficit which failures in the West Indies may cause. The soil and climate appears equally to favour the nutmeg.—With all these advantages Ceylon must, if no untoward event arrest its progress, soon become the most valuable of our Colonies.

I believe it is considered of peculiar importance at this particular juncture that the discovery has been made that we have such a valuable possession—and I am sure it will richly repay the watchful attention and encouragement of the home Government. It has I am convinced been hitherto kept back by misgovernment and nothing else—much has been done of late years to reform its administration and with the most remarkable success but no pains and attention ought now to be spared to accelerate its progress. I do not think that now any measures are very necessary to bring Ceylon into notice—It does, I believe attract sufficient attention—and it promises to be covered by Planters.

Some steps are, however, practicable for this arrangement.

I have already mentioned the high price of labor as compared with the Continent of India. It is of importance that this should as far as possible be remedied: one important measure I have suggested, the reduction of the duty on grain—and this, as I have said I believe could be effected without hazard to the revenue.—The resort of laborers to Ceylon from India might also perhaps be further encouraged. Before I left Ceylon a measure was adopted with that view which I believe has been very successful—viz the establishment of a ferry-boat for the gratuitous transport of Natives between the Islands of Mannar and Rameswaram—this might be further encouraged.

But one of the most important of all measures is the further extension of roads, and this cannot be done if the present heavy payments into the Military Chest are insisted upon.—Ceylon possesses vast tracts of waste land suited to the growth of Coffee and Sugar, but already settlers begin to complain that the best lands near the roads and the navigable rivers have been bought and that ere long settlers must select lands distant from all communication—It is of infinite importance that this difficulty should, as far as possible be removed.

Much inconvenience is felt from the great delay which takes place in the preparation of Surveys, which renders it impossible to sell the lands at the end of the fixed period of three months notice, nearly twice that time is consumed in preparing a survey—This evil requires a remedy by rendering the Survey more efficient.

While on this subject however it is not perhaps wrong to mention a circumstance which appears to me to require the direction of Government my impression being that the practice in Ceylon differs from that in the New South Wales and Canada.—When a settler in Ceylon selects land he marks out exactly the spot of good land suited to his purpose omitting any bad land which may run through it; my impression is that the lots should be as nearly as the features of the boundary will admit, in squares taking good and bad land as it may chance to be. Purchasers also fix the size of a lot; I do not know that there is any thing to prevent one individual asking to have 50,000 acres put up in a single lot. My opinion is that lots should never be larger than one square mile.

I have recently been informed that an Ordinance the object of which was to prevent the transfer of lands into mortmain and for permitting the sale of temple lands with the Governor's assent, is much connected with the interests of planters.³⁰ The circumstance did not occur to me when my report on the Ordinance was called for and the information sent home with it was so meagre that there was nothing to call my attention to it.

Vast quantities of waste forest land are possessed by temples as a sort of appendage to trifling spots of cultivated fields. These lands are of extremely little value to the possessors but are well suited to the cultivation of Coffee and Sugar, indeed nearly the whole of one of the finest provinces, Saffragam is thus locked up and rendered useless if they could be alienated

30. See above, p. 9.

would be speedily sold, to the great advantage of the temples, and cultivated to the great advantage of the Public, and in my opinion the power so conferred upon the Governor to authorize the alienation of Temple lands does not exceed the powers exercised by the Kings of Kandy and therefore can be considered no invasion of the rights of the temples, or departure from the intention of the donors. I should have thought the exercise of this power by the Government legal under the Kandian law without the necessity of a special Ordinance.

Slavery still exists in Ceylon though in a very modified form and approaching fast to extinction. The population returns shew a very considerable number of slaves. I think from 18,000 to 20,000, but I suspect that a close examination of the registers would lead to a very great reduction of the number.

Many years ago when holding the Office of Judge of Trincomalee, I was enabled to have nearly all the Slaves in that District declared free by investigating the titles of the supposed owners. It was found upon examination that so many penalties and forfeitures had been incurred through total neglect of the registration laws that the owners were glad to emancipate all their Slaves to escape further inquiry. Their loss by doing so was very trifling: nearly all the Slaves now remaining are in the Northern Provinces where labor is particularly cheap and Slaves are consequently hardly worth the cost of their subsistence. Great numbers are therefore totally neglected by their owners and are practically free; much land has been brought into cultivation by this class, it seems therefore that Slavery will soon become nearly extinct from total neglect—Labour being cheap in that province and the removal of Slaves to the interior where labour is much dearer, being prohibited by Law.

Some years ago I made Particular inquiry into the state of Slavery in the Northern Province with the view of causing the process which I had adopted with so much success at Trincomalee to be attempted there: but I was advised by those best acquainted with the subject to allow it to be neglected a few years longer as every year augmented the number of those entitled to freedom from non-registration and in general Slavery was little more than nominal.

The arrival of Mr. Justice Jeremic in the Colony was for a time productive of some ill effect—Slave proprietors fancied that his appointment must have something to do with Slavery and began to call in their Slaves

and look to their titles in the hope that some measure of emancipation and consequent compensation was in progress.

Slavery was much harder in the Central Province and perhaps is so still; the state of Slavery there was much to be lamented, and still it is I fear much harder than in the Northern Province; Slave owners in the Central Province could not be prevailed upon to assent to any measure of emancipation however gradual and in consequence of their repeated refusal I drew up a registration Act which passed some years ago and which has led to the emancipation somewhat unexpectedly of a great proportion of the Slaves.³¹

Many of the Slave holders took alarm at the strict investigation of titles which the Act prescribed before registry—And one of the principal Chiefs having volunteered to emancipate his Slaves—for which the Government presented him with a Gold Medal worth 100 guineas—the example was extensively followed.³²

Religion.

The Buddhist do not appear very warmly attached to their religion, particularly in the interior—the Priests have little or no influence and on the whole the population is in a condition not unfavourable to conversion. But a question of a serious nature which has already arisen in India promises soon to become of consequence in Ceylon—I mean the connexion of the Government with the Buddhist religion.³³

I think that certainly the Government ought to withdraw itself from all connexion with heathen worship and the proposition made some years ago by the Secretary of State that the funds of decaying temples should be made available for education, deserves more serious attention than I believe it has met with. I apprehend no difficulty from the question if it is managed with temper and prudence, but I need hardly say that it is one which might excite the feelings of the population to a dangerous extent if it should be dealt with harshly or imprudently. If therefore the question should come before the Secretary of State I would recommend great caution in dealing

31. Ordinance 3 of 1837 provided for a triennial review of the slave registers of the Kandyan areas.

32. In 1838 Doloswala Dissava of Sabaragamuwa freed his slaves, 39 in all, In recognition of his generosity, and as an example and encouragement to others he was awarded a gold medal worth one hundred guineas.

33. On the campaign against the Pilgrim Tax in India, and against the "connection" of the East India Company with Hinduism, see Ingham, K. *Reformers in India*, (Cambridge University Press, 1956) pp. 33-43.

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with it and that the necessity of a cautious and gradual course of policy should be impressed upon the Governor such has hitherto been on the whole the policy of the local Government and perhaps the time has come when measures of this nature may be properly accelerated, but I must observe that under a system of studied indifference as to caste and religion but no approach to persecution, a similar indifference has grown up among the inhabitants and the people are now quite open to the general spread of the Christian faith, but any appearance of decided hostility on the part of the Government might, as it has ever been the case, create a very opposite spirit among the people.

Education.

I have already had the honor of submitting a report upon the subject of education. It is much to be lamented that the finances of the Colony will not admit of sufficient funds being devoted to this most important object.

The desire of education and particularly of acquiring the English language is now become so great among all classes in Ceylon that an almost unexampled opportunity now offers of rendering English the language and Christianity the religion of the Country.

The universal diffusion of Education and intelligence (I speak in some measure comparatively with the present condition of the people) would prodigiously accelerate the advancement of the Colony. I do not think that sufficient efforts are made to diffuse the English language, and I am confident that if English Schools were established to a sufficient extent the English language would soon be generally spoken in the Country.³⁴

(SGD.) P. ANSTRUTHER

K. M. DE SILVA

34. In 1840, Governor Stewart Mackenzie sent home a scheme of educational reform which gave considerable prominence to education in the vernaculars. See, C.O 54:181. Mackenzie's despatches to Russell 124 of August 10th 1840 and 135 of August 12th 1840. When these recommendations were sent to Anstruther for his comments (he was on leave in England at this time) he came out strongly against education in vernacular; indeed his was the decisive voice in the rejection of Mackenzie's scheme of educational reform.