

CORRESPONDENCE

Relating to

RECENT LAND LEGISLATION IN CEYLON

CEYLON.

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Presented to both Houses of Parliament by Command of Her Majesty.
June, 1899.



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1899.

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TABLE OF CONTENTS.

Serial No.	From or to whom.	Date.	Subject.	Page.
		1897.		
1	Governor Sir J. West Ridgeway.	March 18 (Rec. April 12).	Submits "An Ordinance relating to Claims to Forest, Chena, Waste and Unoccupied Lands" (No. 1 of 1897), with the Attorney-General's report, a letter from Mr. C. J. A. H. Le Mesurier, and a memorandum thereon by the Treasurer.	1
2	To Governor Sir J. West Ridgeway.	July 7.	Transmits, for consideration and report, copies of a petition to the House of Lords from certain owners of land in Ceylon, and a memorandum by Lord Stanmore; no advice will be tendered to Her Majesty respecting the Ordinance submitted in No. 1 pending the Governor's reply.	32
3	Governor Sir J. West Ridgeway.	Oct. 15 (Rec. Nov. 15).	Replies to Lord Stanmore's objections to the Ordinance, and encloses memoranda by various officials.	39
		1898.		
4	To Governor Sir J. West Ridgeway.	June 10.	Transmits a further memorandum by Lord Stanmore and one by Mr. Layard commenting thereon; sanctions the Ordinance and suggests certain amendments; asks for a report as to how far the clauses of Chapter 3 of Ordinance 10 of 1885, relating to village forests, have been utilized and have produced beneficial results.	66
5	Governor Sir J. West Ridgeway.	November 18 (Rec. Dec. 12).	Furnishes report asked for in No. 4 respecting the effect of the clauses in Chapter 3 of Ordinance 10 of 1885, which relate to village forests.	75
		1899.		
6	Ditto	Dec. 13, 1898 (Rec. Jan. 2, 1899).	Submits, with explanations, draft of an Ordinance to amend Ordinance 1 of 1897; requests telegraphic instructions.	76
7	To Governor Sir J. West Ridgeway.	January 18. Telegram.	Approves draft Ordinance submitted in No. 6.	78
8	Governor Sir J. West Ridgeway.	February 28 (Rec. March 18).	Transmits, with observations and a report thereon by Mr. Lewis, Special Commissioner, a memorial from Mr. Le Mesurier relative to the alleged spoliation by the Crown of village lands in the Matara district; considers that such representations are not deserving of serious consideration by Her Majesty's Government.	78
9	Ditto	February 28 (Rec. March 18).	Transmits, with observations, memorial from Mr. Le Mesurier, taking exception to certain amendments in the draft Ordinance submitted in No. 6.	89

Serial No.	From or to whom.	Date.	Subject.	Page.
		1899.		
10.	Lieutenant Governor Sir E. N. Walker.	March 29 (Rec. April 15).	Submits "An Ordinance to amend Ordinance, No 1 of 1897, intituled, 'An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands'" (No. 1 of 1899); it was passed without opposition.	92
11	Ditto	April 3 (Rec. April 24).	Forwards a further memorial from Mr. Le Mesurier claiming redress for certain alleged grievances; deals categorically with the allegations; considers that Mr. Le Mesurier has not a shadow of grievance.	100
12	Mr. C. J. R. Le Mesurier	May 14.	Asks that claimants against the Crown of Lands in the Matara District should have access to certain records.	143.
13	Lieutenant Governor Sir E. N. Walker.	April 22 (Rec. May 15).	States that the allegations in the first two paragraphs of Mr. Le Mesurier's further memorial of February 4, 1899, have been already dealt with, and that his complaints that an armed body of police was sent to intercept him in the Matara district were without justification.	144
14	Mr. C. J. R. Le Mesurier	May 17.	Alleges inaccuracies in the information supplied by the Governor, and asks for an independent enquiry.	145.
15	Ditto	May 24.	Invites attention to the speech of the chairman of the Chilaw Association on the subject of the Ordinance, and refers to certain Administration Reports as showing the harm done by stopping the people from cultivating their village chenas.	146.
16	To Lieut. Governor Sir E. N. Walker.	May 25.	Sanctions the Ordinance submitted in No. 10, but considers that it should be amended, as indicated, to carry out the main object of the original Ordinance, viz., the friendly settlement of outstanding claims.	146.
17	Lieutenant Governor Sir E. N. Walker.	May 10. (Rec. May 29).	Encloses copy of a Memorandum by Mr. J. P. Lewis, replying to a letter published by Mr. Le Mesurier in English newspapers, purporting to contradict misstatements by Lord Selborne.	147
18	Ditto	May 16 (Rec. June 5).	Encloses copy of a judgment by the District Judge, Matara, in a suit instituted by the Crown for the recovery from Mr. Le Mesurier of a block of land.	152.
19	Ditto	May 17 (Rec. June 5).	Encloses copy of a letter from Mr. Le Mesurier complaining of the refusal to furnish him with certified extracts from the Tax Warrants, with remarks of the officers concerned and reply to Mr. Le Mesurier.	15T

Serial No.	From or to whom.	Date.	Subject.	Page.
20	Mr. C. J. R. Le Mesurier	1899. June 20.	Complains as to the action taken by the Colonial Government in regard to certain cases brought against him under the Ordinance, and as to the difficulties placed in his way of recovering costs.	162
21	To Mr. C. J. R. Le Mesurier.	June 29.	Informs him that Mr. Chamberlain is unable to admit the accuracy either of his (Mr. Le Mesurier's) account of the objects of the Ordinances and their administration, or of his complaints against the Colonial Government.	163
22	To Lieutenant Governor Sir E. N. Walker.	June 30.	Transmits copies of Nos. 12, 14, 15, 20 and 21 ; quotes a statement received from the Chief Justice referring to the allegation made that he had expressed disapproval of the principles of the Ordinance ; refers to No. 4, and expresses confidence that care will be shown for <i>bona fide</i> native claims as distinguished from those of land speculators.	163

CEYLON.

CORRESPONDENCE

RELATING TO

RECENT LAND LEGISLATION IN CEYLON.

No. 1.

GOVERNOR SIR J. WEST RIDGEWAY to MR. CHAMBERLAIN.

(Received April 12, 1897.)

[Answered by No. 2.]

SIR,

Queen's Cottage, Nuwara Eliya, Ceylon, March 18, 1897.

I HAVE the honour to submit, for the signification of Her Majesty's pleasure, an authenticated transcript, in duplicate, of an Ordinance passed by the Legislative Council, and assented to by me, entitled "An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands," No. 1 of 1897.

2. I enclose a statement* by the Attorney-General to the effect that the Royal Assent may properly be given to the Ordinance.

3. The provisions of the Ordinance are explained in the accompanying report by the Attorney-General, and in the enclosed extracts from the proceedings of the Legislative Council, namely, the speeches of the Attorney-General when introducing the Bill, of the Attorney-General and the Acting Auditor-General (Mr. Saunders), and of myself, on the second reading of the Bill. In consequence of the concessions which were made by the Government—none of them affecting the principle of the measure—the Bill was read a second time without a division, and, after passing through Committee, was read a third time and passed, with only three dissentients.

4. I have the honour to transmit at the same time a letter addressed to you on the subject of this Ordinance by Mr. C. J. R. A. H. Le Mesurier, together with a Memorandum thereon by the Honourable the Treasurer.

I have, &c.,

WEST RIDGEWAY.

Enclosure 1 in No. 1.

ORDINANCE enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof.

No. 1 of 1897.

An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands.

WEST RIDGEWAY.

Whereas it is expedient to make special provision for the speedy adjudication of claims to forest, chena, waste, and unoccupied lands: Be it therefore enacted by the Preamble.

* Not printed.

Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Government agent or assistant government agent to publish notice calling for claims.

1. (1) Whenever it shall appear to the government agent of a province or to the assistant government agent of a district that any land situated within his province or district is forest, chena, waste, or unoccupied land, it shall be lawful for such government agent or assistant government agent to declare by a notice that if no claim to such land is made to him within the period of three months from the date of such notice, every such land shall be deemed the property of the Crown, and may be dealt with on account of the Crown.

(2) Every such notice shall be published in the English, Sinhalese, and Tamil languages six times at least in the "Government Gazette," and if the land shall be more than ten acres in extent in any two of the newspapers published in the island, and copies of such notice shall be posted on such land, and shall also be affixed to the walls of the several kachcheries and the several courts of the province within which such forest, chena, waste, or unoccupied land is situated, and in such other localities as may secure the greatest possible publicity thereto, and the said notice shall likewise be advertised by beat of tom-tom at such places on or near the land and at such times as the government agent or assistant government agent may direct and order. Every such notice shall be, as near as is material, in the form in the schedule hereto; and the publication of the notice in the "Government Gazette" shall be proof of the date and proper publication of such notice.

Survey.

(3) If any such land has not been previously surveyed at the instance of the Government, the government agent or assistant government agent shall, either before or after the issue of such notice, cause such land to be surveyed for the purposes of this Ordinance.

When no claim is made government agent or assistant government agent to declare the land the property of the Crown.

2. (1) If no claim shall be made within the period of three months from the date of such notice as aforesaid, the government agent or assistant government agent shall make an order declaring such land to be the property of the Crown.

(2) Every such order shall be published in the "Government Gazette," and shall be final and conclusive, and the "Government Gazette" containing such order shall be received in all courts of law in this colony as conclusive proof that the land mentioned in the order was at the date of such order the property of the Crown.

(3) Provided always that whenever within the said period of three months it shall be brought to the knowledge of the government agent or assistant government agent that some person is interested in such forest, chena, waste, or unoccupied land, and that such person is then absent from the colony, and was so at the date of the notice aforesaid, then and in every such case the government agent or assistant government agent shall not make his order declaring such land to be the property of the Crown until the expiration of a further period of six months, commencing on the expiry of the said period of three months.

Provisions for inquiry into claims to land.

3. (1) If, in pursuance of the notice issued under the provisions of section 1, any claim shall be made to such land, or to any interest in such land, within the period of three months, or in any case in which such period has been extended under the provisions of sub-section (3) of the preceding section within such extended period, the government agent of the province or assistant government agent of the district in which such land is situated shall forthwith proceed to make inquiry into such claim.

(2) For the purpose of such inquiry the government agent or assistant government agent as aforesaid may exercise the powers conferred on commissioners appointed under the provisions of Ordinance No. 9 of 1872, for compelling the attendance of witnesses and the production of documents and for administering oaths to all persons who shall be examined before them, provided that the requirements of the proviso to section 2 of that Ordinance shall not be necessary for the purposes of this Ordinance.

Procedure in such cases.

4. (1) The government agent or assistant government agent as aforesaid shall call upon the claimant to produce before him any evidence or documents upon which he may rely in proof of his claim; and after considering the same, and making any further inquiry that may appear proper, may either admit the whole or part of such claim, or enter into an agreement in writing, which shall be signed by the government agent or the assistant government agent and the claimant, for the admission or rejection of any portion of such claim, or for the purchase of any portion of the land which is the subject of such claim, and shall embody such admission or agreement in an order. Provided that in any case in which such land is more than ten acres in extent no such admission shall be made or agreement entered into without the consent of the Governor.

(2) Every such order shall be published in the "Government Gazette," and shall be final and conclusive, and the "Government Gazette" containing such order shall be received in all courts of law in this colony as conclusive proof of the admission or agreement entered into under sub-section (1).

5. If and whenever the government agent or assistant government agent does not admit such claim either as to the whole or as to part, and fails to enter into any agreement with the claimant in respect thereof, then and in every such case the government agent or assistant government agent shall refer such claim, or so much thereof as is in dispute between the government agent or assistant government agent and the claimant, to the commissioner to be appointed as hereinafter provided, or in the event of no commissioner being appointed to the district judge of the district within which such land is situated.

Disputed claims to be referred to commissioner or district judge.

Provided that whenever the government agent or assistant government agent and claimant agree to refer such claim to the commissioner of requests of the division within which such land is situated, the government agent or assistant government agent shall refer such claim to such commissioner, who shall have and exercise in respect of such claim all the powers and duties vested by this Ordinance in the district judge; and any decision or order of such commissioner shall be subject to appeal to the Supreme Court, and the provisions of section 18 shall apply to all such appeals.

6. In making a reference under section 5 the government agent or assistant government agent shall state, for the information of the commissioner or district judge, in writing under his hand—

Form of reference to commissioner or district judge.

- (a) The situation, name (if any), boundaries, and extent of the land in dispute;
- (b) The names of the claimants or claimant and of any other person whom he has reason to think interested in such land.

7. (1) The commissioner or district judge shall thereupon cause to be served on each of the persons so named as aforesaid a notice requiring him to make a written statement to such commissioner or judge on or before a date to be mentioned in such notice, setting out the nature and extent of his claim, and in every such statement of claim the government agent or assistant government agent shall be named as the party defendant on behalf of the Crown.

Proceedings of court on reference.

(2) Any two or more persons claiming under the same right or title may join and embody their claims in one statement of claim.

8. (1) If no statement of claim is made to the commissioner or district judge pursuant to the notice mentioned in section 7, the commissioner or judge shall cause to be affixed on some conspicuous place on or near such land, a notice to the effect that if the persons interested in such land do not, on or before a day to be therein mentioned, appear before such commissioner or district judge, and state the nature of their respective interests in the land, and the particulars of their claims, the commissioner or district judge will proceed to adjudicate such land to be the property of the Crown.

Proceeding when no claim has been made.

(2) If on the day named no such person appears in pursuance of such notice, the commissioner or district judge shall adjudicate such land to be the property of the Crown, and from such adjudication there shall be no appeal.

9. It shall be lawful for the Governor, as occasion may require, from time to time to appoint a proper person for any province or district to be commissioner for the investigation and trial of references under this Ordinance.

Special commissioner for trying claims.

10. Whenever any commissioner is appointed under this Ordinance for any province or district, notice thereof shall be given by Proclamation in the "Government Gazette," copies of which shall be affixed in the several courts of the island; and from the date of the issue of such Proclamation no other court shall be competent to entertain any references for the investigation and trial of which such commissioner is appointed.

Notice of appointment of commissioners.

Claims not cognizable in other courts.

11. (1) Every commissioner appointed under this Ordinance shall hold his court at such place or places within the limits of his jurisdiction as shall be by him considered most convenient, and for the purpose of every investigation and trial under this Ordinance may administer oaths, and shall have and exercise within his province all and every the powers and jurisdiction of a district judge.

Special courts where to be held

(2) In case of the death, sickness, resignation, removal from office, absence from the island; or other disability of any such commissioner before whom any inquiry upon a reference made under this Ordinance is pending, such inquiry may be continued by the successor of such commissioner, who shall have power to act on the evidence already

recorded by such first named commissioner or partly recorded by such first named commissioner and partly recorded by himself, or, if he think fit, to re-summon the witnesses and commence afresh.

Plaintiff and defendant in references under section 5.

12. (1) In every reference under section 5 of this Ordinance the claimant shall appear as plaintiff, and the government agent or assistant government agent aforesaid shall appear as defendant on behalf of the Crown.

Parties may appear by pleader.

(2) Either party to any reference may appear by pleader or by agent.

Proceedings regulated by Civil Procedure Code.

13. In references instituted under this Ordinance, except as in this Ordinance provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.

Cases to have precedence.

14. All proceedings in any district court had under this Ordinance shall be taken up before any other business of the said court, unless special circumstances of urgency in any particular case call, in the opinion of the judge, for a relaxation of this rule.

Procedure before hearing of reference.

15. The commissioner or district judge, as the case may be, shall, as soon as the written statement is presented under section 7, or the persons interested appear in pursuance of the notice issued under section 8, fix a day for the appearance of the parties and for the hearing of the reference, of which due notice shall be given to the parties, their pleaders, or agents; and on the day so fixed the parties or their agents shall bring their witnesses into court, together with any documents on which they intend to rely. If either party require the assistance of such commissioner or judge to procure the attendance of a witness or the production of any document on such day, he shall apply to such commissioner or judge in sufficient time before the day fixed for the hearing of the reference, and such commissioner or judge shall issue a summons for such purpose. It shall be competent to such commissioner or judge to require the personal attendance of a claimant on the day fixed for the hearing or at any subsequent stage of the proceedings.

Procedure on hearing

16. On the day fixed for the hearing of the reference, or as soon after as may be practicable, the commissioner or district judge, as the case may be, shall proceed to examine the claimant or his agent (when his personal attendance is not required), and the witnesses of the parties, and upon such examination, and after inspecting the documents of the parties and making any further inquiry that may appear necessary, shall proceed to pass such order in the case as he may consider just and proper.

Commissioner or judge may order a survey.

17. Whenever the commissioner or district judge is of opinion that a fresh survey is necessary for the purposes of the investigation and trial of any claim under this Ordinance, he may cause the land, the subject of the claim, to be surveyed, and the costs of such survey shall be costs in the cause.

Appeals.

18. (1) Any party to the reference who is dissatisfied with the decision or order of the commissioner or district judge, as the case may be, may appeal to the Supreme Court against such order or decision, by lodging within thirty days from the date of such order or decision with such commissioner or district judge a petition of appeal addressed to the Supreme Court, together with an affidavit setting out the value of the land with regard to which the order or decision has been given against him.

(2) Such commissioner or judge on receiving such affidavit and petition of appeal shall transmit the same, together with all proceedings taken by him, to the Registrar of the Supreme Court, and the said court shall make such order as the justice of the case may require, and such order shall be duly carried into effect.

(3) Stamp duty shall be charged upon every such petition of appeal and upon every such affidavit at the rates specified in Part II. of the Schedule B to "The Stamp Ordinance, 1890," for similar instruments in the district courts, and upon subsequent proceedings at the rates specified in the said schedule for appeals from the district courts; and every such appeal shall be dealt with and disposed of in the same manner and subject to the same rules as appeals from district courts are dealt with and disposed of.

Records of cases where to be deposited.

19. The records of cases disposed of by commissioners appointed under this Ordinance or by district judges shall be deposited amongst the records of the district court of the district in which the land, the subject of the claim, is situated.

Limitations as to claims.

20. No claim to any land or to compensation or damages in respect of any land declared to be the property of the Crown under the provisions of this Ordinance shall be received after the expiration of one year from the date on which such declaration shall have been made. If within such year any claimant shall prefer a claim to such

Provision for such claim.

land or to compensation or damages in respect thereof before the commissioner appointed under this Ordinance for the province in which such land is situated, or in the case of a commissioner being appointed, before the district judge of the district in

which such land is situated, shall show good and sufficient reason for not having preferred his claim to the government agent or assistant government agent as aforesaid within the period limited under section 1 of this Ordinance, such commissioner or judge shall file the claim, making the claimant plaintiff and the government agent or assistant government agent as aforesaid defendant on behalf of the Crown in the action, and the foregoing provisions of this Ordinance shall be applicable to the investigation and trial thereof.

21. (1) In any case in which the land has been sold, if such commissioner or judge shall be of opinion that the claim of the claimant is established, such commissioner or judge shall not award the claimant possession of the land in dispute, but shall order him to receive from the Crown, by way of compensation, a sum equal to the price at which the land was sold by public auction.

If claim established and land sold, possession not to be given, but compensation.

(2) In any case in which the land shall not have been sold, but shall have been otherwise dealt with on account of the Crown, and such commissioner or judge shall be of opinion that the claim to such land is established, such commissioner or judge shall order that the claimant be placed in possession of the said land.

If claim established and land not sold, claimant to be placed in possession.

(3) The amount awarded under sub-section (1) shall be in full satisfaction of the claim of the claimant, and shall bar any future claim on his part in respect of the land claimed.

Award to be in full satisfaction.

22. Whenever a government agent or assistant government agent has issued the notice prescribed in section 1 with regard to any land, it shall not be lawful for any person thereafter, without the written consent of the government agent or assistant government agent, to acquire any right in or over such land, or to enter therein or thereon, or to build any house or hut, or to form a plantation thereon, or to make clearings for the purpose of cultivating such land, or for any other purpose, or to cut or fell any trees upon such land, until such land has been declared not to be the property of the Crown. Any person acting in contravention of this section shall be guilty of an offence, and liable on conviction to simple or rigorous imprisonment for a term which may extend to three months, or to a fine which may extend to one hundred rupees, or to both. Provided that the prohibition hereby imposed shall cease in any case in which the government agent or assistant government agent shall fail to make a reference under section 5 within six months from the day of a claimant having preferred his claim.

Prohibition of building, clearing, &c., pending investigation.

23. Whenever the claim of any person to a land, in respect of which a notice under section 1 of this Ordinance has issued, is upheld by the commissioner or district judge or by the Supreme Court in appeal, and the claimant to such land satisfies the Governor in Executive Council that he has suffered pecuniary loss by reason of the prohibition in the preceding section contained, it shall be lawful for the Governor in Executive Council to ascertain and determine the amount of compensation that should be allowed in respect of such loss, and to cause the amount so determined to be paid to such claimant.

Governor in Executive Council may award damages.

24. For the purposes of this Ordinance:

(a) All forest, waste, unoccupied, or uncultivated lands, and all chenas and other lands which can be only cultivated after intervals of several years, shall be presumed to be the property of the Crown until the contrary thereof be proved.

Presumption as to forest and waste land.

(b) The occupation by any person of one or more portions or parcels of land shall not be taken as creating a presumption of ownership against the Crown in his favour for any greater extent of land than that actually occupied by him.

Occupation of a small portion of land not to create presumption of ownership of a large tract of land.

(c) The term "unoccupied land" includes uncultivated land and all land which at the time of the passing of this Ordinance was not in the actual occupation of any person or persons, and also all lands which shall not have been in the uninterrupted occupation of some person or persons for a period exceeding five years next before notice given by the government agent or assistant government agent under section 1 in respect of the same.

Definition of unoccupied land.

25. In any case in which the claimant is a minor or person of unsound mind, or in which any person shall claim for and on behalf of a minor or a person of unsound mind, the government agent or assistant government agent shall apply to the district judge of the district in which such land is situated, to appoint a fit person in manner provided by the Civil Procedure Code to represent such minor or person of unsound mind for the purposes of the claim and the investigation and trial thereof.

Application for appointment of guardian or curator.

Government not barred from awarding compensation for land.

Penalty for obstructing surveyor, &c.

Governor may appoint one or more special officers to carry out Ordinance.

Crown rights of disposition of land reserved.

26. Nothing in this Ordinance shall be held to preclude the Governor from awarding to any claimant of land which has been dealt with under this Ordinance, on proof to his satisfaction of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the government agent or assistant government agent as aforesaid within the period prescribed by this Ordinance, or has not made any statement of claim to the commissioner or district judge as required by section 7 of this Ordinance), such amount of compensation as to the Governor may seem proper.

27. Whoever at any time shall obstruct or molest any surveyor, headman, or officer of the Crown, or any person acting under the immediate orders of any such surveyor, headman, or officer of the Crown, from carrying out or performing any survey or other act or thing which he may be directed, empowered, or required to do by any government agent, assistant government agent, commissioner, district judge, or special officer acting under the authority of this Ordinance, shall be guilty of an offence, and liable on conviction to rigorous or simple imprisonment for a term which may extend to three months, or to a fine not exceeding fifty rupees.

28. It shall be lawful for the Governor to appoint one or more special officers for the whole island, who may for the purposes of this Ordinance perform, do, and exercise in any province or district all or any of the powers, duties, and functions vested in the Government agent or assistant government agent under this Ordinance.

29. Nothing in this Ordinance contained shall preclude or prevent the Crown in any case in which no notice has been issued under section 1 in respect of any land from selling, leasing, reserving, or otherwise dealing with the same, or from instituting in any court an action to recover such land.

SCHEDULE.

Form of Notice.

(Section 1.)

Take notice that unless within three months from the _____ day of _____, being the date of this notice, the persons, if any, who claim any interest in the land commonly called or known as _____, situate in the village of _____ in the _____ kóralé, in the _____ Province, containing in extent about _____ acres, and bounded as follows:— _____, appear before me at the Kachchéri and make claim to the said land or to some interest therein:

I, _____ Government Agent of _____ (or Assistant Government Agent of _____), in pursuance of the powers in me vested by Ordinance No. 1 of 1897, will, on the _____ day of _____, being the date on which this notice expires, declare by writing under my hand that the said land is the property of the Crown.

Government Agent or Assistant Government Agent.

Passed in Council the Sixth day of February, One thousand Eight hundred and Ninety-seven.

J. J. THORBURN,
Acting Clerk to the Council.

Assented to by His Excellency the Governor the Ninth day of February, One thousand Eight hundred and Ninety-seven.

E. NOEL WALKER,
Colonial Secretary.

Enclosure 2 in No. 1.

REPORT of the Attorney-General on Ordinance No. 1 of 1897, intituled "An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands."

The Government Agent of a Province or the Assistant Government Agent of a district in which any forest, chena, waste, or unoccupied land is situated may advertise for claims to such land in manner provided by section 1 of the Ordinance, to be made within three months of the date of such advertisement, and if no claim be made to such land within that time, proceed to declare such land to be the property of the Crown.

2. By sub-section 3 of section 2 it is enacted that whenever it is brought to the knowledge of a Government Agent or Assistant Government Agent that some person

claiming to be interested in such land is absent from the Colony such Government Agent or Assistant Government Agent shall make no order in respect of such land until the expiry of a period of nine months from the date of the issue of the notice.

3. If any claim to such land be made within the time prescribed by the Ordinance, the Government Agent or Assistant Government Agent is empowered under section 3 to investigate such claim, and for the purpose of such investigation is empowered to compel the attendance of witnesses and the production of documents, and to administer oaths to all persons who shall be examined before them.

4. By section 4 the Government Agent or Assistant Government Agent, after considering the evidence and the documents produced, may either admit the whole or a part of such claim, or may enter into an agreement with the claimant for the admission or rejection of any portion of such claim, or for the purchase of any portion of the land which is the subject of the claim.

5. By section 5 whenever the Government Agent or Assistant Government Agent does not admit a claim or enter into an agreement in respect thereof, he shall refer the same to a Commissioner to be appointed under section 9, or in the event of no Commissioner being appointed to the District Judge of the District within which the land the subject of the claim is situated.

6. By section 9 the Governor is empowered to appoint a Commissioner for any province or district for the investigation and trial of references under this Ordinance, and the Ordinance provides the procedure which is to be adopted on all references made under the Ordinance, whether to a Commissioner or District Judge; and by section 11 every Commissioner may hold his court at such place or places within his jurisdiction as shall be by him considered most convenient; and is clothed with all the powers of a District Judge for the purpose of the Ordinance.

7. From any decision or order made by a District Judge or Commissioner under the Ordinance an appeal is allowed to the Supreme Court by section 18.

8. No claim to any land which has been declared to be the property of the Crown under the Ordinance shall be receivable after the expiration of one year from the date of the final order made in respect of such land; if within such year any claimant shall prefer a claim to such land, and shall satisfy the District Judge or Commissioner that there was good sufficient reason for not having preferred his claim within the period before mentioned, the Commissioner or Judge shall proceed to investigate such claim, and if the claim is established shall, (a) in any case in which the land has been sold, order the claimant to receive from the Crown by way of compensation a sum equal to the price at which the land was sold, and (b) in any case in which the land has not been sold order the claimant to be placed in possession of such land.

9. By section 22 it is provided that whenever a Government Agent or Assistant Government Agent has issued the notice prescribed by section 1, no person shall without the written consent of such officer enter on the land mentioned in such notice, or shall make clearings thereon for the purpose of extending any cultivation that may already have been commenced thereon. This prohibition, however, ceases to have effect if the officer shall have failed to make a reference within 6 months from the date of the claimant having preferred his claim; and by section 23 the Governor in Executive Council may award damages to any person who has suffered any loss by reason of such prohibition.

10. By section 24 the presumptions created by the Ordinance No. 12 of 1840 are declared to continue for the purposes of this Ordinance, and the occupation of a small portion of land is declared not to create a presumption of ownership to a large tract of land, whilst the term "unoccupied" is defined as including all land which at the time of the passing of this Ordinance was not in the actual occupation of any person or persons, as well as all land which has not been in the uninterrupted occupation of any person or persons for a period exceeding five years before notice issued under section 1 of the Ordinance.

11. Section 26 provides that the Governor shall not be barred, on proof to his satisfaction of the claim of any claimant, (notwithstanding that the claim may not have been preferred within the time prescribed by the Ordinance) from awarding to such claimant compensation in respect of any land.

C. P. LAYARD,
Attorney-General.

Attorney-General's Chambers, Colombo,
February 22, 1897.

Enclosure 3 in No. 1.

LEGISLATIVE COUNCIL DEBATES.

November 23, 1896.

FOREST AND WASTE LANDS.

The Hon. the Attorney-General:—Sir, I rise to move the first reading of "An Ordinance relating to claims to Forest, Chena, Waste, and Unoccupied Lands." The object of the measure, as the preamble states, is to obtain "speedy adjudication of claims to forest, chena, waste, and unoccupied lands" in the island. It has been found difficult by Government to get many of these claims settled, and it has been suggested to Government that it would be expedient to pass an Ordinance which would enable a claim to be settled once and for ever. If hon. members will kindly turn to clause 1* of the Bill, they will find that it provides that the Government Agent in his province or the Assistant Government Agent in his district can call for claims to any forest, chena, waste, or unoccupied lands situated within his province or within his district. Clause 2 provides that if such lands are not claimed within two months from the advertisement which is required by clause 1 to be published six times, at least, in the "Government Gazette" and in any two of the local newspapers, and to be posted on such land and to be affixed in the several Courts and Kachcheries of the island, the Government Agent or Assistant Government Agent may make an order declaring the land to be the property of the Crown, and such order will be final, and the land so declared the property of the Crown will from that date become the property of the Crown. By clause 3, if any lands are claimed, the Government Agent or Assistant Government Agent has to investigate such claims, and the Ordinance, for the purposes of that investigation, gives powers to Government Agent and Assistant Government Agent to take evidence on oath, and to compel the production of documents and to exercise such powers as would be requisite to enable him to come to a conclusion on the subject as to whom the land belongs to. If the Government Agent finds the land is the property of the Crown, he shall so order, but, on the other hand, power is given to him to settle with claimants and to come to terms in respect of such claims. Power is also further given him to reject the claim of a claimant. By clause 5 if the Government Agent orders that any claim be rejected, either in whole or in part, the claimant must, within one month from the date of such order, bring an action either in the District Court of the district in which such land is situated, or if a Commissioner has been appointed by His Excellency the Governor for the Province under clause 7, before a Commissioner appointed for the investigation and trial of claims under this Ordinance. The Ordinance briefly lays down what the procedure is that is to be adopted in respect of such Courts; and, if you turn to clause 16 of the Bill, you will find that power is given to a party who has failed to make any claim to the Government Agent to bring an action within a year from the date of the declaration made under a previous clause of the Bill, declaring the land to be the property of the Crown. If, by such action, he establishes his claim to land which has been previously sold by Government, all that he will be entitled to receive in respect of such land as compensation will be a sum equal to the price at which the land was sold. If he establishes his claim to land which has not been sold, he will be entitled to receive from the Judge in whose Court the claim has been upheld an order placing him in possession of the land. There is another important provision to which I would like to refer hon. members, and it is clause 18 of the Bill. That clause, hon. members will find, prohibits a person building on or clearing the land after the issue of notice by the Government Agent or Assistant Government Agent under clause . . . Hon. members will see this is absolutely necessary for the protection of Government, otherwise valuable forest land will be immediately cut down and valuable timber will be removed, and the land will be greatly reduced in value before the Court will be able to settle between the claimant and the Government. Clause 19 also contains some important provisions. It enacts that all forest, waste, unoccupied, or uncultivated land and other lands which can only be cultivated at intervals of seven years shall be presumed to be the property of the Crown until the contrary is proved. It further enacts that occupation by a person of one or more portions or parcels of land shall not be taken as creating a presumption of ownership against the Crown in favour of such person to any greater extent of land than that actually occupied. There have been cases in which a squatter on one acre of land has alleged that thereby he has a claim to 2,000 or 3,000 acres of land; and it is to prevent in such cases any presumption going against the Crown that sub-section (b) clause 19 has been put in the Bill. Hon. members will find that the term "unoccupied

In this debate, the references to clauses are as they stood in the original draft of the Ordinance.

land" has been defined so as to enable the Judges and Commissioners deciding these cases to decide what class of land should come under the term "unoccupied." There is a saving clause at the end of the Ordinance which enables the Crown to sell, lease, reserve, dispose, or otherwise deal with any land. Without following the provisions of this Ordinance, hon. members will see that it would be undesirable to say no such land as is dealt with by the Ordinance should be sold, because the result would be that land sales would be postponed, possibly, in some cases for a very long time. There is another provision which enables Government to institute any action in the Courts, notwithstanding the provisions of this Ordinance, in respect of any land not mentioned in the Ordinance. I now move the first reading of "An Ordinance relating to claims to Forest, Chena, Waste, and Unoccupied Lands."

December 2, 1896.

THE FOREST AND WASTE LANDS (CLAIMS) ORDINANCE.

The Hon. the Attorney-General said:—I concisely explained the objects and reasons for the introduction of the Bill at its first reading. I have only to add that the principal object the Government has in view is to facilitate as far as possible the settlement of land disputes between Government and the people. These long-standing disputes only lead to unnecessary and undesirable irritation between the Crown and its subjects. The Government is desirous that these disputes should be amicably settled, if possible, and the Bill provides for such settlement being come to by the Government Agent, the officer of Government best able to judge as to the wants of the people of his province. Experience has taught Government that those officers are only too willing to recommend to Government a settlement in favour of claimants of Crown land, and the Government is anxious, as far as its duty to the general public will allow, to act on such recommendations under the provisions of this Ordinance. There are cases, and cases may arise, in which it would be the duty of Government, not for personal reasons, but in discharge of its trust to the public, for after all Crown lands in this Colony are the property of the public and not of any individual, to protect such rights from being invaded by individuals to the prejudice of the general public. The Bill has been drafted entirely for the protection of public property in which every hon. member of this Council, whether official or unofficial, is as interested as the Government, and I feel sure that all the hon. members of this Council will support the second reading of this Bill, which, if carried, will be referred to a Sub-Committee to consider its details. I am authorised to state that Government is quite ready to accept and consider any modification in the Bill which does not endanger or seriously affect the principles of the measure. I move the second reading of "An Ordinance relating to claims to Forest, Chena, Waste, and Unoccupied Lands."

The Hon. the Government Agent, C.P., seconded.

The Hon. the Tamil Member:—Sir, if it is proposed to have a debate on this question, I would ask if Government have no objections to postpone it for some time. I may mention —

His Excellency the Governor:—Is the hon. member about to move an adjournment of the debate?

The Hon. the Tamil Member:—Yes.

His Excellency the Governor:—I would then ask the hon. member to keep strictly to the point so as not to prejudice his right of speaking again.

The Hon. the Tamil Member (continuing):—This Bill was only published the Friday before last, and some hon. members are desirous their constituents should have ample time to study the Bill, which they seem to think would affect them. Therefore, I am sure Government will have no objection to agreeing to my motion. My motion is that the debate be adjourned to any date Government wishes other than next Wednesday. I say next Wednesday, because I believe next Wednesday will not suit the Planting Member.

The Hon. the Planting Member:—Next Wednesday would suit me.

The Hon. the Tamil Member:—Then I would ask it to be postponed for a week or a fortnight.

His Excellency the Governor:—Perhaps the hon. member will adhere to his original motion; the matter can then be settled by the Government with the unofficial members.

The Hon. the Sinhalese Member seconded.

Motion carried and debate adjourned.

December 16, 1896.

THE WASTE LANDS ORDINANCE.

The Hon. the Tamil Member (resuming the debate on the second reading):—Sir, in Your Excellency's opening address to the Legislative Council at the commencement of the present session, Your Excellency was pleased to state that what we required now was not legislation, but proper administration of the laws now in force. That statement was hailed with delight by the people of this Colony. It seems to me now, if we consider the drastic legislation that has been introduced into this Council by Your Excellency's Government, such as the Pilgrimages Bill, the Crimes Repression Bill, and the present Ordinance, that one would not be far wrong if one stated that, unfortunately, Your Excellency's intentions have not been carried out, and that the statement was *vox et præterea nihil*—empty words. I do not attach any blame to Your Excellency for that, but I rather regret to have to say that I believe—and it is believed by intelligent persons who take an interest in our public affairs—that Your Excellency is guided by unsound advice. It is not to be supposed that, within the very few months Your Excellency has been in this Colony Your Excellency can well know the wants of the people nor devise means for meeting such wants. Therefore, I say, it is that there is an impression that Your Excellency is not being properly advised in these matters. This Bill, sir, I consider—and it is considered by the public meetings that have been held in respect of it—a very drastic measure indeed. I hold in my hand the opinions—two letters—from men who, at least to unofficial members, are well known. One is Mr. Shockman, of Kurunegalla, a public-spirited man who knows everything about the people of the Kandyan provinces. The other is Mr. Clovis de Silva, one who is possessed of large estates and who also, I may say, knows what the people require. In this matter one of them says:—"If this Ordinance is passed as it is, it will undoubtedly be ruin to the villager." The other says, "The Bill, in my opinion, will work great hardship." This Bill, sir, is, I think, a sort of an offspring of the Ordinance No. 4 1887—an Ordinance relating to lands alienated by the Crown, which have been abandoned by the owners thereof. If one will study the discussion which took place when that Ordinance was being considered in this Council, he would see what great pains the unofficial members were at in pointing out that the Ordinance would work mischief. Now, this offspring is much worse than its parent. If that Ordinance would work hardship this Ordinance would work ruin. This Ordinance, sir, strikes at the tenure of land. Look at the preamble! "Whereas it is expedient to make special provision," for what! "for the speedy adjudication of claims." Claims by whom? Why, all the claims seem to be claims of Government in respect of land. Surely, if Government think they have claims they have got the Ordinary Courts to go to to substantiate their claims. Not so here; it begins with a fiction. It states there are claims, but it does not state these claims are the claims of Government. And what does it propose to do—to put into the hands of Government officers, the Government Agents, ample powers to persecute the villager; and if one studies this Ordinance he will further find that it is a blow aimed, not at the richer classes who hold land, but at the poorer classes—the dumb animals, so to speak, of Ceylon, who can hardly fight the richer classes, and who certainly cannot fight the Government. Instead of the Government being the protector of the poor, Government assumes the rôle, sir, if I may so call it, of the highway robber. Lands are possessed by us—

His Excellency the Governor:—I did not follow the hon. member. Will he repeat those words?

The Hon. the Tamil Member:—I said —

His Excellency the Governor:—Perhaps the hon. member had better not. The hon. member will proceed.

The Hon. the Tamil Member:—I think I said that Government were assuming the rôle —

His Excellency the Governor:—I thought the hon. member said Government were in the position of a highway robber. I take exception to these words.

The Hon. the Tamil Member:—I withdraw them. (Continuing) Sir, the tenure of land in this colony is either on Crown grant or by prescriptive possession or *sannas*. The title to such land can easily be ascertained by Government on reference to the Registrar-General's Department, and, therefore, the validity of claims to any land can be ascertained by Government from its own Department; and it need not, therefore, put poor people to the expense of contesting a claim put forward by Government against

their tenure. This Ordinance goes further. Even when the title to the land is a good one, even when the Government Agent declares that the claimant has a title, the Governor may order the claimant to go before the Court to substantiate his claim. There is another principle in this Bill which must be attacked as vicious, and that is, when a claim is put forward on behalf of the Crown, does it not strike anyone that the Judge investigating that claim shall not be a Government servant. This Bill proposes that the Government Agent, who is a servant of Government, and who is, in fact, an agent of Government as the phrase properly describes it, shall not only inquire into the claim, but get possession of the evidence the other side may have against the Crown, look into his title deeds, go into the evidence, and then declare that the claim is valid or invalid; and, what is more, in all these claims, without the slightest foundation perhaps it may be, when any individual claims land if it shall appear (that is the wording, *when* it shall appear, or *how* it shall appear this Ordinance does not tell), but if it shall appear to the Government servant, to the Government Agent, to be without foundation he shall put the whole machinery of the law in motion as against the villager in order to secure this land for the Crown. Then, sir, look at the farce of giving notice to the villager. First of all the Government Agent notifies six times in the "Government Gazette" and in any two of the local papers that claims are called for; fancy a villager in the Wannai district knowing that the Government Agent of some province had taken such a step! When a claimant came forward in reference to a particular claim, then fancy his claim being nullified if it is not brought forward within two months of the notice in the "Gazette"; and if, unfortunately, a villager, either by reason of his not hearing of the notice, or by other causes, does not come forward within two months, the adjudication of the Government Agent shall be final and conclusive. Now, sir, if you look at Ordinance No. 4 of 1887, which I have already referred to, you will find that the notice shall not be less than 12 months. Why it is two months now I fail to understand. Then again, sir, there is the question of "forest, chena, waste, and unoccupied lands." I fail to understand what the Ordinance means by this. Many of our lands are waste because they cannot be cultivated—many are cultivated at intervals of from ten to fifteen years, because by the nature of their soil they cannot be cultivated within shorter periods. Many more lands cannot be cultivated for want of labour. I have paid for land, and because, forsooth, it is impossible for me to cultivate the land within the few years provided by this Ordinance, therefore it shall be waste land! I suppose that is what the Ordinance means. Why, as it was asked in 1887, by the Planting Member, Mr. Downall, who then represented the planters, should we cultivate at all? If I have paid my money I need not cultivate. I can keep the land uncultivated if I choose. It is a thing not unknown in other parts of the world. Because I do not cultivate it within so many years, why should my land be forced away from my hands? Then, what is to be done when an absentee landlord is the owner? Supposing I am away from the Island for years, or supposing a minor is the owner, what provision does this Ordinance make with regard to claims by a minor or by an absentee landlord? It may be said that a guardian may be appointed. The Government Agent asks a certain guardian to be appointed, with the result that the guardian may or may not be acting in the interests of the minor. Then again, sir, as to the question of possession, this Ordinance forces a man to take the price that is paid for the land when Government chooses to sell it. Why should he take that price? Why should he not take the proper value of the land of which he claims possession. This Ordinance does not provide that this land should be sold by Government by public auction. Government may dispose of the land as it pleases—at R5 an acre for land that is worth R50 an acre; and yet the owner of the land when he claims damages can only accept what Government has made by this sale, private or public. The 16th clause says:—

"No claim to any land or to compensation or damages in respect of any land declared to be the property of the Crown under the provisions of this Ordinance shall be received after the expiration of one year from the date on which such declaration shall have been made."

Now, sir, it is very strange that when Ordinance 4 of 1887 makes a claim valid for 30 years, yet here a claim is made invalid if it is not made within twelve months. And what "actual physical possession" is I fail to understand. I have no doubt the hon. and learned Attorney-General will explain the legal meaning of that term; though I beg to state I never heard of "actual physical possession" of land. Possession of land is possession of land. What does the phrase "actual physical" mean in this clause? Government, for instance, sold years ago land in the Central Province at a place where they thought a town was going to spring up.

The Hon. the Attorney-General:—The Horton Plains.

The Hon. the Tamil Member:—Yes. (Continuing) A relative of mine bought some acres of land there, as several others did, and that land belongs to me now. I do not know where that land is, but, when a town springs up, I shall build there. It was sold on the understanding that people were to build houses and create a township; but, owing to the fault of Government in that no road goes to that place, nobody can build a house there or go to it; and, yet, these lands for which we have actually paid and which were given to us unconditionally by Crown grants, may be taken by the Government Agent of the Central Province if it appears to him that it is waste land. This Ordinance will be a great hardship on the people. It certainly is not just, and, for the reasons I have stated, the principle of the Bill in making the suitor—the person claiming on behalf of Government—both judge and suitor is essentially vicious. For these reasons I shall be obliged to vote against the second reading of this Bill.

The Hon. the Kandyan Member:—Sir, I wish to make a few remarks. The great necessity that there is for land settlements is admitted on all sides; and the question being one of very great importance to the majority of the people of the Island, more particularly to those living in the districts called the Kandyan Country, the subject should receive the most careful consideration of Government and of this Council; and the ultimate settlements should be conducted on the most liberal lines. By clause 5 of the proposed Ordinance a claimant is allowed 14 days' time to take steps before the District Judge or the Commissioner after the decision of the Government Agent has been given. But the following clause (clause 6) allows three months' time to Government to take the same proceedings. I do not understand the justice or the necessity for this difference. If difference there should be, I think it should be in favour of the claimant, and not in favour of the Government, that is, that more time should be given to the claimant and less time to the Government. Most of the people affected by these proceedings are the poorest villagers in the country, who cannot be expected to be able to find the money and the necessary expenses of taking their claim before the District Court or the Commissioner; and, therefore, I think greater time should be given. Even under more favourable circumstances, even if they had a longer time, I think the great majority of the people will give up their claims rather than incur the expenditure of going to the Court for two reasons (1) the want of funds and (2) the want of agreement between the different shareholders in the land. It is well known that *pangu* and *chena* lands in the Kandyan District are owned by a dozen or more people in unequal and undivided shares, and among whom it will be found most difficult to come to an agreement as to the expense or the steps to be taken. Then again, sir, I should mention that the general feeling appears to be against the appointment of special Commissioners and in favour of District Judges doing the work. Among other reasons given for this feeling against Commissioners, there is one reason, I think, which carries weight—the option given to the Commissioners to hold their Courts anywhere within their jurisdiction that is most convenient. In that connection the Commissioner may hold his Court in some interior and out of the way corner in his jurisdiction, where it would be difficult for the claimant to have himself represented by agents or pleaders. I believe an agent or pleader means a member of the legal profession, and the retainer that a lawyer may demand to go and appear on behalf of a claimant in some interior part of the district would be prohibitive. It would be beyond the means of poor claimants; and therefore I should say the Courts of the Commissioners should be held in the principal town of the District or Province where a claimant can get counsel to appear for him at a cheaper fee. Clause 19, sir, which deals with waste unoccupied *chena* and forest lands treats all these different description of lands in a similar manner. I think that *chena* land should not be classed with either forest, waste, or unoccupied land. A *chena* land is and only can be cultivated at intervals of from 6 to 16 years, according to conditions, and when it is so cultivated one crop only is taken out of it. The process of cultivation from beginning to end will take eight or ten months, so that the land will remain in the "actual physical possession," if I understand the expression rightly, of the cultivator only for eight or ten months in six or sixteen years. During the rest of the time the claimant's ownership is not given up. He exercises it against all intruders, so that he has not relinquished his claim; he retains it, though not actually living on the land, and although the land is allowed to be uncultivated for about fifteen years it is not done for anything else but to allow the land to acquire fertility and make it fit for cultivation. This land should not be called waste land, unoccupied land, or forest land. The only waste lands I know of in the island are the *patnas* which occur in some parts of the Uva Province and some few others. They are never cultivated, and they are supposed to

be unfit for cultivation, and consequently they may with justice be called waste lands. Chena land is not waste land. Chena land can be cultivated as easily as a paddy field. There is a clause which says that all lands are to be presumed to be the property of the Crown. I do not know why chena land should be presumed to be the property of the Crown. The presence of this, sir, in the Ordinance will be most disadvantageous and disastrous to the claims of the villagers. I think that no officer, however just and impartial he may be, can be above being prejudiced against the villagers' claim in the presence of that expression and in spite of himself. Therefore, I think some other should be substituted. In conclusion, sir, if I am in order, I would beg to suggest to His Excellency and to this Council that a Commission might be appointed to thoroughly investigate the nature of land tenure before further legislation is proceeded with. Is it supposed that in the Kandyan times chena lands were presumed to be the property of the Crown, and that the present Government, which succeeded the Kandyan Kings, is only retaining what their predecessors had? I do not think there is anything in support of such a supposition. On the contrary, every information that can now be got points to the contrary. There are registers in the Ratnapura Kachcheri, as I believe there are in other Kachcheries, land registers first made in the time of the last Kandyan King, which go to show that all lands were divided into parcels called *pangu*, each parcel consisting of a certain amount of low land or field and some chenas. Each of these parcels was possessed by one family subject to certain gratuitous services and dues payable to the State. This shows that the Kandyan King acknowledged the right of the villagers to certain portions of high land. There is also in the Ratnapura Kachcheri, a register of chenas compiled in 1840, giving the name of the owner and the cultivator. That also, I think, must be regarded as an acknowledgment on the part of the British Government that the people are entitled to these lands.

The Hon. the General European Member:—Sir, I have listened with attention to the two previous speakers, and I can speak with some degree of certainty as regards the remarks that have fallen from the Hon. the Kandyan Representative. I know in respect to chena lands that they are in many instances appurtenances of paddy lands. The former are only cultivated at intervals of 15 or 16 years, but the owners of the paddy land cut their fence sticks there, and, as I have said, they cultivate the chenas at certain periods. I can hardly think it was the intention of Government to meddle with these lands beyond defining the boundaries. I think that is only right, and, indeed, it is a duty that Government should do, and thus look after the interests of the Crown, and also that the boundaries of these lands should be defined, but that is a very different thing to taking possession of the land after giving short notice, and putting certain machinery in motion which I do not believe the people of this country will like to be put in motion. Then the Government Agents making inquiries and in certain cases acting as judges is very objectionable. I would point out in para. 1 if no claim is made to him (the Government Agent or the Assistant Government Agent) within a period of two months from the date of such notice, every such land shall be at the disposal of the Crown and may be dealt with at the discretion of the Crown. I think that would be a very arbitrary act, and I don't think Government would ever contemplate passing such a law as this and executing it, and if a law be passed, it is surely intended that it should be executed. People might not be at hand. Natives or Europeans who go to England cannot be reached in the space of two months, and to take that land and make it Crown Land would be a very arbitrary act. Clause 2 says:—

“If no claim shall be made within the period of two months from the date of such notice as aforesaid, the Government Agent or Assistant Government Agent shall make an order declaring such land to be the property of the Crown, and such order shall be final and conclusive.”

I am perfectly satisfied there is no man who has any experience of this country who would consent to the passing of a law of this kind. I would not certainly. I have had considerable experience in acquiring land during the greater part of my life in this Island, and I must say that such a paragraph as that should not form part of the Bill. It takes a considerable time to inquire into this matter, and if Government has neglected its own interests for 50 to 100 years, surely adding a few more months to the time required for notice is not a very important matter. Let them define the exterior boundaries of all these places that are claimed, so that further encroachments may not be made on Crown Land, and then set the machinery at work to find out whether it is really private land, and whether people have a proper title. There is no objection whatever, at least, on my part, to the Government Agent or the Assistant Government Agent making a preliminary investigation into the ownership of these lands, because I

believe five times out of six the Government Agent or the Assistant Government Agent would exercise their duties very carefully, and would come to a proper decision on the point, but with regard to giving the Government Agent judicial powers I think it would be highly objectionable. I think a Government Agent should have no judicial powers to decide cases where land in his own district is concerned. I also think, with reference to putting the machinery proposed by this Ordinance into motion that it is not right for Government to compel the claimant to take action—putting the onus on the claimant, and making him take action against the Government. I come now, sir, to clause 5.

“If the Government Agent or Assistant Government Agent aforesaid shall order that the claim be rejected, either wholly or in part, he shall cause a copy of such order to be delivered to the claimant, and if such claimant shall not within fourteen days from the delivery to him of such copy give notice in writing to such Government Agent or Assistant Government Agent as aforesaid, and to the Commissioner to be appointed as hereinafter provided, or in the event of no Commissioner being appointed, to the District Judge of the district in which such land is situated, that he intends to contest such order, the order shall be final and conclusive. And if such claimant shall not within fourteen days from the delivery of such notice to such Commissioner or to such Judge institute an action before such Commissioner or Judge, as the case may be, to establish his claim, such order shall be final and conclusive.”

Now, sir, many of these people are very poor and ignorant. They do not know how to take proceedings, and if they came into Colombo or Kandy to see a legal adviser, he may be away from home, or he may have so many clients' interests to attend to that he might put them off day after day; and yet you compel these people to come within 14 days and take action. I think the time is a great deal too limited. Clause 10 says:—

“In every action instituted under section 5 of this Ordinance the claimant shall appear as plaintiff and the Government Agent or Assistant Government Agent aforesaid shall appear as defendant on behalf of the Crown.”

I think the cases ought to be reversed in respect to this. Then, sir, in the concluding part of clause 12 it is stated:—

“It shall be competent to such Commissioner or Judge to require the personal attendance of a claimant on the day fixed for the hearing or at any subsequent stage of the action.”

There are very many persons who are claimants to land in this colony, and who allow land to remain forest land from year to year. I have done so myself, and some land I have in the Western Province I have not seen for at least 15 years, and I do not suppose I shall ever see it. I ask if it would be right if I were away in England to compel me within such a short time to come out to this country and paying the passage money, when the probability is that the land may not be worth the passage money. That I think is a matter which ought to be taken into consideration. I do not say that a case of that kind will be taken against me, but it might be taken against me or against any man. Clause 17 of the Bill says:—

“In any case in which land has been sold, if such Commissioner or Judge shall be of opinion that the claim of the claimant is established such Commissioner or Judge shall not award the claimant possession of the land in dispute, but shall order him to receive from the man by way of compensation a sum equal to the price at which the land was sold.”

If the Crown has taken upon itself to sell land which it has been proved does not belong to the Crown, and yet the owner of that land has to accept whatever price may be given for it by some person at the auction which may not be within one-tenth of its value, I don't think it would be right—a more equitable mode of procedure would be to appoint assessors, and let them state what amount the owner should receive; and assessors, having before them all the circumstances of the case, would be enabled to judge what was a fair remuneration, for, this man losing his land had no control over it. He lost it entirely owing to the action of Government. Under sub-section 3 it is stated this is to be in full satisfaction, that is, the amount paid for the land by some other person. These are the only remarks I have to make against the principles of the Bill, and I feel sure Government has no intention of doing anything that is wrong or unfair or unjust towards the people of this country, but I would urge, in so far as paragraphs dealing with the principle of the Bill are concerned, they should be thoroughly revised. I feel quite sure Government will take all that is said on these points by persons who have had long experience in this country into consideration.

The Hon. the Acting Auditor-General:—Sir, it will be admitted by all persons who know anything of this country, as has already been admitted by the hon. member who represents the Kandyan community, that some action is necessary for the adjudication of claims to land. No one who has lived in this island for any number of years, or who has studied the administrative reports which have been issued from time to time, can fail to see that if there is one thing more than another which leads to litigation, ill-feeling, and crime, it is the unsettled state of claims to land. It would, of course, be extremely difficult for the Government to introduce any measure which would deal with claims between private parties, but there is a very large extent of land in this country which, everybody must admit, is the property of the Crown, and all that the Government wishes to do by this Ordinance is to expedite enquiry and bring about the settlement of the claims between the Crown and the subject. I was very glad to learn from the hon. member who represents the general European community that he felt sure in bringing forward such an Ordinance this Government would do nothing harsh or unjust to the people of this country. The hon. member who resumed the debate to-day stated—and very properly—that he exonerated His Excellency the Governor from any odium which might attach to the framers of this Bill. He pointed out that a Governor coming to the island must necessarily be for some time under the advice of, he stated, his Council, and that, in the opinion of many gentlemen in the country, as well as members of the Council, that Executive Council had given advice to His Excellency which was not altogether sound. But I can safely say that both the Governor and the Executive Council are always ready, and especially in cases such as this Bill covers, to listen to anything which hon. members who represent the several communities of the island may bring forward, any objection they may state or any proposal they may make to rectify any wrong they imagine will be done by a Bill. Their representations will always be most carefully considered, and will always receive attention. (Unofficial applause.) In the case now under discussion I am now at liberty to tell the Council that the Government, having carefully considered the various representations that have appeared from time to time with regard to certain parts of this Bill, and having listened to what has been said to-day, are prepared to make certain alterations and amendments to the Bill, and I think, when I have explained how far the Government is prepared to go, that is to say how far it is prepared to amend the Bill in Committee, that hon. members will perceive that all the fears that they have had of this Bill working badly, all the fears some members have expressed as to the interests of the natives of this island being neglected, are groundless, and I think when these amendments are introduced into the Bill there will be no member of Council who will not agree with the hon. member who has just spoken (Sir John Grinlinton) that, in bringing forward the Bill, Government has done nothing that could be termed unjust or wrong. I think it would be better, perhaps, if I were first of all to state what those amendments will be, and then proceed to show, for I must do so, how even on the Bill, as it stands, many of the arguments of hon. members were not well based and that their fears were quite unfounded. Well, sir, the first question to which exception has been taken is to the mode of notice. Government is now prepared to give further publication to the notice of enquiry—indeed, I may say, almost any extension hon. members might suggest in Committee would be agreed to as far as that is concerned; but what is now proposed to do is as follows:—It is proposed to publish such notice in the English, Sinhalese, and Tamil languages six times in the "Government Gazette" and in two of the local newspapers, copies of the notice are to be posted on the land, affixed on the walls of the several Kachcheries and the several Courts of the Province within which such land is situated, and in such other localities which may secure the greatest publicity, and be advertised by beat of tom-tom once a fortnight for three months. It seems to me that no publication could be more extensive than that. Every possible publication that can be given will be given. Further than that, in the event of its being suggested to the Government Agent that a claimant is absent or a possible claimant is absent from the island the term will be extended for three months longer in order that any representative he may have in the island may communicate with him that this enquiry is about to take place. The next point that I would refer to—and that is a very important point indeed—is the objection taken by hon. members about the Government Agent being the person who shall absolutely adjudicate on the claim. Now, sir, it has been decided that the powers of the Government Agent shall be restricted to dealing with such cases in which he may come to an agreement with the party. (Unofficial applause.)

Acting
Auditor-
General's
speech.

The Hon. the General European Member (*sotto voce*):—That is all right.

The Hon. the Acting Auditor-General (continuing):—and that in all cases where he is unable to agree with the claim of a party he shall then send the case to the District Court or before the Judicial Commissioner whom the Governor may appoint. In order still further to guard against any possibility of its being supposed that the Government would send a case for trial to what has been called a biased Court it has been decided that in every case under this Ordinance heard by the District Judge or Judicial Commissioner he shall be associated with two Assessors, one to be nominated by the claimant and one to be nominated by the Agent of Government. There will, therefore, be a Court to which, I think, no person can possibly object. Government would have been quite willing to have left the decision to the District Court, but it is absolutely necessary to insure the speedy decision of these claims. The great object of Government is not to keep this sore open for any length of time, and it is for this purpose that Government must reserve to itself the right to appoint Judicial Commissioners or in other words Additional District Judges to enquire into these particular cases, and I feel quite sure that Council will admit that the judgment such an officer sitting with two Assessors will be able to bring to bear upon the case will be quite equal to the judgment of any Judge sitting singly. Those, I think, are what I may call the principal amendments of the Bill. There are minor amendments to meet various points that have been brought forward, such as the extension of time and other small matters. I am not sure, but I think that these smaller items might be very much better left to be considered in Committee of the House. The two principal points I have stated, and I should like to address myself now to what would be the working of this Ordinance under its amended conditions. The hon. member who resumed the debate to-day, stated that this Ordinance was, he believed, a continuation of Ordinance No. 4 of 1887 regarding Abandoned Lands. Now really the present Ordinance has nothing whatever to do with the Abandoned Lands Ordinance, but I merely refer to it because the hon. member said so much evil was prophesied under that Ordinance. It was said that it would work such desperate mischief and this Ordinance was going to do worse. I should like to know what mischief has been worked under the Abandoned Lands Act? Has anyone suffered in the slightest degree? I feel perfectly certain when this Ordinance is understood as well as the Abandoned Lands Act, and has worked as long, hon. members will see that there is no injury likely to be worked to anyone. I call the special attention of hon. members to the fact that this Ordinance does not attempt to deal with cultivated land or land in the possession of persons. It is an Ordinance relating to forests, chena, waste and unoccupied lands. The hon. the Tamil member said what is the use of enquiring into those titles, they are perfectly clear; and that, our claims to land being based upon Crown grants, prescriptive rights or *sannas*, these claims are easily ascertained. It is quite true that the native claimant has at his command immediate proof whether he is entitled to the land or not. The Crown, on the other hand, has absolutely no proof, so to speak. It is forest, waste or unoccupied land as regards if there is any claim to it it is easily ascertainable, as the hon. member said. If easily ascertainable by the Crown how much more easily ascertainable by the claimant! Now what is he required to do? This notice, which is to be most extensively published, calls upon him to go before the Government Agent and to state his claim. It has been said that the Agents of Government in these matters will be inclined to be excessively hard. Now, Sir, I must say that hon. members or those who know the Government Agents of the country best will admit, it is the Government Agent of the Provinces who stands by the natives of the country in every transaction which they have whether it be with outsiders or whether it be with the Crown. I maintain that if a native wants his case fairly and properly put, the Government Agent of his Province or the Assistant Government Agent of his district, if he is worth his salt, will put his case as fairly and equitably as he can before the Government or the Court. What is the Government Agent now to do? If, when a man comes before the Government Agent, he satisfies him that he has a proper claim, the Government Agent is at once to agree with him, and say, "The land is yours, keep it," and it is settled. It has been necessary to include a proviso that such settlements shall have the approval of His Excellency the Governor. That is necessary, because otherwise by mistake or erroneous views a Government Agent might give up large tracts of land to a native, or I may say to a European claimant. That proviso has been inserted to guard the interests of the Crown. but outside that the Government Agent can give up land to the claimant if he is satisfied that he has got a good claim. Now supposing that he thinks that he has not

got a good claim. He immediately proceeds to hold an inquiry fairly and squarely. He must not assume that the man has no title, but he holds an inquiry to the best of his ability and judgment, and says, "I cannot admit your claim." What then does he do? He tells the claimant, "You must take that claim to the District Court. I will send the case there." That is the only result of the decision of the Government Agent, and that is what hon. members seem to take great objection to. I hope they will object no longer when they see it in its proper light. The Government Agent says: "The result of my inquiry is that, having found that you have not a claim, you shall be the plaintiff in the Court below." Now, I cannot understand that being a very great grievance as if it was almost impossible for the unfortunate man to prove his claim. As the hon. the Tamil member has said, "Native claims are easily ascertainable." The plaintiff has only to go to the Court, and you must recollect that he has already had a trial of his claim before the Government Agent; but the cases go to Court, and again come up for trial before the District Judge or Judicial Commissioner. Now, does that look as if Government were trying to take a man's land from him. I appeal to hon. members, does it? Well, sir, it has been stated that if a person is absent from the island or he does not bring his claim before the Government Agent that he has lost his land. Nothing of the kind. The decision of the Government Agent, which was merely a reference to the Court, holds good for one year in the case of a man being absent and not bringing his claim before the Government Agent. All he has to do is to take his claim himself to the District Judge or Judicial Commissioner when he returns, instead of having his claim referred at once to the District Judge or Judicial Commissioner, if he does appear. If you consider the amount of notice that is going to be given and the fact that the Government Agent is going to advertise the enquiry throughout the length and breadth of the district, post notices up on every Kachcheri, have them regularly cried by tom-tom, put advertisements in the Government "Gazette" and local newspapers extending for three months, hon. members will see that there is really no ground for the fear that any man's land will be adjudicated upon without his full knowledge and his having every opportunity of being represented and putting forward his claim. The hon. member seemed to imagine that because he had bought land—I am referring to the hon. member who represents the Tamil community—and does not cultivate it, therefore it can be taken from him. He says, "I have got a Crown grant, and because I do not cultivate it you propose to take it away." The case simply means this. If the Government Agent does not know that the hon. member has this piece of land under a Crown grant he advertises in the "Gazette" and other newspapers in the Island, give notice by posters and beat of tom-tom that an enquiry will be held into the matter. If the hon. member does not write in and say: "I hold the title deed," the Government Agent would say, "This land is declared to be the property of the Crown unless within twelve months—(the hon. member has twelve months to come to Court and establish his claim)—he has established his claim before the District Court or judicial Commissioner." I do not see how it is possible for a man who has bought Crown land to be turned out of his land under such circumstances. The hon. member who represents the Kandyan community stated that he thought we were dealing harshly with chenas. The hon. member must know that so far as the Kandyan district is concerned these chenas have always been deemed to be the property of the Crown, whereas in the maritime district they were merely presumed to be the property of the Crown. The hon. member who represents the Burgher community, who smiles, will admit that there is great difference in those terms. The Ordinance of 1840, which was an Ordinance passed at a much earlier date than the date at which we are now speaking, the officers who framed that law must have had a much better knowledge of what was Kandyan law than we can profess to have to-day. It was distinctly laid down in Ordinance No. 12 of 1840 that the Crown had greater claims, and that they were to be asserted more strongly in the case of Kandyan chenas than in the case of chenas in the maritime district. Not only did Ordinance No. 12 of 1840 so specify it, but Ordinance No. 9 of 1841, passed shortly afterwards, went so far as to declare that no prescription whatever should run against the Crown in respect to public roads, streets, or highways, or chena land. I think, therefore, it will be seen that the Crown has a very good right for saying that until you demonstrate that you have a good claim we have a right to assume that these lands are the property of the Crown. All we ask you to do is to show us your proof, and we will consider it as well as we can, and if you have any title whatsoever you shall have the land. That is the object. I do not think any hon. member can be serious in supposing that the Government wish to deal unfairly with the question of claims of land. Then, again, great exception was taken to the sale of land. If hon.

members will study the Ordinance they will see that the sale of land can only take place if by any chance no one makes a claim to it. As soon as any person makes a claim to land it comes under inquiry either before the Government Agent, the Judicial Commissioner, or District Judge. There can be no sale until the question has been finally settled, and the land declared to be the property of the Crown. This clause was put in to protect the interests of the claimant, for, if the land is sold in the ordinary course, and if a man appears after considerable time and says, "You have sold my land," and if he then establishes his right to the land, we give him back the money we received. Surely that is only just and fair. Government has made every enquiry, and done all they can. The man is away—and the man makes no claim. Government could not proceed with ordinary sales of land if it did not have power to sell where there are no claims. Government sells, and if the claim is made and upheld even a year after, the owner gets back the full value of the land paid on our taking possession. Then an objection was taken by the hon. member who represented the Kandyan community to the places the Commissioner might hold his Court. I feel perfectly certain that that clause was only put in to give the Commissioner power to come nearer to the claimant, rather than drag the claimant some considerable distance to him. I feel perfectly certain there would be no Commissioner who, if the claimant preferred to have the enquiry held at a particular court or station, would decline to meet his wishes as far as possible; but it is absolutely necessary to give the Court power to shift its position if agreeable to all parties concerned. As I said before, there are several other minor amendments, and all of them are in favour of the claimant. There has been nothing added to in any way increase the powers given to Government, but every amendment added is in favour of the claimant. These amendments, which are minor amendments comparatively, will all be submitted to the Committee, and I trust after the very strong amendments which have been admitted by Government that the hon. members will not further oppose the second reading of this Bill. I should like to say, in reference to what fell from the hon. member who represents the Tamil community, that he did but scant justice to His Excellency when he stated that he felt sure that he was led by the advice of bad counsellors. I can tell him that the Governor has taken the greatest possible interest in the amendments to this Bill, and the amendments brought forward in the interests of the various communities of the island are greatly due to the suggestions which have been made in the Bill by His Excellency himself. (Unofficial applause.)

THE WASTE LANDS ORDINANCE.

The Hon. the Muhammadan Member said:—Sir, land encroachments have become a very common practice in Ceylon, and one which is still going on, without checking. There are ready purchasers to purchase waste lands at very low rates, such immodest practices prevailing in almost every province. There are certain documents called "sannasas," purported to be grants, granted by ancient Kings, to perform certain special services, which the grantees are bound to perform in respect of the land held by them. According to the conditions of such "sannasas," the holders of the land had to render these services either to the Royal household, or to some public works of the Kingdom, such as the construction of temples, wiharas, and dewalas. Practically all these services are extinct. And most of the temples are ruined, and of some no trace can be found. How far and to what extent those grants should stand good? I have heard that very large tracts of land, alleged to belong to temples, wiharas, and dewalas, have been alienated, or leased to others. That is a breach of trust on the part of those alienators, because the "sannasas" or grants did not empower them to sell or lease the land. Now, sir, all these specified services are no longer rendered. Such grants ought to be reverted to the Crown. Among the "sannasas," or "extracts," the latter being a Dutch grant, are mixed up many spurious and unguine documents, not easily detected, which gave a handle to those dishonest land sharks to invent spurious documents to suit their purposes, and there is cause for grave suspicion in the fact that almost all the grants were granted by the last exiled King. In former days land surveys were non-existent and boundaries were defined by the extent sowed and planted—in the case of low lands by the quantity of grain sown and in the case of high lands by the number of coconut plants planted. Those alleged grantees are going further, and seize and get hold of other lands bearing the same or similar names, which are not included in the grants. Wanton destruction of Crown lands is going on in the North-Western Province between Chilaw and Puttalam, and also at Kurunegala, where a certain class of Tamil fishermen, known as "Mookoowam," sold very large extents of Crown lands only defined by boundaries such as landmarks, the purchasers chiefly being Moormen, Sinhalese, and Tamils

of the adjacent localities. Very many lands have changed hands, and the price paid to those alienators is a few rupees and a few bottles of arrack for a block of land described by landmarks, whether it may be one hundred or five hundred acres. Most of those lands are now turned into valuable coconut estates. In the same districts a large extent of land, especially waste land, is claimed by some persons, which is known to the lawyers very familiarly by the name of "chettichena." Of other cases I abstain from forming an opinion, because they are still hanging in a law suit between the Crown and the claimants. Not a province is left untouched by those designing men. The faults of the system are that the existing laws are very weak, and powerless to deal with those who filch land. A more effective law, such as the proposed Ordinance, would defeat the dodges played by dishonest claimants, who are generally supported by the lawyers with all technicalities. In this Bill ample provisions are provided, to hear and decide claims, calmly, and without much expense to either side, and by it all frivolous and false claims would be wiped off. Honest claimants who hold good titles have no reason to dread this Ordinance. Sir, it has become a common practice to prepare petitions, and also to hold meetings, pretended to voice public opinion. These are set up by designing persons. And I am surprised to see that the voice first sprung from the North-Western Province, which is one of the most sinning provinces, and in which land huntings are carried to the full extent the same as slave hunting in Africa. Our civilized laws are too lenient to deal with those unprincipled false claimants. Litigation at present is too prolonged; very many of the suitors die before their cases are heard and decided. I am in full concurrence with this Bill, and I hope it will give a general satisfaction to all claimants to lands. Hitherto a land dispute has meant ruination to suitors and Crown land has been made a prey. I wish a merciful clause to be added, to the effect that whoever failed to prove their claims, and who, being in distressed circumstances, resided in such plots of land, should not be ousted without giving them some relief. That discretion, I think, should be reserved to His Excellency the Governor, who should be empowered to grant such concessions as he may consider fair and reasonable. In the section 1 I think the period of two months should be extended to three months, and, further, in the case of absentees from the island should be extended to six months. In the section 5th the provisions within fourteen days should be extended to "thirty" days. And in section 18 the words, "It shall not be lawful for any person hereafter to acquire any right in or over such land, or to enter thereon or to build and clear," should be deleted. I do not think it is a proper course, deciding to prohibit any person who may desire to cultivate or improve his lands. I do not object to retain the portion prohibiting the cutting and felling of any trees upon such lands, until such land has been declared not to be the property of the Crown. This Bill is originated by the Acting Registrar-General, who has roused Government and suggested an expensive scheme of surveying the whole island to check the evils. The thanks of the general public are due to the Hon. the Attorney-General, who has saved the Colony from an enormous expenditure which would be incurred by surveying the whole island, by introducing this Bill in such a prudent manner to determine claims more speedily and on very liberal principles. If any objection is to be made against this Bill, it is the one that the revenue officers should not be the persons to administer justice. This, however, can be easily remedied. A fact cannot be overcome by falsehood. An honest man loves the truth, but a dishonest man hates the truth. A judge loves a fact to decide his decision on the facts, but a lawyer seeks technicalities to overturn decisions of the Court.

The Hon. the Planting Member:—Sir, after the remarks which fell from the hon. the Auditor-General, it is perfectly evident that the hon. the Tamil Member has cruelly misrepresented Government when he suggested that they were about to fill the rôle of a highway robber. The rôle they evidently intend to follow is that of a tamby trader who suggests R10, expecting to get and being quite willing to accept R7.50. I hope, sir, Government will see their way to accept a lower price; I hope Government will see their way to modify some of larger and far further reaching evils of this Bill that have not hitherto been touched upon. The hon. the Acting Auditor-General very skilfully avoided touching upon what I consider the real crux of the Bill—that is, the presumption of ownership which it gives to the Crown. I think, sir, all members of this Council and all people in the country who take an interest in this question are quite at one as regards the desirability of settling these claims, but the difficulty is how it shall be set about in a fair manner. I do not think the Abandoned Lands Bill has anything in common with this Bill. I do not think it bears on the subject at all. The Ordinances which more or less relate to the same subject are those of 1840 and the Forest Ordinance of 1885. Now, sir, those who know what took place before the passing of the Forest

Ordinance know that it was a foregone conclusion that the original suggestion of the Government to make the Government Agent the adjudicator of these claims, could not be carried out if the Bill were taken to the Secretary of State. We have on record the Secretary of State's strong opposition to anything like the combination of executive and judicial duties. I felt myself that Government were unlikely to persist in that position, and I am extremely glad they have withdrawn it, and extremely glad to hear of the comparatively minor improvements that the hon. the Acting Auditor-General foreshadowed. When this Bill was introduced by the hon. the Attorney-General he dwelt very naturally upon the position of Government, and in such a matter he pointed out that the Government was not a robber or a grabber of land, but it was really a trustee for the community; and that it was really its duty to get hold of and supervise these lands, which were the property of the community. I quite agree with him, and there is no doubt it is so, and we must not regard the Government of the country as anything other than a trustee of the people, wishing to do what they consider to be best. There is another point, however, which we must not lose sight of—the weakness of the individual when he is fighting the community—in considering the community as against the individual. I take it that it is a part of the duty of the Council and of the unofficial members of Council who, more or less, represent the several communities more than Government, to see that the weak individual when fighting the strong community shall not be placed at a disadvantage. The hon. the Attorney-General, sir, and also the hon. the Auditor-General, also claimed at our hands a recognition of the work of Government servants, and maintained that the Government Agents were to be trusted to administer such laws in a generous and impartial spirit. Now, sir, I do not think that is so. I think the traditions of the Government Agents and the bringing up of the Government Agents are such as to make them adverse to native claims. It has hitherto been too much the inclination to think they are doing well for the community by defeating native claims which natives advance to lands in their respective districts. I do not think that, as a rule, the Government Agent or the Assistant Government Agent is sufficiently in favour of the native in disputed land cases, and, sir, if proof of that was wanted we have only to turn to proceedings under the Forest Ordinance. It is not very long since I returned to the colony, and yet in that brief space of time I have read two Supreme Court judgments, doubtless known to Your Excellency and the hon. the Attorney-General, in which very strong language was used with regard to the misuse of the Forest Ordinance by Government servants as against claimants; and we know there are cases in which there has been similar misuse, and which have not been made public, and which have not been before the Supreme Court; and when I look at what is done under the Forest Ordinance and what was said when the Forest Ordinance was introduced, I am not disposed to attach much importance to the claim that we should consider the indulgent way in which Government Agents would administer this Ordinance. When we come to the Ordinance itself, we find that the interpretation clause—the most important clause of the whole Ordinance—instead of being put in a leading part of the Bill, has been pushed away towards the end, and it takes a considerable amount of study between the interpretation clause and the other clauses to see what the real effect of that clause is. The hon. the Acting Auditor-General—I don't know whether he was in earnest or whether he was satirical when saying that the claims to native lands were easily ascertainable. That may be so, sir, were the usual rules applied to them, but if you are going to put an artificial interpretation on common English words, and take evidence away from the claimant and give it to the Government, you make it a very difficult matter for him to prove his claim. If this Ordinance is passed it will be very difficult to specify all lands to which this Ordinance applies, but it is comparatively easy to specify lands to which it does not apply; and, at the date of passing of this Ordinance, the only land in the Colony, the title to which is not unsettled, and at law liable to have to rebut an adverse presumption of ownership, is land which at that date has been in cultivation for a period exceeding five years. When this Ordinance is passed into law, there is absolutely no other land in the Colony which has not had its title unsettled. I do not think it is fair to unsettle titles in that way. Ceylon is essentially an agricultural colony, and the people are nearly all landowners, and any interference with tenure is a serious matter, and in my opinion it is not right to unsettle the title to land in that way, and, with this one exception, you cannot feel certain as to the title to land which has not continually been in cultivation for a period exceeding five years. In one of these Supreme Court judgments to which I have referred, I find that the Judge put the matter, I think, in a very fair way. He, talking of some of the proceedings under the Forest Ordinance, says:—

“It drives the claimant into a civil Court as a plaintiff, whereas, if he is in bona fide possession or occupation of the land he ought in fairness to be on the defensive, and his rights of occupation and possession protected.”

I think that is eminently fair, and we must all admit that possession has got some rights. If you possess an article it has rights of possession, and if you are the bona fide owner of land you should have the benefit of such presumption of ownership. I think it is very wrong that Government should take possession themselves, and should take from the occupier all possessive rights, and practically give them to themselves. I cannot think, sir, it is fair. In such a Bill as this we must consider the conditions of chena cultivation. The idea of chena cultivation to revenue officers is abhorrent, and comes in for the strongest possible adjectives they can find to apply to chena cultivation. Now, sir, I have a good word to say for chena cultivation. The great bulk of the chena land in this island outside the comparatively small zone where tea is grown is unfit for any other kind of cultivation. To what is it to be put? We know of no other sort of cultivation that can be substituted for it. The land is land above the level to which water can be put on, so that it cannot be used as paddy fields, and there are no means of turning it to use other than the system by which the villagers at present grow crops after a period of several years for resting the land. The objections to the system are that it is said to be wasteful. I do not believe it is wasteful except in instances, of which there are very few, where we find that forests are destroyed. From an agricultural point of view I maintain that it is not a wasteful system. The land is able to recover, and there is practically nothing taken out of the land other than taken out by the crop. Tea planters find that chena lands cleared for many generations grow some of the best tea in the Island. They are not at all exhausted by the crops, and there is much to be said in favour of chena cultivation within certain limits and in certain districts. If the object of this Ordinance is to restrict chena cultivation, I think, sir, that it will prove an injury, because in connection with chena cultivation, you must consider that it is the usual and ordinary means of cultivation. It is the only means by which those lands can be cultivated, and it is unfair in these circumstances to say to a man, “If you do not cultivate it uninterruptedly we will presume ownership against you.” A man has been in bona fide possession of the land, and his rights of ownership and possession should be respected. The hon. the Acting Auditor-General said these rights were respected, and that the Ordinance applied only to uncultivated land; but it is not so. When you read the interpretation clause—it is a very far reaching one—you will find it applies to all cultivated lands unless they have been cultivated over five years continuously. I am quite aware that there is many a shadowy claim put forward by natives to Government land, which, it may be, Government are unable to repudiate and wrongful claimants get possession; and I am quite at one with Government in trying to put an end to it, and to see that no one except bona fide possessors shall obtain possession; but the Ordinance goes a great deal too far in that respect. I, in common with other members of Council who have spoken, cannot attach any precise meaning to the expression “physical occupation of land.” I cannot imagine what that is. I can see the fairness of limiting an owner to a block of chena perhaps of 20 or 30 acres, and I can see the fairness of not allowing a native to claim 400 or 500 acres merely because he has some field or patch on which he has squatted; but I think it would be possible to pass an Ordinance to protect anything like bona fide possession and bona fide occupation, and at the same time to defeat the claims of wrongful claimants. I don't think any law we can pass will prevent Crown land now and again falling into the hands of wrongful claimants, but I think, sir, we could frame a law which would result, on the average, in justice being done to bona fide occupiers and bona fide possessors, and at the same time secure to Government the lands which may fairly be termed Government lands. The Ordinance, as a whole, sir, is too heroic, although Your Excellency foreshadowed an Ordinance that would not be heroic. I think it goes too far; instead of untying the knot it simply cuts it. It simply declares that with one small exception all the land in the country is Crown land, and you have got to prove it is not. I attach much more importance to the presumption of ownership which the interpretation clause places than I do to details. I have no doubt the lengthening of the period of notice will all be arranged in Sub-Committee; but the vital principle of the Ordinance is that in this colony the presumption of ownership in favour of the Crown goes much further than any other preceding Ordinance did. The same words are there as are used in the Ordinance of 1840, but they have a different meaning put upon them. The Ordinance of 1840 was intended to apply, and it was stated that it only did apply, to lands to which the claimant had no probable claim or pretence of title; that is a very different thing,

sir, to the lands which fall under this Ordinance. Then again, the Forests Ordinance, sir, is only applied to all land at the disposal of the Crown. Instead of in the year 1896 going back a little further and giving the people a little more in their favour, we seem to be going in the other direction, and seem to be going to whittle away more of their claims. We are going to introduce artificial meanings in this Ordinance, and by these artificial meanings we are going to unsettle the titles to land, chiefly native lands, which the people have possessed for generations. Without going into any details, I think it is extremely undesirable that the initiation of a settlement always rests with the Government Agent or the Assistant Government Agent. I think means should be provided whereby, if the claimant fears interference, if he dreads the Government Agent will at once step in, he should have some means of initiating a settlement. At present it is only when the Government Agent or the Assistant Government Agent chooses to put the machinery here provided in operation, that any settlement will be arrived at. In connection with the concession that the Hon. the Acting Auditor-General intimated—that the Government Agent would not adjudicate upon disputed claims, but that his decision would only be final where he might come to an amicable agreement, I think that the power of repudiation in Clause 6 ought to be swept away. It seems to me to be extremely unfair.

The Hon. the Attorney-General:—That will be swept away.

The Hon. the Planting Member:—Not naturally.

The Hon. the Attorney-General:—In view of the amendments which are to be made it must be swept away. As the Bill is amended any arrangement must be with the consent of the Governor and consequently clause 6 will disappear; it only refers to cases where the Government Agent has acted without the consent of the Governor.

The Hon. the Planting Member:—I do not follow my hon. friend.

His Excellency the Governor:—Clause 6 only refers to the Government Agent when he is acting judicially. He is not to act judicially now.

The Hon. the Planting Member:—I am glad to hear that, because I thought the provision was an unfair one.

The Hon. the Attorney-General:—I did not wish to interrupt the hon. member. I thought it might save time.

The Hon. the Planting Member:—Thanks. (Continuing.) In concluding my remarks I can only express the hope that Government will see their way to modify the interpretation clause and modify the presumption of ownership by making the law one which will respect the bona fide rights of occupation; and, at the same time, one which will enable Government to resume possession of any lands to which the claimants have not got fair and reasonable title.

The Hon. the Mercantile Member:—Sir, the title of the Crown to land is, I suppose, chiefly effected by Ordinance No. 12 of 1840, whereby it is provided that all waste forest and unoccupied land shall be deemed to be the property of the Crown until the contrary thereof be proved. These lands are held by Government as trustees for the people, and the title is thus acquired, I take it. It is quite within the rights of Government, and not only so, it is a duty to protect these interests in the land and also to create just titles where there is any doubt, and to vest the title in the Crown where there is no other legitimate claimant. I take it this measure now before us is not exactly the kind of measure to accomplish this. In second readings of Bills it is customary to discuss the principles of measures, and it appears to me that the Bill now before us, as it stands, is, I may say, a most unprincipled Bill; in fact, it seems to be devoid of all the principles of common honesty. It is very crude in its provisions, and I don't suppose the framer ever expected it would pass this Council in the form in which it at present stands. Probably as much usurpation as possible was crammed into it in the anticipation that it would be very much modified when the Bill passed through Committee. The principal objections I took to it were with regard to the powers allowed in the different clauses and regarding the notice to be served or objection to be taken. As has been pointed out, large concessions are to be made in this direction, and it will be needless to take up the time of the Council by referring to them; and assessors are to be appointed, which will go a long way towards making the seventh clause less objectionable. The clause to which I take special exception is clause 19. It appears to me to be the most presumptuous of the lot, inasmuch as it presumes all chena, forest, waste, or unoccupied land to be the property of the Crown until the contrary thereof be proved. Well, sir, with regard to many lands owned by people who are absent, nothing can be easier than for Government to ascertain from the Surveyor-General's office whether the lands have been surveyed and to whom they belong; and to an owner who might be

absent from the island that would save an infinite amount of trouble. Why should he be put to all this trouble when it is unnecessary? Sub-section B of that clause has been referred to by several speakers. I cannot understand what is meant by "actual occupation." How can a man be in "actual occupation" of 1,000 acres? Then, with regard to "actual physical possession," I do not understand the term, but I suppose the hon. the Attorney-General will be able to explain it. The hon. the Auditor-General has stated that very many amendments are likely to be introduced. If many of these are introduced it will be almost impossible to recognise the Bill, and I have no doubt when it is passed through Committee it will be put into shape and made a workable measure, which it is not at present.

The Hon. the Burgher Member:—Sir, I am thoroughly in accord with the remarks that have fallen from the previous speakers with regard to the provisions of this Bill. Government themselves have felt the force of their arguments, and have modified the provisions of the Bill in several material respects. I feel with my hon. friend on the right (the Planting Member) that the sting of the Bill lies in the definition contained in the interpretation clause, No. 19. While using the words of the older Ordinance with which we are familiar—the Ordinance of 1840—in sub-section C, it has given to these words a vastly extended meaning. "Unoccupied land" is made to include land which, for any period under five years, has been in the "actual physical possession" of any person, and has been for that period under cultivation. I think the definition in that respect is objectionable in extending the scope of the Ordinance far beyond anything which Government can claim to be reasonable. The hon. the Acting Auditor-General in his remarks led me to believe that some modification was intended with regard to the sale of land. I understood him to say that no sale would be possible where a claim had been preferred. At present the prohibition under section 18, which prevents anybody from acquiring rights to such land or entering thereon, or doing any act of cultivation or possession after notice under section 1 is issued, does not include the Crown. I suppose it is intended to give effect to the Hon. the Acting Auditor-General's remarks, and secure that the Crown shall not sell, once a claimant has preferred a claim to the land. There is another point on which I would like to make a few remarks, and that is the making of it obligatory on the claimant to bring an action. I should be pleased if the Government saw their way to provide that the Government Agent shall be the plaintiff. Put the claimant in the position of a defendant, and let the Government Agent, who has not only the presumption in favour of the Crown, but, after the inquiry, a perfect knowledge of the case for the other side, let him come to the Court as a plaintiff. The presumption would still be in favour of the Crown, and the Government Agent, as representing the Crown, will still be entitled to any presumption that the existing law makes with regard to the right of Government to the land under these conditions. I think there would be no objection to his being the plaintiff in the proposed action. As to the suggestion that there should be two assessors—I suppose the number is a detail—I would take exception to the mode of appointment, which I think it was suggested should be as under the Lands Acquisition Ordinance. Those who are familiar with the Lands Acquisition Ordinance know that the assessors are partisans—they make no secret of it. The Government Agent usually nominates the Kachcheri Mudaliyar and the claimant nominates some friend upon whom he can rely, and, therefore, the Court receives very little judicial help from the assessors. In lieu of them I would suggest that the procedure under the Courts Ordinance and the Civil Procedure Code be made applicable. Under these I believe the number is three assessors; they are summoned by the Fiscal and chosen by the Court, and they are able to assist a Judge in his deliberations. Lastly, sir, I would suggest to Government, whether in view of the special conditions that are applied to claims under this Ordinance some relief should not be afforded in the matter of stamp duty. The present Ordinance makes the full duty payable on these claims that would be payable if the action were brought in the regular Courts.

The Hon. the Attorney-General:—Only in appeals.

The Hon. the Burgher Member:—That being so, and the stamp duty being so very small, I would suggest to Government the remission of it altogether. This seems a small matter, but, when the position in life of these claimants is considered, it will afford them very considerable relief.

The Hon. the Sinhalese Member:—I do not wish to remain silent, sir, while such a very important Bill is being discussed, and I can only express my gratification at the amendments that have been suggested to-day by the hon. the Acting Auditor-General. I was very much gratified to hear that the concessions referred to were suggested by Your Excellency. I may mention that the hon. the Attorney-General asked me what

were my objections, if I had any, to this Bill. I stated to him that a great deal of the objections to the Bill would be removed if the judicial powers in this Bill were taken away from Government Agents and given to judicial officers. I am very much gratified to hear that Your Excellency has agreed with me in that matter. I feel sure, having regard to the concessions already made, that any other suggestions made by the public or unofficial members of this Council will be respected in Committee. There are objections which I might mention in detail, but I am not now going into the details of this Bill. In section 18 there appears to be a slight amendment necessary. I have already written to the Hon. the Attorney-General on the subject. I do not see any reasons for preventing claimants—bona fide claimants to land—making any improvements on the land during the pendency of the investigation, which cannot in any way injure the owner, whether it is the Crown or a private individual. I can quite understand any person being prevented from causing any injury by cutting down forest, which would be a very great injury, but I cannot quite understand why a person should be prevented from cultivating the land. I do not see any objection to such cultivation until the decision of the Commissioner or District Judge is given and the owner of the land ascertained. Sir, that is a modification that can easily be introduced in Committee. There was an observation made by the hon. the Acting Auditor-General with regard to the notice contemplated in the first section. He said tom-toming in the district was one of the means by which this notice was to be given. I should say that tom-toming in the district would be a very difficult matter in districts that are very extensive. I do not see how tom-toming can be carried on throughout the district. I suppose that means tom-toming in the village or locality in which the land is situated, otherwise it would be practically impossible to do it; but, as my hon. friend has said, these are matters that can be arranged in Committee. I also see objections to certain terms. The use in section 19 of the term “unoccupied land” to include uncultivated land, but there are lands that are not cultivated, and which it is not desirable to cultivate; in fact, we are using the word in altogether a new meaning. In the same way in the Forests Ordinance, the word “forest” had a new meaning given to it. If we have no word in the language we may coin a word, but to use a word which signifies another thing is not right. “Forest” is declared to be all property at the disposal of the Crown, and it seems that “unoccupied lands” include “uncultivated land,” &c. There are a good many lands in the possession of persons who really cannot be in “physical possession.” That I would submit also is a term that can easily be modified if Your Excellency pleases, and I have not the least doubt, having regard to the concessions already made, that you will have no objection to alter section 19 to suit the circumstances of the case. None of us are desirous to cripple Government in any way in its desire to conserve the interests of the public, and the unofficial members are desirous to assist Government quite as much as its officers are desirous. My hon. friend inquired what was the procedure unofficial members intended to adopt. That rather implied that we resort to concerted opposition. Such has never been the case, I think. We have all attempted to act with Government, only we think it is our duty to declare our opinions when we have decided opinions on any subject. With regard to the fairness of the Government Agents in settling claims, I am not at all prepared to admit that the majority of Government Agents have been very unfair in their dealings with natives. I think some of them have been eminently fair in their dealings, and not only fair, but some of them have been generous in their dealings with native landholders; but there are exceptional cases—cases that have been commented on by the Supreme Court, as well as by the public, in which injustice was done owing to no fault of the Government Agent, but owing to their anxiety to serve the Government and what they considered the interests of the public. There is only one other point I should like to mention, and that, too, refers to clause 19. The term “unoccupied land” includes many other things—“all land which at the time of the passing of this Ordinance was not in the actual physical possession of any person or persons, and also all lands which shall not have been in the uninterrupted possession of any person or persons for a period in excess of five years.” I think the term of five years should be extended, and I have no doubt Your Excellency will extend the term. We have heard that cultivation of chenas often takes place at intervals of fifteen or sixteen years, therefore we cannot limit the period to five years. There is one point that occurred to me in connection with the subject—can the possession of land which is cultivable only at intervals be regarded as interrupted if there was no cultivation during these years? Supposing land is cultivable once in ten years, can the non-cultivation during that period be considered interruption of possession? I

would submit not. I think it must be made clear, otherwise the Crown would be presumed to be the owner of all chena lands which are not cultivated except at long intervals of time. These are the only observations I wish to make on this Bill. Before I sit down I should like to express my thanks to Your Excellency for the concessions that have been promised.

His Excellency the Governor:—Before calling on the hon. the Attorney-General to reply, I am sorry to have to make a few remarks. I had hoped that this debate would have come to a conclusion without my being called upon to speak. But the observations made by the hon. member who represents the Tamil community make it desirable for me to make a few observations. The hon. member absolved me from all responsibility for this Bill at the expense of the able gentlemen who advise me. I have recently had reason to admire the ingenuity and rapidity with which, in travelling about this charming country, buildings are erected for the accommodation of travellers out of the flimsiest materials, and the statement of the hon. member somewhat reminded me of one of these. I greatly regret that I cannot accept the hospitality of the hon. member or avail myself of the shelter he offers me. I am conscientiously unable to do so, because the responsibility of this Bill rests upon me; and the Council may always assume that the more distasteful legislation is, the greater is my responsibility, because the more carefully, cautiously, and painstakingly do I examine it. The hon. member based his kindly hypothesis on my address, and said, repeating my words, that I preferred administration to legislation. That is quite true, but in that same address I told the Council that it would be necessary for me to legislate on these two questions to which he alluded, viz., the repression of crime and this waste land question. The hon. member is perfectly correct when he thinks that it is most distasteful to me to introduce legislation of this kind. The Council cannot think that at the beginning of my tenure of office it can be anything but repugnant to me to have to introduce legislation which is so unpopular as this and the other bill relating to the repression of crime, and it is only a stern duty that obliges me to do so; and if these two cases are the first and the last of that sort of legislation that I have to introduce into this Council during my term of office, I assure you nobody will rejoice more than myself. Several hon. members have questioned the necessity of this legislation, and that is the point to which I wish to confine myself on this occasion. If there is no necessity for this legislation, then I have not only been inopportune—I have not only introduced inopportune and superfluous legislation—but have been guilty of a very grievous error of judgment. That is a point which greatly concerns myself, and to this point I address myself—as to whether this legislation is or is not necessary. The other arguments which arose in the course of the debate will be dealt with by my learned and hon. friend the Attorney-General, who will reply to the arguments, and he will have the more pleasant task of indicating the further concessions which we are prepared to make in Committee, and which we hope will obviate and will remove all serious objections to this Bill. I am greatly encouraged in that hope by the moderate and able speech we have just heard. Before I deal with the point as to the necessity of the Bill, I may be allowed to express my surprise at the attitude of the hon. member who represents the Planting Community. No one here is more clear-headed or farsighted than the hon. member, and I wonder he does not see that this Bill is greatly in the interests of the community he represents. This Bill does not deal with occupied land or land for which there is a Crown grant, and the hon. member who represents the Tamil community need not be alarmed if, say, the Government of the Western Province attempts to lay hands on that property in which, I may say, he has so wisely invested in the Horton Plains. He has only to flourish in the Government Agent's face his Crown grant, and the Government Agent will disappear. This Bill only refers to unoccupied lands to which the claimant has not a very convincing title. And what prudent planter would purchase such land from a vendor? Would he not first say:—

“Do you occupy the land?”—“No.”

“Have you a Crown grant?”—“No.”

If the vendor has nothing but some vague title, what would the planter say? “Go to the Government Agent and get a certificate.” Or “Go to the Government Agent or Assistant Government Agent under this Ordinance to investigate your claim, and come to some amicable settlement with him. You know from the assurance of Government that you will be treated with liberality and justice, and if you are dissatisfied with that settlement, or you cannot come to a settlement, then go to the District Court, and then beyond that there is the Supreme Court in which you may seek redress.” That is the answer which I think any prudent planter would make. He would refuse to purchase the land with this doubtful title, or subject himself to the risk of being ejected

The
Governor's
speech.

when the inevitable cadastral survey comes off. No, gentlemen, it is not the bona fide purchaser who should object to this Bill, but there is a class who will object to it, and that is the middlemen who are buying up parcels of land from those who do not own them, and selling them to the innocent planter. This very day I had a report showing this very case of a middleman who purchased some land from a person who has no title, and consequently there is riot and bloodshed and fighting. This is the report I received. (His Excellency proceeded to quote from the report.) This is one of the necessities of the Bill, and it is in order to settle disputed claims to land such as this that I ask you to pass this Bill. I ask you to review my position when I came here to assume the administration of the island. To whom did I look for guidance?—the hon. gentlemen who advise me here, and also the trusted Agents of Government. What did they say on this point? The Surveyor-General says that “Crown Lands have been taken by encroachment, and in certain districts our forests are disappearing, and that Government is powerless to prevent it.” A Government Agent says “in many Provinces in Ceylon large tracts of jungle are claimed by the villagers; the Crown does not admit the claim and constant warfare goes on, demoralising to both the officers of Government and to the villagers whom they are supposed to control.” His Excellency proceeded to quote passages from official reports, showing how forest and Chena land belonging to the Crown were daily being encroached on, and went on to say: These are a few specimens out of many testimonies. There is much evidence to the same effect which was pressed upon my notice when I assumed the administration of this island. Now, gentlemen, I ask you what would you have done if you had been in my position. I do not believe that any hon. member if he occupied my position and had my responsibility, would not have thought it necessary to introduce legislation of some kind or another to check this growing evil. I was certain that it was my duty to introduce this bill, and I say without hesitation that I did so as I was convinced of the growing necessity for this legislation, and the necessity in the interests of posterity of preventing the further squandering of the capital of this island, and the destruction of the rich heritage which we ought to hand down to those who come hereafter, and also the waste of that fund from which public works can only be constructed. Our object is amicable—our chief object in this legislation is to bring about an amicable settlement. It will be an instruction to the Government Agent and to the Assistant Government Agent to effect an amicable settlement if possible, even at a loss to the Crown. We have no intention of demanding our pound of flesh. We do not wish to stand too strongly on our rights. We do not intend to press too harshly upon the claimant. If a claimant can show a fairly good claim to any land, he is more likely to get an equitable settlement from the Government Agent or the Assistant Government Agent than from a Court of Law. That is the great object that we have in view, namely, to bring about an amicable settlement and prevent litigation. All we ask is that the claimants should come forward, should come out into the open, should emerge from their hiding places, and say, “We claim this land, and this is why we claim it.” When they do that, I promise that they shall receive generous treatment. As I said before, all we seek is the prompt adjudication, the inexpensive adjudication, of these claims, which are a grievous sore in the island, which is spreading gradually, and which will have most unfortunate consequences if not dealt with. I am certain that no Governor ever in this Council Chamber proposed legislation of the necessity of which he was more convinced than I am in this case. I hope hon. members will allow this Bill to go into Committee, after hearing my hon. friend the Attorney-General, and I assure them that in Committee we shall listen attentively and sympathetically to any suggestions they may have to offer. (Unofficial applause.)

The
Attorney-
General's
speech.

The Hon. the Attorney-General:—Sir, I think hon. members of Council have hardly taken into consideration in considering the measure which has been before Council to-day what the actual position of the Government of this Colony is with regard to lands that are called Crown property. You must bear in mind that it is not the property of Her Majesty the Queen, but it is property which is at the disposal of the public—property which is held by Government, not only for the use of individuals of the present day, but the proceeds of which will be used, when sold and realised for public works of utility. You must remember that so far back as in the year 1840 it was decided by this Council that all forest, waste, uncultivated, and unoccupied land should be presumed to be the property of the Crown; you must bear in mind, also, with regard to Chenas, that it was enacted by this Council that all Chena should be deemed to be the property of the Crown unless a sannas or a grant, or the payment of certain fees could be proved in respect of the land. The hon. the Planting Member has endeavoured to show that this provision applied only to that particular Ordinance, but, having

practised, as I have; both as an unofficial and as an official at the bar in Ceylon, I can inform him this presumption applied to all Crown Lands, whether the proceedings were taken under that Ordinance or not. The present Bill, if the hon. member will study the clause he has so much objected to, with regard to the presumption, is based on the Ordinance of 1840; he will see, as has been pointed out by the hon. the Acting Auditor-General that you have only to come forward with your Crown grant and the perils of the Ordinance immediately vanish; you have only to come forward with your proof of continuous occupation to the land, and also they vanish; still, hon. members, I may be pardoned for saying, have had the presumption to say that this Ordinance endeavours to snatch for Government land which ever since I have been in the Colony has been presumed to be the property of the Crown. We have not placed the subject in any worse position to-day than it has been in since 1840. The public is in exactly the same position. We have left the claimant in exactly the same position, but all we ask in this Ordinance is that he should come forward and establish his claim. If hon. members will consider the course of legislation in this Colony, if they will consider what was done when they were dealing with private rights irrespective of the rights of the Crown, if they consider the Registration Ordinance and the registration of claims; if they consider that after 90 days, if a man did not come forward and put forward his claim, he might have no claim given him to the land; and if he was absent from the Colony no provision was made to protect it; and why? because that was for the public weal. I unhesitatingly say it is for the benefit of this Colony, it is for the benefit of the native population of this Colony as well as that of European planters, that there should be no mistake as to claims that individuals have in respect to land in this Colony. What is the present course of procedure with regard to Crown lands? The course of procedure is for the Government Agent or Assistant Government Agent—and I have turned over many of their files to carefully investigate cases to see whether the Crown had any title before the land was put up for sale—was to put up the land and sell it if there was no proper claim, or if they thought there was no proper claim. Years after the European planter or the Sinhalese or the Tamil gentleman who had purchased the land, after he had improved the property, would find a claimant come forward before the Government Agent establishing a good title, and proceed to eject the gentleman who had probably in the meantime cultivated the land and improved the property all to his own loss. There was no provision in the law by which these settlements made by the Government Agent could be made final; there was no provision even where the claimant had no claim, there was no protection by which, if a man had no claim he might not worry the gentleman who had bought the land; he might carry his case to the Privy Council, and no settlement be arrived at until the judgment of that case, he might cause the man who had occupied the land and cultivated it, having considered he had a good title because he had purchased it from the Crown, endless expense, he might cost that man any amount of money, he (the claimant) might be unsuccessful and a pauper. How would native—Tamil or Sinhalese—gentlemen be benefited by leaving the claims to land in that unsettled state. His Excellency the Governor has taken upon himself the responsibility of the Bill, but I so far take upon myself to say with regard to the suggestion that the Government Agent or Assistant Government Agent should adjudicate on these claims, and be the only referee, that it came from me. I simply tried to legalise what I believed—I conscientiously believed—to be best in the interests of the native population of this country. I have so stated it in my report to His Excellency the Governor. When it was suggested that outsiders should be sent to different districts to settle these claims, I pointed out how Government Agents and Assistant Government Agents have the interests of the people of the country at heart. I think I may express an opinion, because for many years I was not a member of this Government, nor was I a Government servant, and I know how, for many years, the Government Agents and the Assistant Government Agents have worked and how they have protected native interests even in cases where Europeans have endeavoured to invade their lands. It has been suggested with regard to the Government Agents that in the Supreme Court blame has been attached to the Government Agents, but such is not the case. I have read the judgments of the Supreme Court as critically as they have been read by the hon. the Planting Member, and I would point out that there is divergence of opinion amongst the Judges of the Supreme Court bench, and there is certainly divergence of opinion between myself and the Supreme Court Judges. If hon. members will follow these judgments carefully they will see there was no intention on behalf of Government to do anything but to settle claims rightly or wrongly, arising between two parties. It may be and it has been so urged that the Government acted wrongly, but if it be said.

that the Government Agents were the authors of that wrong, I cannot but think that the parties who made that observation have not read the Forest Ordinance. If there is any fault it is the fault of the Government of which I am a member. The Government Agents were merely instruments, and the operation of the Ordinance was put into force by the Government because it was thought necessary. It was done by the Government and not by the Government Agents for the purpose of getting a settlement. It has now been held we pursued a wrong course. We bow to that, and say, "Give us a measure to have these actions settled. Don't, when we attempt to settle these cases, say: 'Oh, you are not to have the presumption you have had for 20 or 30 years.'" Government can have no written title, and members of Council know it is impossible it can bring any paper title into Court. It must have some presumption in its favour if we are going to deal with forest or chena land. I ask legal members of Council what evidence can I, as Attorney-General, adduce to show that the Crown has a title if this presumption is not allowed. The hon. the Tamil Member has shown how easy it is to prove a claim in Court from sannas, or to prove it from possession; how easy it is to upset the presumption. It is stated that Government goes into Court strong and powerful, and the individual goes into Court a weak person as the hon. the Planting Member suggests. I have had experience of both sides; I know what it is to be against the Crown. I know of many cases where I have wrung money from the Crown as advocate for a private individual, and I know of many judgments, I unhesitatingly state, which would not have been given had the judges weighed more thoroughly the rights of the Crown in these particular cases. I say the Crown goes into Court with everybody's hand against it. Judicial officers who are appointed by the Government and the Judges of the Supreme Court, always say "the Crown comes in so powerful that we give all the benefit of the doubt in favour of a private individual." The same will happen with this Ordinance. I do not say we are going to coerce the Courts, and compel them to give judgment in favour of the Crown. All we ask is for a speedy settlement, and, having given us a speedy settlement, whichever way judgment is given, we shall be perfectly satisfied, because we will then know that land will not be tied up for 20 or 30 years. I and the Government have no personal interest in these settlements; the land is held for you and the general public. I am not ashamed to be the draughtsman of this Ordinance. Whether the Government did or did not act under the advice of the Attorney-General or whether His Excellency the Governor did receive some advice from me that is a matter between His Excellency and myself. I am not a bit ashamed of the part I have taken in connection with this Ordinance, however much any other member of Council may be ashamed of his part. With reference to what has been said by the hon. the Acting Auditor-General in his very able and powerful speech, I would only point out one or two things Government are willing to concede, not because they think they have taken up a wrong position, but because they wish in every way to facilitate justice being done between the Crown and the private individual. We are not ashamed of the Bill—not a bit. What we want to do is to get a speedy and just settlement of these claims. You say certain officers are likely to be prejudiced against the claimants—consequently we say if these officers cannot come to terms with you they shall have nothing to do with deciding the claim. If they decide in your favour—the land shall be yours; and if they decide against you we send you to the District Court; if they come to an agreement with you, well and good, can anything be more reasonable? Who is ousted here? The Crown is ousted. We trust officers of the Crown; he gives a judgment against the Crown; we accept his judgment. Something has been urged with regard to an objection to commissioners. I am not in any way wedded to the appointment of Commissioners. I think it is a question His Excellency the Governor will leave to you to decide. Let it be decided that a judicial officer of the Colony be appointed; but I am afraid that if it is left to the District Judges of the Colony they may have too much work, and it will be necessary to appoint additional District Judges in exactly the same way as additional District Judges are appointed now. You are bound to trust Government; have we ever dealt badly with you in any of the judges which we appointed? Can it ever be said we have chosen a judge to adjudicate in a case because we thought he would give judgment in favour of the Crown? On the contrary, when we thought an officer was likely to be biassed in any way or likely to be influenced in favour of the Crown, the Government has gone out of its way to appoint and send an officer from a long distance to hear and determine the case. Government are quite prepared, I have His Excellency the Governor's authority to state, to provide, where any injury or damage may have been done, when such injury is represented to the Governor in Executive Council, is perfectly willing to give compensation in respect of

such cases. In reference to what was said about land being sold, and the owner only getting back the money paid for it, that only arises when claimants have not come forward. I can only point out Government has not the slightest intention to sell unless the claimant has had time to come forward, but does not come forward, and the Government then will sell the land. It is desirable in the public interest that it should be sold, and that revenue should come from it. The Government Agent or Assistant Government Agent puts up the land for sale by public auction, and he receives the value in cash; and if you subsequently come forward and prove your claim, you will be entitled to receive that value. If the land has not been sold, we will hand you back your land.

His Excellency the Governor:—I must ask the hon. gentleman to address the chair.

The Hon. the Attorney-General:—I beg your pardon. (Continuing.) I think it will be admitted by all hon. members that that is reasonable and just. I would also like to point out Government are prepared to introduce a further provision in the Bill which will enable the Governor in Executive Council at any time to award compensation under the Ordinance, and if any hard case has arisen consideration will be given with regard to it. With regard to absentees, we cannot take "The Lands Ordinance, 1887," as an example, because in that case the Crown proceeds on the distinct understanding and on the distinct ground that title has issued from the Crown. In this Ordinance we proceed on the presumption that no title has issued from the Crown. The two cases are entirely different.

Bill read a second time.

The Hon. the Attorney-General:—I put it to Council and leave it to hon. members to decide whether the Bill should be referred to a Sub-Committee or to a Committee of the whole house. In the event of its being remitted to a committee of the whole house I will circulate amongst hon. members before next meeting of Council the amendments proposed.

The Hon. the Tamil Member:—I think that it would be preferable that the Bill should go before a Sub-Committee.

On the motion of the Hon. the Attorney-General Council went into committee, when it was decided that the Bill should be sent to a Sub-Committee, not to a Committee of the whole house, the Committee to consist of the Hons. the Auditor-General, the Treasurer, the Government Agent, W.P., the Government Agent C. P., P. Coomaraswamy, W. W. Mitchell, Wendt, T. N. Christie, A. de A. Seniviratne, and the mover—six to form a quorum.

Enclosure 4 in No. 1.

C. J. R. A. H. LE MESURIER to the Right Honourable the SECRETARY OF STATE FOR THE COLONIES.

THE WASTE LANDS ORDINANCE.

The Carnac Mills, Batticaloa, Ceylon,

SIR,

January 18, 1897.

I HAVE the honour to call your attention to the proposed Waste Lands Ordinance now before the Legislative Council of Ceylon, and to ask you, in the spirit of fair-play, to order that clause 28 be withdrawn from the Bill.

This clause enacts that all land that has not been in cultivation during a period of five years before the passing of the bill shall be presumed to belong to the Crown, that is, it unsettles the tenure of all such land, and attempts to make a present to the Crown of land that is now presumed by the law of the country to belong to the subject.

I beg you in this connection to be good enough to peruse the annexed copies of letters* that I have addressed to the Ceylon Press, to call for the many Petitions that have been presented to the Governor and the Legislative Council, and to read the speeches of the unofficial members of the Council in the debate on the second reading of the Bill.

I fully realise the necessity for legislation on the subject, to settle once and for all the many thousands of disputes between the Crown and the subject now pending all over the country; but I appeal to you if it is fair to place the Crown title in a better position as regards those disputes than it is at present. I have no doubt that, were those disputes to go before the Courts under the present law, they would end in the Crown losing a large extent of land that it now claims, but does it follow that this

* Not printed.

would be unjust? That it would harm the people? The very magnitude of the claims go to show that there must be some solid foundation for them. The foundation is to be traced to the old tenures of lands both in the Kandyan and maritime provinces, and to the fact that the educated portion of the community is gradually waking up to the injustice perpetrated by the Ordinance No. 12 of 1840, passed at a time when there was no representation in the Legislative Council, when there were no newspapers, and by which the then Government of the country attempted to get possession of large tracts of village lands that never really belonged to it. This attempt has been frustrated by the Supreme Court practically holding from time to time that village lands cannot be considered as waste and unoccupied, and that they therefore cannot be presumed to belong to the Crown. Who ever heard in Kandyan times of the king laying claim to a village chena land, except it were in a royal village or Gabadagama?

The draft law proposes to alter this and to give the Crown a title to such lands that it never had before.

The indignation roused by certain clauses of this Bill is wide-spread. Many public bodies have denounced it; public meetings have been held against it in all directions, and many petitions have been sent in to the Governor and the Legislative Council.

As one planter, in writing to the Press recently observed, "Our very sensible Government would appear to have gone clean demented over this land question. That a body of Englishmen should propose so palpably unjust a measure appears to leave no other explanation. Truly it is an astonishing Ordinance."

The Tamil member of Council declared that Government were in this measure adopting the role of a highway robber; that it was a vile Ordinance, and would ruin the people.

The Kandyan member declared that it would be disadvantageous and disastrous to the claims of the villagers.

The General European member did not think the Government ever contemplated the executing of such an arbitrary law.

The Planting member condemned the law as being too heroic, and pointed out that if artificial interpretations were to be put upon common English words, and evidence were to be taken away from the claimant and given to the Government, it would become very difficult for the former to prove his claim; that the proposed law would unsettle the tenure of all land that had not been in cultivation during the whole of the past five years, and declared that it was unfair and would be a very serious matter to the people to unsettle titles in that way; in fact, the whole of Mr. Christie's speech is a striking commentary on the law, and proves the unfairness of the present attitude of the Government towards chena cultivation and chena claims.

The Mercantile member pronounced the Bill to be "a most unprincipled Bill, and devoid of all the principles of common honesty."

The Burgher member saw many objectionable features in it, and so did the Singhalese member.

With such a consensus of opinion as this on the part of the representatives of so many interests, of gentlemen who are not at the same time so interested in the question as Government officers imbued with the policy of the last 56 years, it would need very strong evidence to support the Government proposals, and this evidence is not furnished by the speakers on the Government side. They spoke, it is true, of many encroachments on Crown land, but this statement begs the whole question, since it assumes the very fact that is in issue in those claims.

You will no doubt be told that I am personally interested in this matter, and that my statements must be received with caution. That is true, but at the same time I would ask you to remember that I have had as much experience of those claims as any member of the Government, and much more than most of them—that my claims are but a small proportion of the whole (there are over 600 more in the Matara District alone) and that the question does not affect me so much (for I am able to protect myself) as the many thousands of poor, ignorant, defenceless villagers who are in danger of losing their ancestral lands.

I am, &c.,

CECIL J. A. H. LE MESURIER.

Enclosure 5 in No. 1.

Memorandum on a letter from Mr. C. J. Abdul Hamid LeMesurier, addressed to the Right Honourable the Secretary of State, dated 18th January, 1897, calling attention to the provisions of a draft Ordinance which has since become law as Ordinance No. 1 of 1897, "An Ordinance relating to claims to Forest, Chena, Waste or Unoccupied Lands."

THERE is nothing in Mr. LeMesurier's remarks which has not been carefully considered during the progress of the Bill through the Legislative Council. Much that he says against the Bill, the public feeling that he speaks of, the speeches that he quotes from, were all directed against the Bill as first introduced, and before amendments were made, and therefore have but little application to the Bill as it stands amended, and this was known to Mr. LeMesurier at the time that he wrote his letter.

Mr. LeMesurier does not even quote correctly the terms of the clause he most objects to. He states that clause 28 (new clause 24) enacts that all land that has not been in *cultivation* during a period of five years before the passing of the Bill shall be presumed to be the property of the Crown.

The clause really enacts as follows:—

"All lands which shall not have been in the uninterrupted occupation of some person or persons for a period exceeding five years before notice given by the Government Agent or Assistant Government Agent, under section 1, in respect of the same" shall be included in the term "unoccupied land" and "unoccupied land" is presumed to be the property of the Crown.

There was no objection on the part of any unofficial member to "unoccupied land" or uncultivated land being presumed to be the property of the Crown, this has been the law for years, but objection was taken to the clause above quoted as unduly extending that principle. The real intent of that clause seems to have been generally misunderstood. Its object is to prevent a land grabber, or squatter from settling on a piece of Crown land, planting a cocoanut or two, and so attempting to oust the jurisdiction under this Ordinance on the plea that the land being so planted is neither "Forest, Chena, Waste or Unoccupied land."

It is difficult to see how anyone having the slightest pretence of title can be injured by extending the definition of "unoccupied land" to land occupied less than five years from date of enquiry (that is from the date of discovery of the encroachment).

All that this really does is to bring the land under the operation of the Ordinance, that is to say, it enables the Government Agent to call upon the claimant to shew on what grounds he claims the land, which the Agent cannot do if the land be occupied or cultivated land. If the Government Agent considers the title good, he at once confirms the claimant in his title and possession. If he considers the title bad, he does not disturb the claimant, but he sends the case to the Commissioner or District Judge, in whose Court, as a consequence of the Government Agent's enquiry and finding, the "unoccupied land" is presumed to be the property of the Crown until some proof is led to the contrary.

But the Court will hear the case judicially, and will not suffer a man who has a just title to be dispossessed. Indeed, it is almost impossible to conceive a fair or just title which would suffer by such a presumption. It is only the squatter or land grabber who has no title whatever, and who relies on having snatched possession, who will suffer, and he is intended to suffer, by a presumption which forces him to give some proof of title beyond his mere entry on the land.

It is this simple and just provision in the Bill which Mr. LeMesurier declares is "an attempt to make a present to the Crown of land that is now presumed by the law of the country to belong to the subject." It may be observed that no stamp costs are incurred by a claimant either before the Government Agent or during the judicial enquiry. An appeal to the Supreme Court only bears stamp duty.

The law regarding chena lands, or village lands is not affected by the new Ordinance. If, as Mr. LeMesurier asserts, the Supreme Court has repeatedly held from time to time that village lands cannot be considered waste or unoccupied, then they cannot be brought under the purview of this Ordinance.

Lastly, Mr. LeMesurier admits that he is an interested party. He is more than that, he is a prejudiced because a defeated party. He has been foiled in an attempt to appropriate large tracts of Government land whilst he was a Government servant, and whilst he ought—if his view of a Government Official be correct—to have been "so

interested in the question as Government Officers imbued with the policy of the last 56 years." He is, moreover, still attempting to appropriate Crown land by buying up bad or weak titles in the hope that the Crown may not be able to recover possession.

Mr. LeMesurier says he fully realises the necessity for legislation on the subject to settle the thousands of disputes regarding land between the Crown and the subject. He admits that were these disputes to go before the Courts under the present law, they would end in the Crown losing a large extent of land that it now claims (it is on the strength of this that he is buying), but he says, "Does it follow that this would be unjust? Is it fair to place the Crown title in a better position than it is at present?"

The reply is, Yes, certainly. If, under the present law, the Crown is unable to protect its "forest, chena, waste or unoccupied lands," the law should be amended so as to enable the Government to protect the public property for the public good; and it may be asked in reply, "Will the new law enable the Government to seize property that does not belong to it, to rob the villager, and to appropriate his lands?" The answer is, "No, not unless every Government Agent is an oppressor of the people, every Court in the Island is corrupt and incompetent, and even the Supreme Court approves and affirms injustice." Are we to assume all this on the mere assertion of Mr. Abdul Hamid LeMesurier? In all his criticism of this Ordinance there is not a single attempt made to shew definitely how the people of the country will be injured by the new law; there is but a reiteration of the assertion that they will be oppressed and ruined, and that the Government and its officers are banded together to bring about this result.

F. R. SAUNDERS.

No. 2.

MR. CHAMBERLAIN to GOVERNOR SIR J. WEST RIDGEWAY.

[Answered by No. 3.]

SIR,

Downing Street, July 7, 1897.

WITH reference to your despatch of the 18th March last,* submitting for the signification of Her Majesty's pleasure, Ceylon Ordinance No. 1, of 1897, entitled "An Ordinance relating to claims to forest, chena, waste, and unoccupied lands," I have the honour to transmit to you, for your consideration and report, copies of a petition to the House of Lords, signed by certain owners of land in Ceylon, which has been sent to me by Lord Stanmore, and also copy of a memorandum with which His Lordship has favoured me at the same time.

Pending the receipt of your reply to the objections to the Ordinance raised in these documents, I will not tender any advice to Her Majesty respecting it.

I have, &c.,
J. CHAMBERLAIN.

Enclosure 1 in No. 2.

To the LORD HIGH CHANCELLOR OF ENGLAND, Speaker of the Honourable the House of Peers of England.

The Humble Petition of the Undersigned Land-Owners of the Island of Ceylon.

SHWETH,

YOUR petitioners are greatly aggrieved by the passing of a recent Ordinance by the Legislative Council of Ceylon, entitled, "The Ordinance No. 1 of 1897: an Ordinance relating to claims to Forest, Chena, Waste and Unoccupied Lands," containing provision from which Your petitioners apprehend the gravest hardship and injury to the agricultural classes of the Island.

2. Lands, sometimes of great extent, are held in the Island in undivided ownership by whole families of villagers (known under the name of "goiyas,") whose ancestors in remote ages had been granted the same by Sinhalese kings. These grants had been made either by the delivery of small plates of copper or strips of ola leaf, called *sannas*

or in the large majority of cases by the mere verbal expression of the king's pleasure; and no official record appears to have been kept of such grants. In their nature, the above-mentioned documents of title were easily liable to loss and decay; and but very few of them survived the vandalism and destruction of property which were perpetrated during centuries of destructive warfare waged by invaders previous to the British occupation of the Island:—warfare whose chief plan of campaign consisted in “burning and destroying all the houses, stores, and gardens” of the people. The few remaining “*sannas*” have been made unavailable for proof of title by an enactment passed in the year 1866, the Ordinance No. 6, of 1866, which declared all ancient documents inadmissible in evidence unless registered within a certain period, a requirement which the holders of these documents, mostly ignorant and poverty-stricken villagers to whom the English language was then strange and unknown, were generally unable to observe for mere want of knowledge of the law. Thus, therefore, the only means of proof of ownership which remained to the goiyas of the Island in respect of their ancestral holdings was their long possession. Now, the only method of possession generally habitual to the agricultural classes in the Island has, from time immemorial, been by what is known as chena cultivation in the case of high lands, and by the cultivation of rice on the low and marshy lands: and it was essential for the life of an agricultural community, depending upon this species of cultivation, that there should be reserves of forest for “village purposes,” and of “Patanas” or uncultivated wastes for grazing grounds. In the early period of the coffee industry in the Island there was a large demand on the part of coffee-planters for chena land, which having been recently cultivated, and consisting of low jungle, entailed less expenses in clearing than high forests.

To enable the Government to sell such land to meet this demand, was passed the Ordinance No. 12 of 1840 (at a time when the people were not represented in Council), creating a presumption of title in favour of the Crown in respect of lands of the above description, which had till then been undisputedly held as absolute private property. Your petitioners respectfully submit that that law which burdened their holdings with a presumptive title in favour of the Crown was an encroachment on the rights of the people. But the people were saved for a time from the disastrous consequences which would have followed the strict enforcement of that law by two causes: first, by the fact that coffee planters soon discovered that low jungle was not suited for coffee cultivation, and, secondly, by the failure of the coffee industry in consequence of the leaf disease, but not before there had been much “encroachment by the Europeans, as well as by the Government upon the lands and forests hitherto affording free and unmolested pasturage to the cattle belonging to natives, which lands were available also for the extension of their cultivation.” (Evidence of H. L. Layard, Esquire, before the Select Committee appointed by Your Honourable House on the 11th February, 1850, to inquire into the grievances complained of in Ceylon in connection with the Administration and Government of that Colony.) Now that a great demand has again arisen for lands of this kind by the extensive cultivation in recent times of tea and cocoa-nuts, which are less fastidious than coffee, as to the nature of soil, chena lands and appurtenant village jungle, held by poor and helpless goiyas, are sought to be sold as Crown property. It is on evidence upon no less an authority than the Government's Surveyor-General that “Patanas and jungles adjoining villages are too often sold without due regard to the grazing, water, and, what may be termed, jungle rights of the villagers, who, squeezed into a corner, are tempted to sell their chenas and fields, and after spending the money in gambling and drink, become vagabonds” (letter No. 538, dated 13th October, from the Acting Surveyor-General to the Honourable the Colonial Secretary). If further evidence is necessary that lands belonging to villagers have been often sold as Crown property with disastrous results, your petitioners would point respectfully to the enormous increase of crime all over the Island for which the Government is unable to assign any other cause, and to the perceptible decrease in the Sinhalese population, while all other classes of people in the Island have gained in numbers, as proved by the Registrar General's Statistical Reports. This Ordinance would further facilitate the sale of lands belonging to villagers inasmuch as it burdens the villagers in the proof of their rights with limitations and restrictions which would affect the liberty of legal action, empowers the Government Agents to declare any land to be Crown property upon the mere proof of the publication in the Government Gazette (which is generally inaccessible to the villagers) of “a notice that if no claim to such land is made within the period of three months from the date of such notice, such land shall be deemed the property of the Crown,” and creates further presumptions of title in favour of the Crown in such a

manner as to effectually preclude the possibility of the villagers proving their ownership by the only means available to them, namely, the evidence of possession in the manner habitual to them.

3. Your petitioners beg specially to complain of the clause No. 24 of the Ordinance which was forced into law by the weight of the official vote—the unofficial members of the Committee on the Bill being unanimously opposed to it. This clause, your petitioners respectfully submit, is contrary to justice and to the old tenure of lands in the Kandyan and Maritime Provinces, and it is an attempt to over-rule certain decisions of the Supreme Court of the Island in recent cases wherein lands were in dispute between the Crown and the individual.

Wherefore your petitioners pray that Your Honourable House will move Her Majesty the Queen to disallow the said Ordinance No. 1 of 1897, and as in duty bound they will ever pray.

(Signed)
Vice-Chairman, Chilaw Association,
Proctor, Chilaw.

And OTHERS.

Enclosure 2 in No. 2.

MEMORANDUM.

On the Ceylon Ordinance No. 1 of 1897, "Relating to Claims to Forest, Chena, Waste, and Unoccupied Lands."

The Ordinance in question has been framed to meet an admitted evil, and could its operation be limited to the object for which it was devised, its provisions, (though not, I think, free from objection as regards some of their details), might have passed without comment as being well calculated to meet the mischief at which they are aimed.

It is because the framers of the Ordinance appear to have had in view one particular class of Land Claims only, and to have overlooked or disregarded its probable effect on claims of a totally different character, that I venture to entertain doubts whether the Ordinance in its present shape, should receive Her Majesty's gracious allowance and confirmation.

The evils which this law is designed to remove are those which spring from unrestricted chena cultivation, and from the rights which, under the present existing order of things are supposed to accrue from its practice.

A great deal has been written on this subject, and of what has been so written, much is really altogether irrelevant to the question, which has been greatly obscured by a neglect of the original theory of chena cultivation, and by a perverse application of modern English ideas of ownership and property to cases where they are really altogether out of place.

With the exception of certain large estates, to which I will hereafter refer, villages or individual native proprietors in Ceylon, when they possess any clear written title at all, usually possess one relating to their paddy land only. To this is attached, by custom or tradition, a greater or less extent of highland appurtenant.

Even where the number of *ammunams* of high land attached to the paddy cultivation is mentioned in the deed, it is very uncertain what is meant, not only because their *locality* and boundaries are undescribed, but because it is now clearly proved that the *ammunam* is not, as was once supposed, a fixed land measure, equal to so many acres, but varies in size according to the nature of the ground, and is rather a measure of the crop to be raised from it than of the land itself, an *ammunam* of bad soil being perhaps twice as large as one in a better position. Generally speaking, it may be said that an ordinary property consists of a definite amount of paddy land with an altogether undefined, or very loosely defined, extent of forest or wild land attached to it.

In ancient times, the village or family, or individual held as his or their own, the paddy land *only*, but had a recognised *usor* over the adjacent forest. It is manifest that a village restricted rigorously to its paddy land alone could not continue to exist. It requires grazing for its cattle; it requires jungle wherein to cut firewood and obtain timber for house-building and fencing; and it requires space for the satisfaction of the various wants which are met by the heterogeneous collection of articles known as "forest produce." Above all, it requires water.

So long as the theory and practice of this custom coincided, no difficulty arose. The forest was the property of the king, but the proprietors of adjacent paddy fields, whether villages or individuals, had the right, under regulation, to exercise certain powers within it. The king could not alienate the forest, for he was bound to respect the rights exercised in it by others. The village or individual could not alienate because it was not theirs. But with the growth of ideas of exclusively individual and alienable property, a different state of things has grown up. On the one hand, the villager who has occasionally cultivated a patch of land in the adjacent forest claims it (often impudently) as his own individual property, whilst on the other hand, the Crown claims the absolute possession of all parts of the forest not shewn to be already alienated, and claims, with the possession, the full right of disposing of it, and of regarding neighbouring paddy owners using it, as trespassers.

From this there has arisen a double evil. The first of these—and it is a serious one—is that which this Ordinance seeks to remedy, namely:—that large parcels of forest land are now often claimed as the property of private individuals, because they have at some time or other, cultivated or used a portion of such tracts. This abuse the proposed Ordinance will go far to remedy. But I am not sure that the other evil, which the Ordinance not only does not remove, but may even aggravate, is not a more serious one. That evil consists in the mischievous consequences of the fact of all idea of joint occupation by the Crown and private proprietors, whether villages or individuals being, so far as this Ordinance goes, rejected. What is proved under it to be the property of an individual on the one hand, or remains the property of the Crown on the other, is liable to alienation at any moment. But, as I have already said, a village cannot exist on paddy land alone, and the unrestricted right of the individual villager to sell what has been adjudged to him as *his* bit of chena ground may, if exercised by any large number, effectually deprive the village of its means of existence. So too may the exercise of the right of the Crown to sell—but this right will no doubt be generally—(not always)—used with caution and circumspection, and in a considerate and humane spirit. But this will not be equally the case with the individual, who is often tempted to sell to an European planter, who clears off the forest and jungle to the very edge of the paddy field. The claims (often very absurd ones) to *individual* ownership of chena land near a village are, as I have already said, in my opinion, a source of almost unmitigated evil. The proposed Ordinance will go far to make their successful prosecution impossible, and in so far as it does this, it will effect great good. But, on the other hand, if it thus severely curbs the attempt to establish a claim to the exclusive property in land through an occasional use of it, the Crown, on its side, should, I cannot but venture to think, admit that the use within certain limits of forest adjacent to their village or paddy field by villagers and other proprietors is not an indulgence but a *right*, and should be clearly recognised as such in the present Ordinance.

Without some such provision, the Ordinance will, I think, act very harshly in many cases. It will not only effect its object in the suppression of claims to property founded on chena cultivation, but will render the legitimate right to chena very difficult of exercise.

To some extent it is possible that the provisions of the "Forest Ordinance 1885," (which I do not at this moment, happen to have by me), may suffice to prevent some of the mischief I anticipate; but so far as my memory serves me, they can only do so partially, and where the Forest Ordinance and the present Ordinance conflict (as in some cases they certainly do), I presume that though the provisions of the older Ordinance are not expressly repealed, they must impliedly be so by those of the later enactment.

So much for chena claims and chena cultivation, but the Ordinance will also, I fear, practically confiscate a very large part of the estates of the great native landholders,—a result which I cannot suppose to be intended, but which is not, on that account, in my humble judgment, the less certain.

My remarks on this head, however, will be better reserved till I come to deal with Section 24 of the Ordinance, the clauses of which I will now proceed to examine in detail.

Section I. No limit is here placed upon the extent of forest or unoccupied land which may be included in the notice here mentioned. So far as I can see there is nothing to prevent an Assistant-Government Agent from including very large areas in one single notice—say all the forest and unoccupied land between the two principal rivers of his district—or indeed in his whole district. I have no hesitation in saying that

at the end of the three months allowed, such a notice would in many cases remain totally unknown to many little villages buried in the forest, and that they would irrevocably lose their rights without knowing that they were even questioned.

Section 1, Subsection 2. The notice here contemplated is by no means sufficient, and the wording of the clause makes it very far more inefficient than I am sure its framers intended it to be. I need hardly say that the "Government Gazette" does not find its way into the hands of natives in the provinces, but, as the clause is worded this is the *only* formality necessary with regard to small pieces of land; all the subsequent provisions *being governed by the words preceding them*, "and if the land shall be more than ten acres in extent." I do not think this was the *intention* of the ordinance, but it is clearly its effect.

Section 1, Subsection 3. The wording of this section makes the survey practically discretionary, for it may be made "either before or after" the issue of the notice, and as there is no limitation on the time *after*, within which it is to be made, it may be postponed for years or altogether indefinitely. Again, it is not stated at whose expense the survey is to be made. It is not, I believe, intended to repeal the Ordinance of 1840, and, if not, these surveys may be made under a very oppressive provision of that Ordinance, exacting that where the Crown disputed the possession of land, it might order a survey to be made, to be paid for by the occupant or claimant. I call this an oppressive provision, because under it, it was possible, in the case of very large estates, to call on the reputed owner to pay for a survey, with the full knowledge that he could not do so, and would have, in any case to surrender a considerable portion of the estate to pay for the costs of the survey. Nor is this a mere imaginary possibility.

Section II. The period allowed for putting in a claim under Subsection 1, is, I venture to think, far too short. Subsection 2 seems to me to conflict with Sections XX. and XXIII. of the Ordinance, and I confess I do not see how the positive enactment that the notice in the "Gazette" shall be "final and conclusive" and shall be "received in all Courts as conclusive proof," can be got over by the provisions of clauses XX. and XXI. The investigation ordered by the later clauses can only result in the declaration that *conclusive proof under the Statute* has been adduced that the land belongs to the Crown.

The utmost that could be done in such cases would be to grant compensation. Now compensation may be perfectly satisfactory to an individual, but there can be no real compensation where a village is deprived of the adjacent forest lands necessary for its support. I know it will be replied that no village or communal property is now recognised, and that all property is individual, and that the individual will be compensated. So it may be in the eye of the law, but where the population of a village consists in great part of men owning say a sixteenth share of a sixty-ninth part of a quarter of an acre (and I have known smaller divisions than this) the land is practically held in community.

Section II., Subsection 3, is meant for the protection of the estates of European planters absent from the Island, but it should be extended to those of natives also, by substituting the word "Province" for "Colony."

A Moorman trader engaged in business in other parts of the Island, may, quite as easily as a planter on a visit to England, be ignorant for months that the property in which he has an interest in, say, the Wannu of Manaar, is threatened with confiscation.

On the Sections III. to XIX., both inclusive, I have a few general remarks to offer.

(1) The objection that the officer who is in the first instance to judge whether the claim is good is the same man who has already declared the land to be the property of the Crown, is an obvious and not an unsound one; but practically I do not think that this will lead to injustice. (2) It is otherwise with the provision which in all instances makes it necessary for the landowner to *prove* his claim *against* that of the Crown.

It is quite right that the casual chena cultivator should be required to do so, but the Ordinance has a far wider scope than this, and constitutes the Crown in every case the presumptive owner of every patch of forest and every piece of uncultivated land in the Island. It is by no means fair that in ordinary cases a proprietor should be put to the expense and trouble of proving against the Crown that land which he has left in forest, or does not always keep in cultivation, really belongs to him.

Section XX. requires, I think, the most careful consideration. I confess I entertain grave doubts whether it really carries out the purpose which I have no doubt it was intended to effect. Under it, any one who shews good and sufficient reason for not having previously preferred his claim may put forward such a claim at any time within a year of the date of declaration, and if the claim of the claimant is established, the land may, in certain cases, be restored, and in certain other cases, compensation may

be given for it. But can such claim be *established* in the face of Section II., Subsection 2? May not the Crown urge that there is conclusive proof, which all courts are bound to accept as final and conclusive, that the land is the property of the Crown? Section II. contains no proviso or reference limiting its operation by Section XX., and as the Section only gives a right "to *prefer a claim*," it seems to me that the defendant, the Crown, may meet that claim by showing that the Court is bound under Section II. to consider the land the lawful property of the Crown.

This is the more important when we consider the pedantic adherence to the strict letter rather than the obvious intention of the law invariably exhibited by the Ceylon Courts. At all events some reference should be made in Section II. to the qualifying effects of Section XX. upon the otherwise absolutely positive terms of its operation.

Section XXII. is a needful (and I am inclined to think necessary) provision as against chena claims, but it takes a very different aspect when the claims of some large landed proprietor are concerned. To forbid him for six months to make any sort of use of—or even to enter upon—lands over which, for many generations he and his family have been accustomed to exercise, however fitfully, acts of possession, unless it is declared judicially *not* to belong to the Crown, is in itself unjust and impolitic, and reverses what ought in such cases to be the order of proceeding. What custom, tradition, and common repute assign to the landholder should be deemed his till it is proved not to be so, even though the land may be in forest, or may have been left uncultivated.

But it is the definitions contained in Section XXIV., which will most seriously affect great estates. If the definition (a) had been limited to "all chenas, and other lands which can only be cultivated after intervals of several years," I believe it would have effected its avowed purpose, and done nothing but good; but the clause further proceeds to sweep *all* forests and *all* uncultivated or unoccupied lands into the net, and assigns them absolutely to the possession of the Crown unless the contrary be proved. Now, such positive proof will often be very difficult if not impossible. Where a "*sannas*" exist it seldom gives definite boundaries; when it does so they are usually so vaguely described as to be susceptible of perfectly fair dispute. The utmost that can be said in most cases is that there is a reasonable presumption that, besides the paddy fields, certain tracts of land belong to their reputed owner. But if statutable presumption, only to be negatived by absolute legal proof, is to be on the side of the Crown's ownership of *all* uncultivated and forest land, I fear that a great quantity of land to which the Crown has no equitable right will pass into its possession.

Subsection (b) provides that the occupation of a parcel of land shall not constitute a presumption of ownership to any part of the land beyond what is "actually" occupied. What constitutes "actual" occupation is not defined; but subsection (c) defines "unoccupied" land as all lands which have not been in "uninterrupted occupation" for a period exceeding five years next before the issue of the Government Agents notice. It is also provided that "uncultivated" land is to be considered as "unoccupied" land. There is no large proprietor whose estates do not contain such lands, in fact, except the paddy fields the same land is seldom cultivated every year continuously, and, of course, forest land is not cultivated at all. Yet all such lands being uncultivated are to be deemed to be unoccupied, and, as being unoccupied, they are to be considered the property of the Crown, unless it is *proved* that they are not so. These provisions will touch all forest and waste lands on private property, and may be made the means of doing great injustice.

I shall no doubt be told that it is not the intention of the local Government to do injustice. I fully believe it, but I cannot think it a wise act on the part of the Colonial Legislature to confer power capable of grave abuse simply because those to whom their exercise would at the present moment be entrusted are not likely to abuse them. We have no guarantee as to the future exercise of these powers by others. Moreover, I would venture to add, that, however just and liberal the intentions of the local Government may be, it will be exposed even now to great pressure, which I doubt whether it will always be strong enough to resist, to acquire land for sale to European planters.

Nor is this all. I have known Revenue Officers, who—some from adherence to a traditionary policy—(once, perhaps, necessary, but now mischievous) of lowering the position and destroying the influence of the native gentry; others, from a desire to increase the apparent revenues of their districts by large land sales—would have needed no such pressure to carry out the provisions of this Ordinance with the utmost rigour.

The conversion of a population of landowners small and large into a proletariat of wage owners on plantations, though advocated by a portion of the European Press in the Colony, will, I am confident, appear to Her Majesty's Government, as it does to me,

eminently undesirable. But that this Ordinance will have a tendency towards effecting such a change, I entertain no doubt.

I fear, too, that in many cases, apprehensions as to the working of the Ordinance may lead to the reckless clearing, on disputable lands, of forests, the retention of which, for climatic and other reasons may be of public importance.

Similar apprehensions may excite suspicion and ill will towards the Government on the part of native landholders, who, though not now possessing the influence they once had, are still able to be of great assistance to the Government when so disposed, and yet more able—by passive obstruction at least, and often in other ways—to hamper and thwart its action, if inclined to do so. I could quote many instances to shew that willing co-operation in such quarters is often, even in direct money value, worth more than would have been gained by a rigid insistence on some technically justifiable claim.

In conclusion, I beg to enclose, in original, a petition which has been forwarded to me for presentation to Parliament. I have preferred, however, in the first instance to appeal in this less public manner to the consideration of Her Majesty's Government. I have not thought it necessary to forward the bulky mass of signatures sent home with the petition. It will no doubt be observed that among the few signatures attached to the petition itself there are not only those of Sinhalese and Tamil proprietors, but also of English *cocoa nut* planters.

I ought, in an earlier part of this memorandum, to have adverted to the fact mentioned by the petitioners, which goes far to render the provisions of Section XX. useless, even if my apprehensions with respect to its inadequacy be shewn to be unfounded. No document that was not registered thirty years ago can be received as proof of a land claim against the Crown, all such documents having been made inadmissible by statute. That there was a very general failure to register such documents I believe to be perfectly true, as alleged by the petitioners.

I also enclose a notice in the form contained in the schedule, such as *might* be issued under the Ordinance. I have known men in the Civil Service of Ceylon who would have been quite capable of issuing it.

STANMORE.

June 11, 1897.

NOTICE—(ACCORDING TO FORM GIVEN IN THE SCHEDULE).

Take notice, that unless within three months from the *Twelfth* day of *July, 1897*, being the date of this notice, the persons, if any, who claim any interest in the land commonly called or known as *the Manaar District*, situate ~~in the village of~~ ~~in the~~ *Kóralé* in the *Northern Province*, containing in extent about (*say*) *700,000* acres, and bounded as follows :—

N. By the Jaffna District.

W. By the sea.

E. By the Vavonia District, Northern Province, and North-Eastern Province.

S. By the Western and North-Central Provinces.

appear before me at the *Manaar Kachcheri*, and make claim to the said land or to some interest therein.

I, *A.B.*, ~~Government Agent of~~ (~~or~~ Assistant Government Agent of *Manaar*), in pursuance of the powers in me vested by Ordinance No. 1 of 1897, will, on the *Twelfth* day of *October, 1897*, being the date on which this notice expires, declare by writing under my hand that the said land is the property of the Crown.

A.B.,
Government Agent
~~or~~ Assistant Government Agent.

No. 3.

GOVERNOR, SIR J. WEST RIDGEWAY to MR. CHAMBERLAIN.

(Received November 15, 1897.)

[Answered by No. 4.]

SIR,

Queen's House, Colombo, Ceylon, October 15, 1897.

I HAVE the honour to acknowledge the receipt of your despatch of the 7th July last,* transmitting copies of a petition by certain landowners of the Chilaw District in Ceylon, together with a copy of a memorandum by Lord Stanmore with reference to "An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands," which was recently passed by the Legislature of this Colony.

2. The subject is of vital interest, for the law in question was enacted in order to save from rapid havoc and devastation the remaining forests of the Island, and to preserve other valuable Crown land from illicit use and alienation.

3. Lord Stanmore's views must naturally carry great weight with you. There has been no Governor of this Colony whose rule has been more vigorous and successful. Personally, I have a sincere admiration for his Lordship's administrative powers, and also a genuine sympathy with the main features of his policy: and, indeed, no feature of that policy commands my cordial acquiescence more than his statesmanlike determination to protect the landed aristocracy of the Island, and to prevent their being stripped of their ancestral lands by administrative zeal or legal technicalities. I therefore, much regret to find myself at issue with Lord Stanmore on the important question of this Ordinance, which I consider to be essential to the successful maintenance of the policy which he and I have so much at heart. I think that, if Lord Stanmore had realized that these were my views, and this my policy, his opposition to the Ordinance in question would have been disarmed; for it is evident that the spirit which breathes through his Memorandum is not so much objection to the measure itself, which indeed, as I shall show, departs little from his own legislative lines, as distrust of the views and policy of those who will have to administer it. Thus, Lord Stanmore writes: "I shall no doubt be told that it is not the intention of the local Government to do injustice; I fully believe it, but I cannot think it a wise act on the part of the Colonial Legislature to confer powers capable of grave abuse, simply because those to whom their exercise would at the present moment be entrusted are not likely to abuse them. *We have no guarantee as to the future exercise of these powers by others.*"† The Ordinance, as I shall show, confers no powers on the Government which Lord Stanmore and his predecessor did not enjoy; but, even if it were otherwise, I am confident that my successors in this office will be as anxious as Lord Stanmore and myself to deal generously as well as justly with the landed aristocracy of the Colony. If any Governor did arise who was so short-sighted as to reverse that wise policy and to "abuse"—I quote Lord Stanmore—the powers entrusted to him, the voice of the aggrieved would soon be heard in Downing Street, and champions as zealous, but perhaps not so capable, as Lord Stanmore would spring up to defend their interests.

4. It may indeed be contended that the liberal policy of a Governor may be defeated without his knowledge by local agents. In this small Island, with its numerous newspapers and highly centralized administration, the Governor must indeed be *fainéant* who could thus remain in ignorance of the proceedings of his subordinates.

5. I think that you will agree that legislation must continue to be based on the assumption that the Government will administer it wisely and justly: otherwise no executive powers can be safely entrusted to the Government which are not so rigidly defined and jealously restricted as to be practically useless.

6. Lord Stanmore does not content himself with the abstract expression of his fear as to the abuse of their powers by, say, future Governors. He evidently imagines that this Ordinance has been enacted in favour of the planting interest; and, indeed, he does not hesitate to give frank expression to his doubts, when he writes that "section 2, sub-section 3, is meant for the protection of the estates of European planters absent from the Island." This suggestion has no justification. I can imagine no more serious charge against a Governor of one of Her Majesty's Colonies than that of class legislation or administrative partialities. I recognize, indeed, that the planting interest of the Colony is essential to its prosperity, and, therefore, that it is my duty to foster and protect it; but I challenge critics to point out any action or proposal of mine which

* No. 2.

† The italics are mine.—W. R.

unfairly favours that industry, or which in any way subordinates the interests of other classes to those of the industry in question. I hope that the fact that up to the present I have been able to preserve harmonious relations with the planting interest, will not be considered as an indication of any such partiality as that which is evidently feared by Lord Stanmore.

7. How unjust are these doubts and misgivings will appear when I explain, later on in this despatch, the reasons for this legislation, and when I show that one of its chief objects is "to prevent the conversion of a population of landholders, small and large, into a proletariat of wage-earners on plantations," and not to encourage such a revolution even "though it is advocated by a proportion of the European Press in the Colony." The fact is that circumstances have materially changed since Lord Stanmore left the Colony, and a new condition of things, of which he has evidently no suspicion, has arisen, which has called for and necessitates legislation such as that proposed by me.

8. I have only one word more to say before proceeding to deal with Lord Stanmore's arguments, and that is with reference to his criticisms of the Civil Service. As you are aware, I fully realize certain defects and failings in the Ceylon Civil Service; but I must acquit them of the harsh and mischievous prejudices which are attributed to them by Lord Stanmore. I am now personally acquainted with, I think, every member of the Service; I know their sentiments from conversation, from their reports, diaries, and proceedings, and above all, as far as the Revenue Officers are concerned, from their criticisms of the Ordinance in question; and I cannot point to a single officer desirous of "lowering the position and destroying the influence of the native gentry." If any officer does hold these mischievous views he conceals and subordinates them to what he, and I am happy to think the native gentry themselves, know to be the policy of Government; and this is all I have a right to demand. Lord Stanmore, as a proof of the harm which an imaginary officer of these mischievous propensities could do, has drawn up a notice "which might be issued under the Ordinance;" and he adds that he has known men in the Civil Service of Ceylon "who would have been quite capable of issuing it." I infer that these officers have disappeared. Certainly, I fail to identify any one of them. The notice in question is illegal and impossible. It is bad in itself and invalid; and if any officer was foolish enough to propose its insertion in the "Gazette," he would not have an opportunity of repeating his mistake. It might as well be argued that no Magistrate should be invested with powers of awarding six months' imprisonment, as he might in some moment of aberration pass a sentence of death. The reply would naturally be that such a sentence would not be confirmed by the Governor, and that such an officer would be promptly removed from his office.

9. At the threshold of this discussion the question naturally arises, Was this legislation necessary? To prove that it was not only necessary, but urgently necessary, I must invite your attention to the state of things when I assumed the Government of this Island. The Administration Reports of the Revenue Officers showed me that the devastation of our forests in consequence of the spread of chena cultivation and of the sale by villagers of lands, often not belonging to them, to planters and others, was rapidly proceeding. The Surveyor-General reported that "Crown land and forest are being eaten away and devastated by encroachments, and are slowly but surely disappearing;" and at the annual Conference of Government Agents, the Government Agent, Northern Province (Mr. Ievers), read a paper (copy of which, with extracts from the Administration Reports of the preceding year by the other Government Agents, is enclosed), which was fully endorsed by the Conference, who were unanimously of opinion that legislation was urgently called for. I thus alluded to the question in my Address at the opening of the Legislature:—

"One great difficulty which confronts the administrator is the question of chena cultivation. This system of cultivation, as is well known, is the cutting down and devastating of a tract of forest and the sowing of a crop of grain called kurakkan or some other dry grain. The soil of such tract is thereby exhausted and cannot be cultivated for a period of about fifteen years. Accordingly the cultivator fells a fresh patch of forest. The finest and most valuable timber has been thus exterminated, and constant encroachments take place on the remaining forests.

"It has been rightly described as a wretched system in every way, as bad for the cultivator as for the Government; on the other hand, in some places where there are no means of irrigating the land, it has been found necessary to permit it with safeguards. In these localities chena is allowed on Crown lands on certain conditions, and of course there is no opposition to the cultivation of chena on private land. But

“ this leads to encroachments, which, under the present law, are most difficult to deal with, and which, if not checked, will lead to the devastation of our forests.

“ It is sometimes thought that the interests of Government are in question, but in reality the interests of the people and the commonwealth are at stake. Posterity will be the sufferer if the policy of inaction be followed. Large tracts of forests are claimed by villagers; the claims are not admitted by Government, and in the meantime havoc and devastation of forests continue.

“ The Administration Reports of the Revenue Officers for the last year show that this process of devastation is so serious that the matter must be speedily dealt with, else it will be too late.

“ An attempt has been made by the Legislature to deal with this evil, but, ambiguous words having crept into the Ordinance passed, the intention of the Legislature has been defeated and nullified by the construction which the Courts have been obliged to put upon the Ordinance. Certainly Ordinance No. 12 of 1840 has not succeeded in carrying out the intention of its preamble, namely, that ‘ divers persons without any probable claim or pretence of title have taken possession of lands in the Colony belonging to Her Majesty, and it is necessary that provision be made for the prevention of these encroachments.’ ”

10. Lord Stanmore allows that the Ordinance has been framed to meet “ an admitted evil; ” but when he made this admission he did not know of the existence of another evil with which it was intended to grapple. Had he been better informed of the present condition of things, he certainly would not have inferred that the Ordinance was drafted in the interests of the tea planters, by whose representative it was stoutly opposed in the Legislative Council.

11. The other evil to which I refer is the growing practice of villagers, unable to resist the temptation of a little ready money, to recklessly sell chena land, and even gardens and homesteads, for some trifling sum to middlemen, who now roam about the country with purses in their hands tempting the people to sell their inheritance, and thus veritably transferring a population of landowners into a “ proletariat of wage-earners.” It has been reported that in the Province of Sabaragamuwa alone the title to 100,000 acres of village lands thus changed hands within six months. In the Matale District many villagers have sold every yard of land belonging, and sometimes not belonging to them. In one village, where there used to be a population of 190 persons possessing and living on their own land, 135 have, by the sale of their chena gardens and homesteads, become entirely dependent on estate labour. This is by no means a solitary case. These lands, thus bought up by the middlemen for perhaps one rupee the acre, have been sold to planters for high prices. Sometimes the land should really be the land of the village collectively, and not of the individual; but more often it is Crown land to which the vendor has not the shadow of a claim.

12. For instance, as mentioned in the Attorney-General’s minute—copy of which I enclose, and to which I invite your careful attention—Mr. LeMesurier is reported to be claiming 3,000 acres of land which are essential to the community, and for which he has paid less than one rupee per acre. Mr. LeMesurier has also advanced numerous claims in respect of land, the property of the Crown, which he alleges he has purchased for some trifling sum from villagers who, however, have no right to the land. Mr. LeMesurier is by no means alone in this traffic. On all sides the broker is at work, and Crown land is thus being stolen, sold, and planted in many directions. This practice is by no means confined to the villagers. The large landowners are doing the same—selling forest to which their claim is doubtful, and lands, which are very essential to the village community, to middlemen or capitalists.

13. Although Lord Stanmore apparently is not aware of these facts, his experience persuades him to admit the necessity of this Ordinance as regards chena lands. But, in his opinion, though the Ordinance goes far to remedy one evil, it does not remove, but aggravates, a more serious evil. “ The evil consists in the mischievous consequences of the fact of all idea of joint occupation by the Crown and private proprietors, whether villagers or individuals, being, so far as this Ordinance goes, rejected.” I would here remark that Lord Stanmore in his arguments seems chiefly, if not entirely, to have in his mind the Kandyan districts, which comprise not much more than half the area of the Island. His description does not apply to the maritime provinces; and even as regards the Kandyan provinces, its accuracy is impugned by Revenue Officers of high standing and large experience. For instance, his statement that the king could not alienate the forest cannot be accepted. If it were so, the title of landowners, based on grants from the king, would be worthless. But, as a fact, communal rights have long ceased to

exist. We may regret their disappearance, but we cannot recall the irrevocable. The revolution whereby individual title has supplanted communal title has been long accomplished. English law and English thought have destroyed Kandyan customs; and much as for some reasons the change may be regretted, it cannot now be arrested. Lord Stanmore himself had to assist the revolution by legislation opposed to Kandyan custom, which was necessary to the progress of civilization. Again, the Supreme Court in 1894 gave a judgment in the Nariyagama forest case, the effect of which, as stated by the Solicitor-General, was to show that "where private individuals and their ancestors have cultivated a defined area at intervals of several years, it is to be considered a private chena . . . ; but where chenas of a more or less undefined tract have been cultivated by villagers from time immemorial, at intervals, without any attempt on the part of any one villager or his predecessors to cultivate any defined portion of these chenas at successive periods, and to the exclusion of both the other villagers and the Crown, then such chena will be presumed to be Crown chena." How can communal rights live in face of judgments such as this?

14. Thus it is that communal property has ceased to exist, and the individual who has cleared and cultivated a patch of forest in the vicinity of the village, however essential it may be to the welfare and convenience of the community, claims it as his individual property, and is too often ready to sell it to the hungry speculator.

15. At present, we are helpless when this occurs. Most thoroughly do I agree with Lord Stanmore that it is essential that a village should have a user over the adjacent forest, grazing for its cattle, access to water, &c. Owing to the disappearance of communal rights, and the growth in their place of individual property, it has become necessary to provide for these wants; and this is one of the principal ends which will be attained by the present Ordinance. If these wants are to be supplied, it is necessary to set aside, for the purpose, lands which are the property of the Crown; but before doing so it is necessary to establish the title of the Crown. "Why," Lord Stanmore may say, "cannot this be done under the Ordinance which I passed, Ordinance No. 10 of 1885, relating to Forests and Waste Lands? This was one of the objects of that Ordinance, and under chapter II. the Forest Settlement Officer is required to inquire into and decide these questions of user."

16. Undoubtedly that was the object of Lord Stanmore's Ordinance, but that object has been defeated by rulings of the Supreme Court. If, when the Forest Settlement Officer is dealing with one of these questions, a claimant comes forward, the Forest Settlement Officer, however feeble and preposterous the claim, must stop his proceedings and refer the Crown to a Civil Court, where it must proceed by cumbrous action against, possibly, a man of straw. Meantime, the devastation of the forest, and the individual possession and perhaps alienation of the land required for the community, continue. The object of this Ordinance is to obtain a prompt and cheap adjudication of claims such as this, in order to enable the Forest Settlement Officer, after the question of title has been settled, to provide for the necessities of the village community in the manner desired by Lord Stanmore. On this point an experienced Revenue Officer writes:—

"These necessities, I submit, will never be assured to it (the village community) unless lands which are inalienable, *i.e.*, the property of the Crown, are set aside for the purpose. Proposed grazing grounds, village forests, and watershed reserves are being suggested in every district in the Colony, but without definite title they remain suggestions. I look to the provisions of this Ordinance, No. 1 of 1897, to do more in the course of the next two years towards effecting what is so admittedly desirable as to water supply, grazing, timber, and forest produce for villagers, than administrators, skilled as many of them undoubtedly were, have been able to effect during the last thirty years, with no law behind them to render their settlements and suggestions effective."

Yet Lord Stanmore seems to suppose that this Ordinance, which is intended to supplement and make effective the Ordinance of 1885, conflicts with and renders nugatory that very valuable legislation.

17. Again, it should be remembered that a claimant has only to remain silent during the investigation of the Forest Settlement Officer under the Ordinance of 1885. He need not assert his claim or produce his title. The inquiry and the final Proclamation need not concern him until he desires to use the land; and then he can take possession of the land and prove his claim, if he can, by action against the Crown. Under the new Ordinance he must come forward and show his title.

18. Again, Lord Stanmore will be the first to admit the desirability of the Revenue Officers effecting amicable settlements with landowners, big and small. At present no such settlement has any legal force, and one of the objects of this Ordinance is to enable this to be done. I stated in my Address at the opening of the Legislative Council:—
 “ I would prefer to effect settlements amicably if possible, even at some loss to the Crown. It is therefore proposed to obtain the sanction of law from the Legislature for settlements arrived at between the Government Agents and claimants to lands to which the Crown has a right.”

19. The Revenue Officers unanimously agree that this desired end is to be attained by the new Ordinance. Lord Stanmore, as I have said, will agree that the proper person to effect these settlements is the Government Agent or Assistant Government Agent of the district, who is in touch, and I hope in sympathy, with the landowners. This is the object of the inquiry prescribed under clauses 3 and 4 of the Ordinance. Lord Stanmore is quite mistaken when he states that “ the officer who is in the first instance to judge whether the claim is good is the same man who has already declared the land to be the property of the Crown.” The officer in question makes no such declaration: he merely declares that if no claim is made to certain forest, chena, waste, or unoccupied land, within a certain period, *it will then be* declared to be the property of the Crown. Some such step is necessary to put the Ordinance into motion; and I would ask Lord Stanmore whether he does not consider it most desirable to effect an amicable settlement, and if so, whether the Government Agent or the Assistant Government Agent of the district is not, as a rule, the best person to negotiate it? It is in the power of the Governor to appoint a special officer to act for the Government Agent or Assistant Government Agent, when for any reason he considers it necessary to do so; and all settlements have to be approved by the Governor when the land in question is more than ten acres in extent. These are sufficient safeguards against an arbitrary or unsympathetic Government Agent.

20. These remarks apply equally to the investigation of the claims of the “ great native landholders,” a great part of whose estates, Lord Stanmore fears, “ will be practically confiscated ” by this Ordinance. Never was a fear less justified! The policy of Government is, and I hope always will be, to maintain these gentlemen in a position of influence and affluence, and therefore to preserve to them their hereditary possessions. There are few of these large landed proprietors outside the Kandyan provinces, and there are not many within the Kandyan provinces, whose claims are unsettled. Lord Stanmore points out how vague and uncertain their title is, and how seldom the boundaries of their estates are known. Immense tracts of country are claimed as private property on titles so defective that the Crown has good reason for inquiring into them. The claimant himself is often quite unable to say where his boundaries are. He may, and very often does, make his claim extend further and further from time to time, including in it whole mountain sides of virgin forest and untouched waste lands. This he leaves unoccupied, and exercises no act of possession over it, until some day he sells it for a price which is a test of the value which he attaches to his title. Thus, the other day, in the Puttalam District, 1,200 acres of good forest were sold by the so-called proprietor for Rs. 160. Is this a desirable state of things? Now that land is increasing in value, is it expedient, or is it not expedient, that claims should be inquired into and settled, and boundaries demarcated? Or are these gentlemen to be allowed to lay hands on any Crown forests to which they may pretend to have a title, and to sell it, as some of them are selling, to speculators at a price fixed in an inverse ratio to the substantiality of their title? Are they to be allowed to fix their own boundaries? If not, what is the alternative to this Ordinance which Lord Stanmore proposes? Hitherto they have been able, if they chose, to establish their claim under section 7 of Ordinance No. 12 of 1840. They have failed to do so, in some cases alleging as a reason the cost of the survey. Under the present Ordinance there is no such excuse; for the survey, in spite of Lord Stanmore’s doubts, will be and has in every case been made at the expense of Government. Under the new Ordinance there will be, in the first place, an attempt at an amicable settlement under sections 3 and 4 of the Ordinance. The spirit in which those negotiations will be conducted was thus explained by me in the Legislative Council on the second reading of the Bill:— “ Our object is amicable; our chief object in this legislation is to bring about an amicable settlement. It will be an instruction to the Government Agent and Assistant Government Agent to effect an amicable settlement, if possible, even at a loss to the Crown. We have no intention of demanding our pound of flesh. We do not intend to press too harshly upon the claimant. If a claimant can show a fairly good title to any land, he is more

“ likely to get an equitable settlement from the Government Agent or Assistant Govern-
 “ ment Agent than from a Court of Law. That is the great object which we have in
 “ view, namely, to bring about an amicable settlement and prevent litigation. All we
 “ ask is that claimants should come forward, should come out into the open, should
 “ emerge from their hiding places, and say, ‘ We claim this land, and this is why we
 “ claim it.’ When they do this, I promise that they shall receive generous treatment.
 “ As I said before, all we seek is the prompt adjudication—the inexpensive adjudica-
 “ tion—of these claims: a grievous sore in this Island, which is spreading gradually, and
 “ which will have most unfortunate consequences if not dealt with. I am certain
 “ that no Governor ever in this Council Chamber proposed legislation of the necessity of
 “ which he was more convinced than I am in this case.”

21. This is the policy to which the Governor is thus publicly pledged. I am confident that it will be cordially approved by Lord Stanmore, who, nevertheless, objects to the Ordinance by which alone it can be carried out. Again I ask, What is his alternative? Would he allow the present state of things—the undefined boundaries, the vague or unfounded claims, the sale and devastation of forests—to continue, and would he leave the settlement of these questions entirely to the Law Courts, “ whose pedantic adherence to the strict letter rather than the obvious intention of the law ” he with some reason deplures?

22. Next, as to Lord Stanmore’s criticism of the different sections of the Ordinance. You will observe that he and the Attorney-General differ as to the interpretation of some of the sections. In such a case I naturally prefer the opinion of my very able Law Officer; but if you think that the intention of these sections is not sufficiently clear to the lay mind, I have no objection to offer to the verbal amendment required.

23. Lord Stanmore takes exception to section 22, which enables the Government Agent, or Assistant Government Agent, to prohibit for a period of six months the entry upon land which is *sub judice*. His Lordship does not state the case quite fairly when he writes that to forbid a landowner “ for six months to make any sort of use of, “ or even to enter upon, lands which for many generations he and his family have been “ accustomed to exercise, however fitfully, acts of possession, unless it is declared judi- “ cially *not* to belong to the Crown, is in itself unjust and impolitic.” To this I would reply that the Ordinance is not likely to be applied unless, perhaps, to confirm a defective title to land such as this; but even if it were so, I cannot see any hardship in the claimant not being allowed, for at the most six months, to fell trees or clear a forest, which for generations has been left-untouched. But the Government Agent, or Assistant Government Agent, has power to give a written consent to these acts of ownership, and he will not fail to give his consent when he can safely do so. This section is chiefly aimed at encroachers and speculators with a bad title, who would otherwise destroy the forest to which they know their claim cannot be established. It is, in my opinion, indispensable

24. Lord Stanmore considers it unfair that when the case comes into Court the landowner should be required to be the plaintiff, and not the defendant. This is a vital point, and in my opinion perfectly fair. The Crown is presumably the owner of all forest and unoccupied land to which no private person can show a good title. The claimant has, in the first place, the opportunity of proving his case before the Government Agent, who has instructions to deal generously with the case, not to stand on the letter of the law, and, if the claimant can show a fairly good title either by grant or prescription, to make an equitable settlement even at a loss to Government. It is only when the claimant refuses the offer made to him, and when the Government Agent is satisfied that he has not a good claim, that the case goes into court. It seems to me equitable that under such conditions the claimant should be the plaintiff. Otherwise, Government will have to prove a negative. It is easier for a claimant to prove that he is the owner of his land than for the Crown to prove that he is not. Unless the presumption, that Government is *primâ facie* owner of all forest not in the rightful possession of another, is admitted, it is impossible for Government, in most cases to prove its proprietorship. In large tracts of virgin forest Government can prove no act of ownership. On the other hand, it is easy for the claimant to produce his proofs: the land can only be his by grant or prescription, and this he, and he only, can prove.

25. Lord Stanmore questions the justice of the definitions in section 24. He forgets that they are already in the statute book, and have remained there for many years without inflicting hardship or eliciting protest. The principal presumption to which he takes exception is contained in Ordinance No 12 of 1840, and was repeated by Lord Stanmore in his Ordinance No. 10 of 1885; but on this point I would refer you

to the minute of the Attorney-General enclosed in this despatch. I would only say that, in my opinion, these presumptions are vital, and that their repeal or modification would be a retrograde and disastrous step.

26. There is one important point which has been overlooked in this discussion, and this is the practically temporary character of this Ordinance. A cadastral survey of the Island has at length been begun, and is making good progress. As the Government Agent, Western Province, writes:—"This Ordinance, which is being accompanied by a cadastral survey, must before long lead to the compilation of a complete register of Crown lands based on surveys; when this has been completed, the Land Question with its difficulties and grievances will have disappeared."

27. I would apologize for the length of this despatch, were not the question so important. I regard it, and my opinion is shared by most of the officials of this Island, as the most important question connected with this Colony, which for a long time has been under the consideration of the Secretary of State. I believe this Ordinance to be essential to the welfare of the Colony. There are details which might be amended, if you consider it worth while, for their sake, again to throw the question "into the crucible of angry controversy;" but the principal clauses are vital to the Ordinance. If they were emasculated, the Ordinance would be of little or no use. I will only express the hope that if this despatch and its enclosures do not satisfy you as to the soundness of my views, you will give me and my advisers another opportunity of proving our case before finally arriving at a decision.

28. But I leave the question in your hands with confidence. On the one hand, you have the decided opinion of the Governor of this Colony, a man whose policy is in sympathy with that of his eminent critic, and who, although he has not been long in this Island, has enjoyed the opportunity of hearing all sides and forming a judicial judgment, and on whom the responsibility lies. You have also the unanimous opinion of the Executive Council, comprising men so intimately acquainted with the Colony and its conditions as Mr. Layard, Sir Frederick Saunders, and Mr. Lee. All the Government Agents have recorded cordial assent at a recent Conference, in a resolution, of which copy is enclosed. Every Revenue Officer of the Colony is of the same opinion, with one exception—an officer who thinks that the present law is sufficient, but who has not been so fortunate as to prove his theory by practice. The great majority of the Legislative Council are in favour of the Ordinance; for, although it was opposed on its second reading, most of the opposition was disarmed by the concessions made by Government, and when it was finally passed only three members voted against it, one of them being the member representing the planting industry, in whose interests Lord Stanmore seems to suppose that the Ordinance was introduced. Nor is the Ordinance unpopular. On the contrary, it has been accepted by all except a few disappointed speculators and landowners, who wish to sell land to which they know their title to be bad. The planters, with perhaps a few interested exceptions, have been satisfied since I had an opportunity of explaining the object and meaning of the Bill in a speech which I delivered to the Northern Planters' Association at Matale, of which I enclose a report.*

29. And, finally, the large landed proprietors, on whose behalf Lord Stanmore appeals to you with such force, are in no way alarmed. One of the first applications for a settlement of his claim has been made by one of the largest and most influential landed proprietors in the Island, the Maduwanwella Chief in the Province of Sabaragamuwa; and I have no doubt that his example will be quickly followed by others. I hope that within four or five years all the principal claims will be amicably settled.

30. On the other hand, you have the opinion of Lord Stanmore, to which naturally you must attach great weight. Indeed, there is no one who can speak with greater force and authority regarding this Colony, to which he has rendered such eminent services. Nevertheless, I submit that the value of his opinions, the expression of which, I quite recognize, has been inspired by his chivalrous regard for the landed proprietors of the Colony, should be discounted by the facts that he has quite mistaken the object and working of this Ordinance; that the condition of things has greatly changed since he left the Island; and that his doubts are due more to misgivings regarding the policy of the present Governor and his successors, than to any defects or excesses of the Ordinance itself, which, indeed, contains provisions not one whit more sweeping than Lord Stanmore's own Ordinance of 1885. And there is also the significant fact that Lord Stanmore suggests no alternative. You have also the petition to the House of Lords, the presentation of which Lord Stanmore has undertaken. I have not hitherto noticed this petition, because it is, in my opinion, worthless. Its statements of facts are often

* Extract only printed—Enclosure 3.

inaccurate, and its arguments strained and fallacious. Its description of land tenures and their origin is at variance with that of Lord Stanmore; and, finally it is not the representation of the classes whose interests Lord Stanmore champions. The signatories are not villagers who have been deprived of their communal lands or of their user of Crown forests. They are not large landed proprietors, whose property will, in Lord Stanmore's opinion, be practically confiscated by this modest Ordinance. The promoter of the petition, Mr. Corea, is a local lawyer, a notorious speculator in land claims, who is often the advocate of worthless claims in the Law Courts. On one occasion his conduct in bargaining that his fee for defending a claim should be part of the land in question was brought before the Supreme Court, and the Proctor was severely censured and required to execute a deed of cancellation of the bargain. Mr. Corea has also advanced worthless claims on his own account—one being a claim for 100 acres of land purchased at the Fiscal's sale by his uncle, who was himself the Fiscal's officer, for a trifling sum. He has been several times prosecuted for felling Crown forests adjoining his land.

31. The report* of the Assistant Government Agent, of which I enclose a copy, on the signatures speaks for itself. The class whose cause Lord Stanmore advocates is practically unrepresented. When signatures are not forged, they are those in almost every case of Proctors and their clerks, petition-drawers, young boys, and the butcher, tailor, and bootmaker of Chilaw. The inquiries of the Assistant Government Agent have been confined to Chilaw town; but I have no doubt that if there was time, and it were worth while to extend them, the disclosures would be still more startling. It is for Lord Stanmore to decide whether a petition of this character is worthy of presentation to the House of Lords.

32. Enclosed also in this despatch are copies of memoranda by the Attorney-General; the Acting Treasurer (Mr. Lee); the Government Agent, Western Province (Mr. Ellis); and the Assistant Government Agent at Matara (Mr. Jackson), which are well worthy of your consideration.

I have, &c.,

WEST RIDGEWAY.

Enclosure 1 in No. 3.

THE CHENA QUESTION.

By Mr. R. W. Ievers, Government Agent, Northern Province.

THIS difficult problem, the bane of many revenue officers, becomes daily more difficult and complex, and, if it is not confronted and settled, will soon pass into the region of the impracticable.

2. It has two aspects: the first, as it affects the food supply of the people—often the poorest; the second, as it affects the rights of the Crown to large areas of land in different parts of the Island. It must be remembered that this cultivation is destructive and demoralizing. It impoverishes the soil, reduces forest land to poor scrub, and it encourages habits of improvidence and listlessness.

3. In many Provinces of Ceylon large tracts of jungle are claimed by the villagers; the Crown does not admit the claim, and constant warfare goes on, demoralizing to both the officers of Government and the villagers whom they are supposed to control. It is easy enough to trace the origin of this state of things. It is only within this century that land other than paddy land and garden land has become valuable. One hundred years ago and even later, it mattered little to the Government of this country what forests were cleared. The rights of individuals and of the Crown were neglected until the Legislature of 1840 attempted to put an end to encroachment on the latter.

4. To commence with the first aspect of the question, the Government Agents at the Conference of August, 1894, fixed a rate as rent for the use of Crown land given for chena cultivation, where permit for such cultivation is considered necessary to provide for the food supply of the people.

5. The policy of demanding some rent is absolutely necessary in order to preserve the right of the Crown. So far as I know, the only district where any difficulty in recovering this rent has arisen is in the North-Central Province. I think it can easily be shown that there is no private ownership in high land, generally speaking, in the North Central Province, but the opposition to payment is significant and important in showing that where permits to cultivate have been given without any payment the people are apt to come to consider they have a right to cultivate. There is therefore all

* Not printed.

the more reason for a revenue officer to insist on some payment in cases where, owing to the poverty of the people, he feels constrained to give chena permits. In extreme cases a merely nominal rent would suffice.

6. The rent of one rupee per acre in no way represents a fair rent. It is ridiculously low. It was fixed by the Government Agents at this rate because it was contemplated that permits would only be given where the food supply of the people absolutely demanded that they should have "fine grain." As regards the cultivation of chenas on Crown land, the policy of Government is now clearly laid down and involves no difficulty in application; but it must be remembered that chena lands unclaimed now only exist in certain sparsely populated districts, such as the Wanní and Mannár of the Northern Province, the North-Central Province, East Mátalé and Walapane of the Central Province, parts of the Kurunégala District, the Eastern Province, parts of Sabaragamuwa and Uva, and the Hinidum and Magam pattus of the Southern Province. Yet even in these districts it is, in the existing state of the law, difficult to prevent encroachment. And this difficulty will increase in the direct ratio of the population. Enormous extents of the Mátara, Hambantota, Chilaw, and other districts are now wretched scrub jungle, the right to which is in dispute between villager claimants and the Crown.

7. Where conflict arises upon claims to land for chena cultivation between the Crown and the individual, the case becomes complex.

8. In carrying out the policy of Government, which is to restrict chena cultivation to a minimum, the provincial administrator is met by the following problems:—

As to Crown Land Undisputed.—(1) Do the circumstances of the people where population is poor and scattered, where they have few paddy lands, and where but for chenas they cannot obtain an adequate food supply, justify the grant of any permits?

(2) If justifiable and necessary, in what kóralés or villages shall permits be granted, and upon what scale to each family?

(3) Is the distress sufficient to warrant application to Government for the issue of free or reduced rent permits?

(4) The above points being settled, it becomes necessary to define where the chenas shall be cleared.

As to Lands claimed as Private or Communal Property contra the Crown.—Here the difficulties of the administrator begin, for investigation is necessary involving consideration—

(1) How far the case is met by the provisions of the Ordinance No. 12 of 1840.

(2) How far modified by (a) custom of the district, (b) prescription and user, (c) grants from Sinhalese kings and documents derived from Dutch records, relied upon as conveying title to the land in question.*

9. As to dealing with the Crown lands, no further remarks are necessary, and we may pass to the lands where the ownership is in dispute; and in this consideration comes in the question of how an officer is to act regarding chena cultivation, and what powers in law he has to restrict it. And here we are compelled to consider the land claims as a whole, of which the chena question forms an important part.

10. It will be admitted by all that under the existing state of the law most impudent encroachments are being daily carried out notwithstanding all the efforts of the Revenue Officers to resist them. It must also be admitted that the Ordinance No 12 of 1840, intituled "To prevent encroachments upon Crown Lands," has not succeeded in fulfilling the provision stated in the preamble, which is as follows:—"that divers persons without any probable claim or pretence of title have taken possession of lands in this Colony belonging to Her Majesty, and it is necessary that provision be made for the prevention of such encroachments." Owing to its unfortunate wording the Ordinance has been nullified by the construction placed on it by the Courts.

It has been vitiated by the words "without probable claim or pretence of title," for the Supreme Court has so whittled down the effect of the presumptions in favour of the Crown that the position of the Crown and claimant are now exactly the reverse of what was contemplated in 1840. It was pointed out by some Government Agents at the time of the passing of the Ordinance that this would have exactly the effect that has resulted. Any man can say, "I inherited from my ancestors"—"I claim on a Dutch extract;" any such assertion, however worthless as conveying title, is good in avoiding criminal prosecution, and the Crown is left to its civil remedy for ouster and damages against a possible pauper who has done irreparable damage in destroying forest.

* See Vincent's Report (Sessional Paper XLIII. of 1882, chap. VI.).

The intention of the legislators of 1840, that the presumption should be in favour of the Crown, has completely tailed, and now the "onus" is placed on the Crown, and not on the claimant.

12. Again, in 1866 "the continued encroachments made by private individuals upon lands belonging to the Crown" is complained of in the preamble to Ordinance No. 4 of 1866, which was passed to give the Surveyor-General powers of demanding title deeds and of survey.

13. Our next land legislation is the Ordinance No. 10 of 1885, "relating to Forests and Waste Lands," and its amendment, No. 1 of 1892. Here "forest" is defined to be *all land at the disposal of the Crown*. Again, the onus is placed on the Crown of proving its title *contra spoliatores*. It is questionable whether in law the Forest Ordinance can be worked so as to establish any right on the part of the Crown, where there be a claim against the Crown.

14. I have gone through all the decisions of the Supreme Court bearing on the relations of the Crown and claimants. It would be useless here to detail the points by which the Crown has gradually been placed in such a position that it is only a question of the time when the Crown will cease to possess any Crown land except such forests as have been defined and proclaimed as "reserved forests." There is, however, in this Ordinance useful provision made for "village forests," which have been successfully carried out by the Government Agent of the Western Province. Under this Ordinance, too, have been confirmed by Forest Settlement Officers the *chena settlements* which I made as Assistant Agent of Kégalla by consent of the people—but without legal sanction, for none was then available. But even under this imperfect settlement of the conflicting claims of the Crown and individuals, I was enabled to deal with the land so that the possibility of its sale by Government was created, and the flourishing tea estates of the Kelani Valley are the result. Such settlements are now impossible owing to the enhanced value of land for tea cultivation.

15. The Administration Reports of the Revenue Officers for last year show that the process of devastation and loss to the Crown are so serious that the matter must be speedily dealt with.

16. I would here remark that the indulgence of Government to squatters and trespassers has gone far to justify the encroachments which have now elicited almost universal complaint. The departmental orders as to dealing with unlicensed possession require revision by Government, and consideration as to whether such easy terms shall in future be given. Why should Government be more indulgent than the private owner of an estate? The circulars No. 104 of August, 1886, and 45 of March, 1887, were framed with much tenderness for persons who have acquired Crown land by seizure, and who are delicately termed holders of land "over which rights of ownership have been *bonâ fide* exercised." It must be remembered, too, that so long as Government derived a land revenue from lands acquired in this fashion the loss was not so great. But since land taxation has ceased there is all the more inducement to this "exercise of ownership" on Crown land.

17. These circulars were modified and extended by circulars No. 144 of 20th December, 1887, No. 83 of 24th October, 1889, and by "the regulations and rules concerning land sales" passed by the Governor in Executive Council, 9th October, 1890 ("Gazette" of 10th October, 1890), which are now in operation. If I am not in error, the Government Agent, Western Province, last year had to request Government to suspend the clauses favourable to squatters, owing to the extensive encroachments which he found.

18. Tenderness for individuals has resulted in wholesale robbery of the general public, and after an experience of this in 1840 it is time that Government took effective steps by legislation, which, although it may have the effect of giving inconvenience to the individual, must be carried out in the interest of the whole community. All officials are agreed that legislation is necessary; and it will be for the Government to see that such legislation is effective, and is not emasculated in passing through the Legislative Council; for the legal element will strenuously oppose any shifting of the burden of proof from the Crown to the claimant or trespasser, while the representatives of the different communities will see hardship to their constituents while they leave the general interests out of sight. There ought to be no difficulty in enabling the Crown, which is both owner and legislator, to protect its rights. And here I would ask for consideration of the remarks made in 1882 by Mr. Vincent in his valuable report (Sessional Paper XLIII of 1882) under the head "Legislation" (chapter VI.), who states most clearly and forcibly the then precarious position of the Crown ownership to land. The Forest Ord-

nance of 1885 was the outcome of his report, but as it was based on the Burmah Act, passed for a country where presumptions against the Crown do not obtain, it has failed to prevent encroachments.

19. It appears to me only fair to the Crown that any person claiming to be the owner of any "unoccupied or waste land" (terms to be carefully selected) should give notice to some (specified) public officer of his intention to clear and cultivate before he enters on possession or commits any act of possession; that if so required by such public officer, he do refrain from any such act; and that it be made to rest with him to bring the matter before a competent tribunal for decision; that the Courts be peremptorily required to grant injunctions upon application by such public officer to restrain any parties from dealing with such land; and that adequate penalties for breach of such enactment be provided. This is practically the opinion given by Mr. Dyke when consulted regarding legislation in 1846. He clearly foresaw and pointed out the condition of things to which our legislation and policy has tended.

20. Turning to the question of claims which are still unsettled, but well known, there can be no question that in the interest of all parties a definite settlement is urgently required. The longer a claim remains unsettled by the Crown, the larger it becomes; while every claim unsuccessfully contested by the Crown encourages and raises a host of claims which promise to be equally successful. I need only refer to the cases of the "Dehigama claim"—"Chetty chena claim"—"Pankulam claim"—and innumerable others in various Provinces, many of which recall the great case of "Jarndyce v. Jarndyce."

21. Circular No. 65 (Settlement of Land Claims) of June 18, 1896, lays down a procedure by the Government Agent for the investigation of claims in a quasi judicial fashion, and requires a monthly provincial return to be sent to the Attorney-General. I very much doubt of any practical results from this procedure. At the present moment there are hundreds of "case books" of land inquiries, formerly carried out by the Agents, merely swelling the kachchéri records. The Agent has really no powers to enable him to prosecute such inquiries, and, after several years spent in "inquiry," the whole matter must be taken up *de novo* by a competent court. My recommendation is that Judicial Commissioners of the rank of officers of the First Class of the Civil Service, or Barristers of the local Bar of similar status, be appointed with adequate powers to hear and determine all land claims between the Crown and Private persons, with appeal from their decision to the Supreme Court. For purposes of the inquiries a large staff of surveyors must be employed, much in the same way as was done in the case of the temple lands survey. I find on inquiry that there are 141 licensed surveyors, most of whom would be available for employment. In this connection Mr. Wace's remarks* are deserving of attention. The cost of both surveys, and of the judicial inquiry, would be heavy. But no better expenditure could, in my opinion, be made by Government.

22. Whether the exceptional legislation which I advise be enacted or not, the claims must be settled. The Commissioners will make their decisions either under the existing law or a revised law. Government must, in the former case, face the result of its neglect and defective legislation, and make up its mind to lose large areas of disputed lands in giving fixity of tenure to the claimants and causing irritation and litigation to cease. Even when this is done, I fear that fresh encroachments and trespasses will continue, and in a few years the present condition will again present itself unless the law is altered.

23. Objection to special legislation is obvious; but yet whenever actual necessity for such arises, and has been clearly shown, our statute book proves that the objections have not been sustained. For instance, what, except special legislation to obviate loss to the general community or a section of it, is found in the Ordinances quoted in the appendix, † of which I need only refer here to No. 8 of 1874 and No. 13 of 1876, which were specially enacted for protection of planters from coffee stealing, and where the onus of proving innocence is put on the supposed thief? And if a case had been made out for exceptional legislation against cacao stealing, who can doubt that such would have been duly enacted?

24. Mr. Dawson's remarks indicate the lines on which he would rely. He says, "All Ordinances relating to the protection, preservation, and sale of Government lands and forests should be repealed, and one Ordinance should be passed which would regulate clearly and definitely the sale, settlement, or conservation of all such real property of the Crown. In such an Ordinance provision should be made, in terms that could

* *Vide* Appendix A.

† Not printed.

not be misconstrued, for the punishment of trespasses, for any purpose, on Crown land." To all this I agree, for it is practically the course which I have attempted to show must be followed, if the Crown lands are to be preserved.

25. To sum up what I have attempted to indicate in the foregoing, my recommendations are:—

(a) Revision of the existing law upon the lines indicated, with codification as suggested by Mr. Dawson.

(b) Appointment of special Judicial Commissioners to hear and determine claims between the Crown and individuals.

(c) Provision of an adequate staff of surveyors, as recommended by Mr. Wace.

And if no special legislation be approved of by Government, at least the following suggestion may be found useful:—

(d) That the Department of the Attorney-General shall issue a memorandum setting forth clearly the present requirements of the law in bringing a case of Crown land claim before the courts, such memorandum being mainly a digest of the judgments. This is eminently necessary because such cases are frequently lost where some technical point has not been observed.

This will greatly help revenue officers, as Mr. Baumgartner points out, but it cannot be considered any remedy where the whole force of the law is against the successful contesting of a claim. Of course the final remedy of the Crown, when the Crown lands have disappeared, is a land tax.

26. In the foregoing remarks which have been made on the chena question, as complicated by land tenure, land claims, and the law bearing on these matters, there is no originality of suggestion. They are, rather, an attempt to collect and embody the recommendations and views of the Government Agents and Assistant Government Agents so far as appears desirable and practicable to the writer.

R. W. LEVERS,
Government Agent, Northern Province.

June 22, 1896.

APPENDIX A.

Extracts from Administration Reports (Revenue) for 1895.

Central Province, Mr. Bailey (Page C 4).

Legislation is also necessary to provide some simple and inexpensive means of settling promptly claims to waste lands. The Ordinance No. 12 of 1840, the object of which was to prevent encroachments on Crown lands, has been rendered practically inoperative by various decisions of the Supreme Court. Section 6 of the Ordinance provides that "all chenas and other lands which can only be cultivated after intervals of several years shall, if the same be situate within the districts formerly comprised in the Kandyan Provinces (wherein no Thombo registers have been heretofore established), be deemed to belong to the Crown, and not to be the property of any private person claiming the same against the Crown, except upon proof only by such persons of a sannas or grant for the same, together with satisfactory evidence as to the limits and boundaries thereof, or of such customary taxes, dues, or services having been rendered within twenty years for the same as have been rendered within such period for similar lands being the property of private proprietors in the same districts." In the judgment of the Supreme Court in a Panwila case, in which the Crown sued for a chena land, the following passage occurs:—

"They (the defendants) further plead to have acquired a prescriptive right by uninterrupted possession for more than a third of a century. In my opinion the defendants have proved that they and their ancestors have uninterruptedly possessed the lands—no one else. No one on behalf of the Crown has ever exercised any act of ownership. The defendants and their ancestors have cultivated the lands at intervals from time immemorial. On that ground they are entitled to judgment."

And after a forest settlement case (Nariyagama), decided in appeal in 1894, the Solicitor-General stated that the effect of the judgment in the case was to show that "where private individuals and their ancestors have cultivated a defined chena at intervals of several years, it is to be considered a private chena, and the presumption raised

by section 6 of Ordinance No. 12 of 1840 does not apply to it; but that where chenas of a more or less undefined tract have been cultivated by the villagers from time immemorial at intervals, without any attempt on the part of any one villager or his predecessor to cultivate any defined portion of these chenas at successive periods, and to the exclusion of both the other villagers and the Crown, then such chenas will be presumed to be Crown chenas.

Southern Province, Mr. Elliott (Page E 3).

Provision is also required, if possible by rule, or if not by fresh legislation, to prevent wholesale felling of forest of very old growth under plea of a claim. This is considered to oust the jurisdiction of the Police Court, and the only alternative is by civil action in the District Court, which frequently drags out for years and ends in a very inadequate return to Government even when a judgment in its favour is secured.

North-Western Province, Mr. King (Pages G 5 and G 11).

Nothing has been done yet to classify the Crown forests in accordance with the Forest Ordinance. The protection of forest produce and the prevention of encroachments upon Crown lands are still left in the hands of the village headmen. This year there were no cases, such as the illicit felling of timber or encroachments upon Crown lands.

* * * * *

There should be a general and systematic settlement of claims to lands waste and subject to only fugitive cultivation. Large tracts would be eagerly purchased if those possessing the necessary capital and enterprise had sufficient confidence in the right and title of professing owners.

Province of Sabaragamuwa, Mr. H. Wace (Page J 2).

Apart from the all-important policy of improvement and extension of the means of communication throughout Sabaragamuwa, the most pressing requirement is the land settlement of the district, both by steady perseverance in forest settlement under Ordinance No. 10 of 1885, and by the survey and settlement of other land claims so numerous and extensive in Sabaragamuwa. Nothing can be done without surveys, however, and it was not until late in 1895 that surveyors were at last sent to take up the Delgoda claim in the Kukulú kóralé, and the Maduanwala claim in the Kolonná kóralé. I trust these surveys will be steadily pursued, and that the surveyors will not be withdrawn until their work has been completed. There is a tendency in the Surveyor-General's Department to object to any survey which is not "remunerative," meaning apparently thereby immediately remunerative by enabling the sale of the land or recovery of survey fees. I have always considered this a very erroneous and prejudicial view to take of survey work. It is of the greatest importance to the development of the country and the extension of agricultural and mining operations throughout it that there should be no room for uncertainty regarding the title to land, but in Sabaragamuwa and other districts there are large tracts of valuable land which no one can cultivate or open because the title is in dispute. The claimant hesitates to assert his claim because the Crown does not recognize it—or the whole of it—and dreads the expenses of either criminal or civil litigation, and the Crown cannot decide the claim because the land is unsurveyed. I venture to assert that these surveys are those which are really the most remunerative to the country—if not so to the Department—and that this district and Colony would be in a far more prosperous agricultural condition if these surveys had been made and these claims, the unsettled condition of which is a disgrace to our administration, had been dealt with fifty years ago. One thing is certain, that Ordinance No. 12 of 1840 notwithstanding, the Crown is not the party which benefits by the delay. As it is, surveyors are scattered all over the country in taking up applications for survey of small parcels of land, and the important survey of the larger claims and areas is year after year left to take care of itself. I strongly urge again the attention of Government to the importance of keeping a staff of surveyors at this work without cessation.

Puttalam District, Mr. Baumgartner (Pages G 15, G 16, and G 19).

Settlement of Claims to Land.—I think the sanction of law should be obtained from the Legislature for settlements arrived at between the Government Agent and the claimants of land, to which the former may consider the Crown to have a right. Such settlements now have no binding authority, and can be repudiated with impunity.

rendering all the inquiries and negotiations that have taken place so much waste of time and weakening the Government Agent's authority. A notable instance of this came before me in the Karawitagara case, in the Chilaw District. I had to try the case as Additional District Judge, Chilaw. A settlement had been agreed to between the Government Agent and representatives of the villagers. The latter afterwards refused to be bound by it, and proceeded to clear the land, which they had agreed to make no further claim to. The matter had then to be taken to court, and there a sannas, not before disclosed, was put forward in support of the claim.

And the Government Agent should be given legal power for the conduct of his inquiry into claims.

* * * * *

The chena cultivator has, in my opinion, certainly overstepped reasonable limits in many villages, and the process will go on, to the destruction of the forests and the loss of Government, unless the present hand-to-mouth way of dealing with clearings of Crown land be superseded by a better method.

The land available for the villagers should be demarcated on the ground, and I suppose surveys will be necessary, as it is difficult otherwise to make a record of the boundaries decided on.

The Ratémahatmayá urges very strongly the necessity of dealing with this question in the way indicated above. When it is remembered that every village in the interior is surrounded by forest, it will be difficult not to concur with him.

There will be no difficulty in effecting settlements with the villagers.

* * * * *

In no other district that I am acquainted with have I met with claims to Crown land more audacious and unfounded.

Mr. Lushington, in his report for 1888, refers to these claims in the following terms:—

“The usual claims are based on a deed for a ‘paddy field and tank,’ bounded on the north by a stream three miles away, on the south by a hill two miles away, and so on. Such claims as these are the curse of a district.”

During the past year two such claims came up among others for investigation, both being put forward by Government officers occupying responsible positions under me in Puttalam.

In one of these cases an abandoned village of 1,231 acres, including 1,020 of good forest, was purchased by the claimant for Rs. 160.

In the other a paddy field in an abandoned village was purchased, but, true to the type described by Mr. Lushington, the boundaries of this field are so stated as to include hundreds of acres of Crown forest.

With such examples set him, and with the temptation of good prices owing to the increasing demand for land in this district, the speculative villager is likely to be doing a good business in the future in disposing of his shadowy claims, and the Assistant Agent will find his hands full in dealing with the more reprehensible purchaser, who does not scruple to tamper with the Government headmen for the support of his claim. But for dealing satisfactorily with questions between the Crown and the people respecting land, the Assistant Agent's time is quite inadequate, so much of it being taken up by court work. He has usually very little time to spare for anything but the routine of the various offices in his charge.

Province of Uva, Mr. White (Page 17).

Unsettled Land Claims.—Exclusive of the Dehigama claim, there are the following claims under consideration, which I commend to the attention of my successor:—

- (1) The Taldena sannas.
- (2) The Rambukpota sannas.
- (3) The so-called Ketawela Nindagama claim.
- (4) The Katugaha grants by Sir Edward Barnes.
- (5) Telenis Dias's claim.

Nuwara Eliya District, Mr. Lushington (Page C 16).

Year after year I repeat the same suggestion, and year after year I see the same suggestion in the report of other Assistant Agents, viz., that special legislation is required for the appointment of Commissioners to decide all questions of land claims as

between the Crown and subject. It is not merely in the interests of the Crown that such legislation is necessary, it is in the interests of the villager. On the part of the Crown hundreds of acres of Crown forests would be saved annually from the devastations of the chena cultivator. On the part of the villager it would give him security of tenure, it would save him from the "tender mercies" (Anglice, "greed") of the headmen. He would improve those lands to which his title is secure, instead of devastating lands to which he has a shadowy claim. He would run no risks of prosecution or of blackmail on the part of headmen.

Matura District, Mr. Vigors (Page E 19).

Some scheme for the settlement of the numerous claims to Crown lands in this and other districts in a less cumbrous and slow way than by civil action is undoubtedly necessary. All the more so in view of the decisions of the Supreme Court, which throw on the Crown the onus of proof of title and ownership instead of on private claimants. The result is that large tracts which have long been considered Crown land are being occupied and cleared, and damage is being done which cannot be easily made good even when the Crown has proved its title.

Trincomalee District, Mr. Fowler (Pages F 7 and F 10).

I have repeatedly urged the necessity of legislation enabling a Government Agent to compel a claimant of Crown land to substantiate his claim before a competent court within a reasonable time, by empowering the court, on the application of the Revenue Officer, to pass a decree nisi in favour of the Crown, such decree to be made absolute in the usual course on failure of the claimant to show cause. At present it is impossible definitely to settle claims to Crown land, and the longer the claim remains unsettled, the stronger becomes the position of the claimant.

* * * * *

But a firm policy of absolutely refusing to allow chena cultivation until the tanks are all in proper order, and all the paddy land under them cultivated, is the only course that can permanently arrest the downward course of these jungle villages. There is an unceasing clamour for chena permits, and the Assistant Agent on circuit has to listen to the most piteous complaints of starvation and ruin from healthy, able-bodied men, who persistently refused to do a day's work, even at timber felling, for fifty cents. One of their headmen assured me that they would rather shut themselves up in their houses and die of starvation than work for hire. It is difficult for anyone who has to work for pay to sympathize with these aristocrats.

The refusal of chena permits may cause a certain amount of hardship in individual cases where the paddy crop has failed in a small village, but there can be no question as to the ultimate benefit of the refusal. In such cases the crop has failed probably owing to the condition of the tank bund, which has breached or else is in such a ruinous condition that it fails to hold up a sufficient head of water. The grant of chena permits helps to perpetuate the evil. The villagers set to work at the congenial task of chena clearing, neglect the necessary earthwork on the bund, and are reaping their chena crops or idling in temporary prosperity when they ought to be preparing their paddy fields. There is no time left to cultivate more than a portion of the field when they at last begin, the tank probably breaches again in consequence of their neglect, and even the small crop cultivated is lost. They are then worse off than ever, the fields are overgrown, the tank bund is more ruinous; and if, from mistaken kindness, chena permits are granted, the village goes from bad to worse, and is finally abandoned.

As I recorded nearly ten years ago in a similar district, "the more I see of the district, the more firmly I am convinced that chena cultivation has been the main cause of the poverty and disease which has prevented this district from even partially regaining its former prosperity;" and subsequent experience elsewhere has only strengthened my conviction.

One great difficulty in realizing the evils of chena cultivation lies in the picture of prosperity that a thriving chena presents for a short time. But it is only for a very short time, and then the land is useless for all purposes for at least ten years, and in many cases practically for ever, as a thorny growth is very apt to cover old chena, which chokes the seedlings of timber trees, and forms an impenetrable thicket. The injury to the forest is, however, a very trifling matter compared with the injury to the people themselves.

Negombo District, Mr. Lewis (Page B 19.)

There is no clearing on a large scale, but the owners of land adjoining Crown forests are continually clearing strips of Crown land, and thus adding to their property from year to year. This goes on incessantly in Hápitigam kóralé, and though the offenders are prosecuted and fined, the fines are, as a rule, not sufficient to deter the offenders (whose excuse is generally that they did not know their boundaries) from repeating the process at the next opportunity.

There were 50 cases of this kind reported last year.

Kalutara District, Mr. Brodhurst (Page B 23).

The work of the Assistant Government Agent in forest matters chiefly consisted in protecting the Crown lands in the district, and prosecuting encroachers and timber stealers. During the year 161 forest cases were instituted, resulting in 105 convictions and 40 acquittals, while 16 cases are still pending.

Eastern Province, Mr. Fisher (Page F 4).

This system of cutting all valuable timber from chena blocks has been in force for three years, and some 15,000 logs have been felled under it. It is unfortunate that more judgment was not shown in the selection of these blocks, for the result has been to destroy a large amount of valuable timber and to glut the market with it. The chena block system was introduced in 1893, the object being to restrict clearing to certain defined limits. The idea is without doubt a good one, but so little discretion has been shown in carrying it out that nothing but mischief has so far resulted. To begin with, the extent set aside for chena cultivation is far in excess of actual requirements, and chenas have been allowed where no cultivation of this kind was necessary. I have in consequence decided to close a large number of the blocks, and in other places to restrict the area of cultivation.

In the Batticaloa District eighty-four blocks have been demarcated, embracing an extent of 44,275 acres composed of 20,878 acres of high forest, 15,632 acres of forest and chena, and 7,765 acres described as rocky, barren, or grass land. A third of this acreage judiciously chosen would have satisfied all needs, and in any case, with the enormous area of low jungle available, it was quite unnecessary to sacrifice high forest.

Again, the selection of the blocks was unfortunately left to subordinate officers, who exercised very little judgment in their work, and I can instance one piece of forest included in a chena block from which 900 halmililla trees were cut and shipped to the coast. The only divisions in which chena cultivation need be permitted are the Koralai pattu, Bintenna, and the Sinhalese vanams, and even in those districts it may be finally put a stop to when the tanks are restored, and the villages made more accessible by roads.

Enclosure 2 in No. 3.

Resolutions of Conference of Government Agents.

I.—The Conference is of opinion that the settlement of claims to land is a matter the consideration of which can be no longer deferred.

It is impossible that questions of ownership to land can be left permanently undecided, and the present Ordinance is a very necessary remedy for an admitted evil.

It is also advisable that Crown rights should be authoritatively decided on in order to enable Government to preserve for posterity the communal rights of the villagers, and to prevent individuals from transferring to speculators land the use of which is essential to the welfare of the village community.

II.—The Conference is of opinion that the Ordinance is in no way inequitable. It does not and was not intended to curtail in any way existing rights. It is not until it has been ascertained by previous inquiry that there is a *prima facie* case in favour of the Crown that the claimant is required to establish his title in court. The adjudication will, under plain and strong instructions from Government, be carried out in a liberal spirit, and will be subject to the control and supervision of the ordinary courts of justice of the Island.

III.—The Conference is of opinion that not only will the Ordinance not bear hardly on large landowners, but that it will prove beneficial to them.

It is to the interest of landowners that they should have an assured and valid title to all land which is actually theirs.

The Ordinance will not deprive any man who has now a good claim, based either on law or equity, of an acre of his land, but it will give him an unquestionable title to property which he now possesses more or less on sufferance.

The Conference is unable to admit that it is desirable, in the interests of the land-owners themselves, that persons who have not got a valid claim to land should be allowed to remain indefinitely in a state of semi-possession with their rights undecided on.

Enclosure 3 in No. 3.

EXTRACT from a Speech delivered by the Governor of Ceylon before the Northern Districts Planters' Association.

* * * * *

What was the present state of things? First, as regards occupied land. A man who had occupied land for thirty years or more was entitled to a certificate of quiet possession; if he had cultivated it for more than ten years and less than thirty years, he was entitled to purchase at half the improved value; if he had cultivated it for less than ten years and more than five years, he was permitted to purchase at the value at the time being. As regards land which had been cultivated for less than five years, Sections 6 and 1 of Ordinance 12 of 1840 gave the Crown the power of summarily taking possession of such land belonging to the Crown, and the Crown was entitled to an order on such person to deliver such possession of the land, such person being left to his legal remedy by instituting a suit to recover possession.

Enclosure 4 in No. 3.

Memorandum by the Hon. the Attorney-General.

AFTER a careful perusal of Lord Stanmore's memorandum, it appears to me that he admits the necessity of legislation, but considers that hardship may arise in two classes of cases: (a) in the case of Crown lands in which the villagers have rights of user in respect of pasture or forest produce; and (b) in the case of large proprietors with estates of which the boundaries are undefined.

2. The necessity of legislation is amply justified by the remarks made by his Lordship in his prefatory statement, and in considering his memorandum I will assume that he is correct in his statement of the title under which chena and other lands are held in the Colony, even though a perusal of the memoranda forwarded by the different Revenue Officers shows that there is a great difference between the rights of villagers in respect of chena lands in the Maritime and Kandyan Provinces.

3. That some settlement of the rights of native proprietors in Ceylon is required is clear from the following admissions made by Lord Stanmore. He points out that to native proprietors' titles are "attached by custom or tradition a greater or less extent of high land appurtenant," and that, generally speaking, "an ordinary property consists of a definite amount of paddy land with an altogether undefined or very loosely defined extent of forest or wild land attached to it." It is obvious that it is desirable that these loosely defined claims should be finally settled, and the friction which now arises between the Crown and the native proprietor should be for ever removed by a determination of the rights of the respective parties.

4. Owing to the rise in the value of land, small native proprietors have been induced, on the strength of the vagueness of the boundaries to their lands, to dispose of large tracts of "forest or wild" land to land-grabbers, both native and European, for very inadequate consideration, the result being that the villager is deprived of the user over such forest, much to his own detriment.

5. To illustrate to what an extent this evil is prevalent in Ceylon, I quote the following from a memorandum written by the Assistant Government Agent of Matara:— "I have already under claim from Mr. LeMesurier, an erstwhile Civil Servant, who is now cocoanut planting, no less than 3,000 acres of land which he has purchased from villagers, of which many are essential to the well-being of the community, and for which he has probably paid less than one rupee per acre." The very price paid for the land shows clearly that the sellers to Mr. LeMesurier were selling lands which they knew did not belong to them.

6. One of the main objects of the Ordinance No. 1 of 1897 is to enable the rights of the Crown in respect of such lands to be established, and thereby to protect the interests of the villagers by declaring such land to be the property of the Crown.

7. The Government, in introducing the Ordinance in question, were in no way actuated by a desire to deprive the villager of the user over forest adjacent to his holding or in any way to interfere with the admirable provisions of the Forests and Waste Lands Ordinance, No. 10 of 1885, by which the villagers' rights of user are protected. The Ordinance No. 1 of 1897 strengthens the hands of Government in respect to those provisions. It was found that when the Government tried to enforce the provisions of the Ordinance No. 10 of 1885 for the purpose of settling the claims of villagers to rights of user over Crown lands some person would spring up and claim to be the proprietor of the land being dealt with. If the Forest Settlement Officer dealt with such a claim under the Forests and Waste Lands Ordinance and declared such land to be the property of the Crown, subject to defined rights of user on the part of villagers, on appeal by the claimant the Supreme Court would set aside the order of the Forest Settlement Officer and hold that in the first instance the Crown must establish its title to the land. It was absolutely necessary, therefore, to provide some machinery by which the Crown could establish its right to the soil of large tracts of forest and waste land so as to protect the rights of the Crown and the rights of user enjoyed by the villagers. It is the intention of Government to use this Ordinance together with the Forests and Waste Lands Ordinance, and, immediately on the passing of the Ordinance, Revenue Officers were so instructed by circular.

8. I have so far dealt with the case of villagers only. To come to the case of the large landed proprietor. His claim is usually based on a sannas. Where such exists, as Lord Stanmore points out, "it seldom gives definite boundaries; when it does so, they are usually so vaguely described as to be susceptible of perfectly fair dispute." This Ordinance will give a ready means of settling such dispute; and, particularly with the object of meeting such a case, the 4th section of the Ordinance provides for an agreement being entered into in respect of any claim, and should a Government Agent be inclined to take an illiberal view of the claim the large landed proprietor is protected even against himself, because no agreement can be entered into without the consent of the Governor in any case in which the land is over ten acres in extent. Should no agreement be possible, the decision as to the right of the landed proprietor to the land in claim is left to the ordinary courts of justice.

9. That the bona fide large native proprietor has nothing to fear from the Ordinance, and is not suspicious of the act of the Government in the matter, is shown by the following:—When Lord Stanmore was Governor of Ceylon he personally made a settlement in the Province of Sabaragamuwa. That settlement covered only a portion of the land claimed by one of the ancient families. The Government Agent has been asked to settle the remaining portion of the land by the claimants under the Ordinance No. 1 of 1897. No better proof can be given that the large landed proprietor does not anticipate that he has anything to fear from the Ordinance. It is the land-jobbers—European and native—who have purchased on unsound titles who are anxious to defeat the operation of the Ordinance.

10. I will now comment briefly on Lord Stanmore's remarks on the various sections of the Ordinance:—

Section 1.—Owing to the fact that the land in respect of which the notice must issue must be forest, chena, waste, or unoccupied, it is obvious that the extent of the land to be covered by a notice is necessarily prescribed, and cannot be of the vague extent that Lord Stanmore suggests. Such a notice as he encloses with his memorandum would clearly be bad, as it would include land occupied and cultivated, and any order passed on it would be void.

Section 1 (2).—The notice provided under this sub-section is amply sufficient, and is very similar to that which is prescribed by the 6th section of the Ordinance No. 5 of 1877, which in practice has proved quite sufficient. Further, this sub-section is not open to the construction placed upon it by Lord Stanmore: the wording of the sub-section is clear and explicit; it sets out how notice should be given, and parenthetically states an additional requirement in cases where the land is more than ten acres in extent. I unhesitatingly state that that is its only grammatical construction.

Section 1 (3).—Although the notice under section 1 can issue without a survey, no order under section 2 can be made without a survey; for this sub-section provides that a survey shall be made for the purposes of this Ordinance. As the survey has to be made at the instance of an officer of Government, and no provision is made for the payment of the surveyor, it is obvious that the survey must be paid for by the Government. If it was intended by the Legislature that the survey should be made and paid for under

the provisions of any other Ordinance, such Ordinance would have been specifically referred to. As a matter of fact, all surveys under the Ordinance are being carried out at the expense of the Government.

Section 2.—Lord Stanmore states that the period allowed for putting in claims is too short. The period fixed is the same as that which is fixed by the Forests and Waste Lands Ordinance for claims to be made to Forest Settlement Officers, and has been found from practice to be amply sufficient. The provisions of section 20 give a further period of one year to a claimant who can show good and sufficient reason for not having preferred his claim in due course; and section 26 further gives the Governor the power at any time to award compensation to a claimant in respect of any land dealt with under the Ordinance. I cannot see that there is any conflict between the provisions of sub-section 2 of section 2 and those of sections 20 and 23 of the Ordinance. That sub-section provides for an ex-parte order, and section 20 shows how and under what circumstances such order shall not avail, and the claimant's right may be investigated, tried, and disposed of notwithstanding the provisions of that sub-section.

Section 2 (3) is meant to protect all persons absent from the Island, irrespective of race, class, or creed. It will protect the native Moorman trader of India quite as much and more frequently than the European, for they constantly purchase land in Ceylon, and, owing to the quick communication with the continent of India, are more often absentees than the European planter. There is little danger of the Moorman whilst resident in Ceylon being unaware of steps taken under the Ordinance with respect to any of his lands. If he should be, he can come forward under section 20 of the Ordinance.

Section 3 to 19.—The officer who is to judge in the first instance whether the claim is good, does not, on issuing notice, declare the land to be in his opinion the property of the Crown. All that he does say is that by personal observation he finds the land to be forest, waste, chena, or unoccupied, and invites claimants to come forward in respect of it.

The presumption complained of by Lord Stanmore here is no new presumption. Lord Stanmore has pointed out in the early portion of his memorandum that it is a matter of history that all forest was the property of the king, and that the king could not alienate the forest, "for he was bound to respect the rights exercised in it by others." Further, such presumption is not a creature of the new Ordinance, for the Ordinance No. 12 of 1840 enacted that "all forest, waste, unoccupied, or uncultivated land shall be presumed to be the property of the Crown." This presumption, after being in force for forty-five years, was recognized by the Legislature in the Forests and Waste Lands Ordinance of 1885, which defined "land at the disposal of the Crown" as including all land presumed to be the property of the Crown under the Ordinance No. 12 of 1840; and that the presumption created by the Ordinance No. 12 of 1840 is not, and never has been, a dead letter is shown by a recent judgment of Mr. Justice Lawrie's in the Gillimale forest settlement case.

There really has been no alteration in the law since the Ordinance No. 12 of 1840. By that Ordinance, as I stated before, all forest, waste, unoccupied, or uncultivated land is presumed to be the property of the Crown until the contrary is proved. Clearly the burden of that proof is on the claimant who wishes to rebut the presumption; and under this Ordinance he is not driven to prove his claim in court until he has failed to satisfy the Government Agent or Assistant Government Agent that he has a good title to the land.

Section 20.—I have already dealt with the objections taken by Lord Stanmore as to this section in my remarks under the heading "Section 2."

Section 22.—Lord Stanmore admits that this section is needful as regards chena claims, and I contend that that admission shows how much more necessary it is in respect of forests. The damage that can be done by the felling of low chena or jungle is nothing to the damage which could be done by the destruction of large and ancient forest trees. If the proprietor is in occupation of the land, this section does not affect him, because there will be no necessity for him to enter it. If the land is in actual cultivation, again it will not affect him, because there will be no necessity for him to make clearings for the purpose of cultivating. Further, the Government Agent or Assistant Government Agent can always give authority to the claimant to act in contravention of the provisions of the section, and in any case in which a claimant is damaged by the prohibition in that section he can obtain compensation under the provisions of the following section.

Section 24, definition (a).—This definition, as already pointed out, is merely a declaration of the law as it has stood ever since 1840, and has been fortified by the provisions of the Forests and Waste Lands Ordinance, No. 10 of 1885, and within the last

few months emphasized by a decision of the Supreme Court. If chenas, which show that the land has actually been cultivated by individuals from time to time, are to be presumed to be the property of the Crown, much more so should forests which bear no traces of any acts of occupation or ownership. Lord Stanmore appears to think that a new statutable presumption has been created by this definition. Such, as pointed out above, is not the case. The same presumption has existed in the Colony for over fifty-five years; the claimant to land under a sannas is in no worse position under this Ordinance than he has been for the last fifty-five or more years; and the presumption in favour of the Crown has worked no injury on the *bonâ fide* claimant or proprietor of land.

Section 24, definition (b).—The object of this definition is to prevent a person claiming thousands of acres as his property merely on the ground that he has cultivated and been in occupation of, say, half an acre of land, or a few acres in the vicinity of the land claimed.

Section 24, definition (c).—As said above, there is nothing new in this definition. Unoccupied and uncultivated land has, as stated above, since 1840 been presumed to be the property of the Crown. The period of five years in that definition is also taken from section 1 of the Ordinance No. 12 of 1840, and there is no reason why the repetition of the provisions of the Ordinance No. 12 of 1840 for the purposes of this Ordinance should do "great injustice" or any injustice.

11. With reference to the penultimate paragraph of Lord Stanmore's memorandum, I am unable to agree with him that there was a very general failure to register documents of title, for the Registrar-General, in his report for the year 1875, wrote as follows:—

"Old Deeds.—Two Ordinances on this subject were passed, viz., 6 of 1866 and 15 of 1867, which amended the former, and by them all old deeds executed prior to the 1st February, 1840, were required to be produced for registration on or before the 31st December, 1867. This period was extended by Proclamation: first, to the 31st December, 1868; then to the 31st December, 1869; again to the 31st December, 1871; again to the 31st December, 1872; again to the 31st December, 1874; and lastly to the 1st February, 1875. From first to last the total number of deeds deposited for registration was 74,130."

12. I feel sure that a reference to the petition itself will show that it is not entitled to much weight on the score of its signatures. Its author unsuccessfully contested an ill-founded claim against the Crown. The claim was fought as a speculation—a young proctor having entered into a notarial agreement with the Dureyas of Karawita-agara that they should give him a portion of the land if he was successful in their claim against the Crown. In contesting the action the Crown was greatly indebted to the research and industry of Mr. J. A. Swettenham, and clearly established that the claim was not a genuine or *bonâ fide* one.

September 7, 1897.

C. P. LAYARD,
Attorney-General.

Enclosure 5 in No. 3.

MEMORANDUM by the ACTING TREASURER.

The object of the Ordinance No. 1 of 1897 is to make provision for the speedy adjudication of claims to waste lands.

Lord Stanmore's most important objection to it is founded on the assumption that it goes beyond its expressed purpose, and that in section 24 definitions have been introduced which are novel, and will most seriously affect great estates.

But there is nothing new in section 24 (a); and the injury, if any, to great estates has been in doing since the year 1840, when the Ordinance "to prevent encroachments upon Crown lands" enacted that "all forest, waste, unoccupied, or uncultivated lands shall be presumed to be the property of the Crown until the contrary is proved."

If this presumption had worked wrong since 1840 the knowledge of it could hardly have failed to reach Lord Stanmore, and, in his known solicitude for native interests, the absence of interference by him, as well as his adoption of the definition in "The Forest Ordinance, 1885," may be taken as conclusive proof that no wrong exists. If the presumption in favour of the Crown has done no ill in the fifty-seven years of the past, it may safely be assumed that it will have no mischievous effect in the future.

The presumption established in 1840 has been the foundation of the inquiries into claims to waste land, which have for the last half century formed an important part of a Revenue Officer's work. Thirty years ago the decision of the Government Agent was

accepted as decisive, and it was rarely that a claimant thought of appealing to the legal tribunals from a decision which he knew was founded on equitable as well as legal considerations.

But the authority of the Government Agent has been gradually slipping away, and the knowledge that his decision has no binding effect in law has brought it into contempt.

The assertion of the title of the Crown has become, therefore, in every case a matter for reference to the law courts, and no middle course was safe either for the Crown or for the subject, for no legal title could be conferred except by the decree of a judicial tribunal.

The first object of this Ordinance is to give the weight of legal authority to the Government Agent's proceedings. If the Government Agent's decision is accepted by the claimant, an order is passed having the force of a judicial decree, which either for ever frees him from interruption or ousts him for ever from the land. If the claimant rejects the Government Agent's decision, his claim is at once submitted to judicial investigation.

To the honest claimant this procedure can present no hardship. If his claim is a good one, he obtains the confirmation of it without the cost of judicial proceedings. If it is good in part and bad in part, he does not run the risk of losing all, but may accept a compromise. If he is dissatisfied with the Government Agent's proceedings, he has still the court as the last resort.

But whatever may be the claimant's course of action—whether of acquiescence or of refusal—finality must be reached; and it is just this finality which is most repugnant to the speculative purchaser and land-grabber, whose success is dependent upon the uncertainty of title.

Given an easy, inexpensive method—such as this Ordinance presents—of obtaining a good title, and the inducement to sell at a nominal price at once disappears, and with it the trade of the speculator.

But in estimating the beneficial results of the new procedure as between the Crown and the individual, it must be remembered that the salvation of communal rights depends upon the maintenance by the Crown of its tenure of its waste lands. Before action can be taken to record these rights under the provisions of "The Forest Ordinance, 1885," the land over which the rights are claimed must be found to be "land at the disposal of the Crown," that is, land which under the Ordinance of 1840 is presumed to be the property of the Crown.

"The Forest Ordinance, 1885," which the people owe to the anxiety of Lord Stanmore for the conservation of their ancient privileges, has been made inoperative by the necessity of subjecting to the dilatory procedure of the law courts every claim of title to the land, however shadowy and unsubstantial; and it is in the impulse which it will give to action under the Forest Ordinance in providing a ready means of adjudicating upon these claims that the beneficial working of this present Ordinance will be best shown.

Communal rights cannot exist where the exclusive right of the individual to property in the waste land is admitted, and it is only when this right can be successfully opposed that the common privileges of the village can be maintained.

Action, therefore, under the provisions of this Ordinance, for the establishment of the title of the Crown, far from being hostile to the maintenance of village rights under the Forest Ordinance, is absolutely necessary to the development of the purposes of that wholesome enactment.

LIONEL F. LEE,
Acting Treasurer.

Enclosure 6 in No. 3.

MEMORANDUM by the Hon. the ACTING GOVERNMENT AGENT, Western Province.

Paragraph 5.—This description of the title on which land is held is in my opinion quite erroneous. It would appear from this that as a rule paddy fields were held on a documentary title, while for the high lands there were no such deeds.

My experience is exactly the reverse. Far more high land is held on deeds than paddy lands, but *all* lands transferred from the possession of the original owner must now for many years be transferred on deed, no other transfer being valid.

Titles to land may be roughly divided into two heads, ancestral and acquired. For ancestral lands, whether paddy or high lands, no title except a certificate of quiet possession granted by the Crown under Ordinance No. 12 of 1840 can be produced. Who could issue such a title, except the owner himself? He is in possession. For acquired lands, whether high lands or paddy fields, there is a written title in existence. No native would buy an inch of land without a written title.

The claim to high land as an appurtenance is one unknown in the low-country, where a man may have a large extent of paddy land without any high land, and vice versa. The possession of paddy fields raises no presumption whatever in support of a claim to high land, and, indeed, in the great majority of instances *chenas* are situated miles from paddy fields, and have no connection whatever with them. Indeed, strangely enough, the claim to *chenas* in the low-country is based, not on the possession of paddy fields, but on the fact that the claimants having no paddy fields were compelled to cultivate high lands for their living. I do not think a case can be produced in the low-country in which a claim to high land is based on possession, or extent, of paddy field. The arguments with reference to appurtenance have no bearing on the question of land titles in three-fourths of the Island. The people do not claim and have never claimed to be entitled to any extent of land as a necessary consequence of their holding paddy fields.

The petitioners being low-country men are of course well aware of this, and make no attempt to set up any claim based on appurtenances. They do not even allude to such a tenure, because it is unknown to them. They deal entirely with claims based on documents of some sort which are now or were at one time in existence. I will deal with these documents when I come to consider the petition.

Paragraph 6.—It must, I think, be admitted that in ancient and even more modern times there did exist a certain "user," not merely over the adjacent forests, but over all forests. Forest produce being almost valueless was at the disposal of anyone who wanted it. It was looked on much in the same light as the water of the river; there was more than enough for all, and he who wanted it might take it. A time, however, comes when this unlimited user over even water has to be restricted. This time arrived long ago with reference to land, but all attempts to enforce restriction have hitherto failed.

Paragraph 7.—I must take issue on the most important statement made in this paragraph: "The king could not alienate the forest."

The king not only could, but did, alienate enormous tracts of forest, and left the "others whose rights he was bound to respect" the tenants—that is practically the slaves, of the persons in whose favour alienation was made. Numerous instances can be cited in proof of this both on grants to temples and private persons, but this does not seem necessary, because the sole claim of the petitioners is based on this alienation. The rights granted to petitioners were rights derived solely from an expression of the "king's pleasure," written or verbal. The position is a singular one. The argument in the memorandum is that the rights to which the people are now entitled are only those which they possessed independently of the king, and which even he could not alienate. The argument in the memorial is that the only rights which the people have, or ever had, are those alienated by the king and transferred by him at his pleasure, being entirely in his power and gift.

The real facts are that the land was indisputably the sole, exclusive property of the king as ruler, but that he viewed with indifference the uses to which the land might be put. The people took what they wanted, and neither ruler nor people troubled themselves about the laws of easement or user, which were not fully developed at the time.

Paragraph 8.—This paragraph seems in the main sound, but it seems to me to contain one serious error. It seems to consider that a claim to an easement makes the owner and the claimant joint and common possessors of the land. A has a right of way through B's garden. A and B are in no sense joint-owners of the land.

The memorandum regrets that all idea of a joint occupation by the Crown and private proprietors has been rejected. Was there ever such an idea at any time, and, if there was, how was it carried out? I have endeavoured to show that as far as I and the petitioners are aware there was no such idea under the kings: the lands were exclusively his, and were alienated or possessed on such terms as he pleased. I maintain that there never was such a joint occupation, and that such an occupation is undesirable and impracticable. There has been, and there is, an ownership in land by the Crown subject to easements, such as grazing, supply of fence sticks, water supply, &c.; but the ownership is in the Crown, and there it must remain. The Forest Ordinance was intended

for the purpose of deciding on these easements; it has done something, but has partially failed, because individual instead of communal rights were set up, and the Supreme Court refused to allow the Forester to adjudicate upon claims to easements until the title of the Crown to the land subject to the easements had been placed beyond doubt.

One of the main objects of the Ordinance attacked in this memorandum is to carry out the views embodied in paragraph 8 of the memorandum, not by making the Crown and people joint occupiers, but by vesting the property in the Crown and then granting the easements to the people. Let us suppose that a joint possession as proposed in the memorandum was introduced: What is to be done if one of the joint occupants sets up a claim to an individual instead of a communal share? It would be extremely difficult to stop him; an owner of an undivided nine-tenths cannot eject the owner of an undivided one-tenth. Anyone acquainted with courts will understand the great difficulties in the way of maintaining specific rights in lands possessed in common.

Even, however, supposing that it was decided to introduce such a scheme, an adjudication similar to that proposed under the Ordinance in question is still indispensable. What petitioners and all other claimants demand is not a communal right, as paragraph 8 would lead us to suppose, but an individual right, and the injustice of arbitrarily converting an individual into a communal right is almost as great as that of converting an individual right into a Crown right, and would certainly meet with as much opposition.

The intention is to proclaim the lands intended for village reserves, to dispose of all individual or exclusive claims, and then to direct a Forest Settlement Officer to consider and adjudicate upon the different claims to communal easements.

The object of this operation is not to acquire large extents of land which are to be recklessly offered to public competition, but to place the lands necessary for the communal use of the villager under the protection of a strong power armed with an indisputable title.

The object is really to enable Government to protect the villager from himself, from his own recklessness and want of foresight, to guard him from the devices of unprincipled speculators, and render it certain that communal rights—rights absolutely essential to the well-being of the community—are handed down unimpaired to posterity.

Section 1.—I propose to deal with this when I consider the supposititious case attached to the memorandum.

Section 1, sub-section (2).—I quite agree that it was the intention of the Ordinance that notices with reference to all lands, whether under ten acres or not, shall be posted on the land, &c., &c. To me the present words bear that meaning, but this is a question for the Attorney-General. I believe that the ordinary native does not read any paper; therefore, publication in the "Gazette" is for him quite as good as in any other paper. There would be no difficulty in serving a copy of the printed notice on each of the five principal landowners of the village.

Section 1, sub-section (3).—This objection seems to be directed rather against the Ordinance of 1840 than the present Ordinance. The fact that no suggestion has been made for its repeal under either of the last two Governors seems to show that in practice it is not oppressive. There is, I believe, no intention whatever of making claimants pay for the surveys; arrangements have been made by which the Crown will undertake them.

Section 2.—There would, I think, be no objection to giving the Governor in Executive Council power to restore land to the owner on being satisfied that it was wrongly proclaimed if application for restoration were made within five years.

Sections 3 and 19.—The question seems to be whether it is advisable that the claimant should be called upon to bring up his claim for adjudication once for all, and be left either with a sound title or none, or that matters should be left as they are at present in a state of grave doubt, with the result that the claimant is really unable to use the land which may be his.

Section 20.—Seems entirely a question for the Attorney-General.

Section 22.—A decision of the Attorney-General's, I think, somewhat modifies the construction which is here placed upon the clause.

Section 24.—Though objections are taken to the clause, nothing is suggested in substitution. Are people as at present to be allowed to remain for ever in doubt whether they have or have not a good title to their lands? Take the case of forest. What is the title? Clearly not possession, for the occupant has not possessed. Presumably a sannas or old deed. Is it not advisable that the validity of that deed should be inquired into? Why should the claimant be left in doubt if the deed is a good one,

or in possession if it is a bad one? The result of the Ordinance will be in my opinion to diminish very considerably the amount of lands which are simply claimed, but to increase considerably the amount of lands over which the claimants are at liberty to exercise all rights of ownership. The Ordinance will have results somewhat similar to those of the Encumbered Estates Court: it will either remove the semblance of possession, or put the occupant in a position in which he can make beneficial use of his property. Many bona fide landowners are now unable to improve their property because their title is doubtful. Such an adjudication will either free them of claims of which they could make no practical use, or give them an unquestionable title to the land.

Although the powers conferred are large, they are necessary, and it is to be hoped will only be needed for a limited time. The Ordinance, which is now being accompanied by a cadastral survey, must before long lead to the compilation of a complete register of Crown lands based on surveys. When this has been completed the land question with its difficulties and grievances, will have disappeared. It seems to me that those who object to the present mode of settlement should state plainly whether they consider that the present system, or rather want of system, should continue in perpetuity, or whether they are prepared to suggest some other method to insure its discontinuance.

Notice.—I am prepared to accept even this admittedly extravagant notice, and show that no harm could be done.

Let us suppose—what is, if possible, more improbable than the issue of the notice—that it passes through the Colonial Secretary's Office unobserved, that it is published in two newspapers and calls for no comment. It has now to be published on the walls of the kachcheri and court-house and published by beat of tom-tom all through the district. Are we to presume that no landowner will hear of this proclamation—not even the very headmen who cause it to be published, or the residents of the town in which it is affixed. I think it will be admitted that such a supposition exceeds the limits of possibility. The instant it becomes known hundreds of claims pour in, the Assistant Agent is not in a position to adjudicate, and matters come to a standstill. The imaginary nature of the supposed danger becomes apparent at once; an attempt is made to draw up the order declaring the land to be Crown. It would be quite impossible for any sane person to make or sign such an order, and if this is not done the whole proceeding is useless, because if the case is not referred to court within five months (section 22), the original notice is practically cancelled.

There is no reason to suppose that the other objections taken to the procedure are not as illusory as this.

FRAS. R. ELLIS,
Acting Government Agent, Western Province.

August 2, 1897.

THE PETITION.

The petition seems to be based on two species of claims: communal claims and individual claims. Individual claims are, as petitioners state, founded as a rule on a royal grant. A verbal grant unaccompanied by acts of ownership has always been rejected, for very obvious reasons; there could be nothing to prevent any man from claiming whatever he took a fancy to, alleging a verbal grant. If continuous ownership was proved, however, even this feeble title was admitted and is still admitted. Crown sannases or grants are also admitted when accompanied by actual possession, and when their validity has been satisfactorily established they have been admitted without proof of ownership. The very necessary Ordinance passed in 1866 was intended to prevent a practice which is in existence up to the present day—that of manufacturing grants. It need hardly be pointed out that it is extremely difficult to decide on the authenticity of a few lines written on a palm leaf or on a piece of copper. Unfortunately the Ordinance was not rigidly enforced, and even now grants are accepted and considered without registration.

The new Ordinance leaves grants and sannases, and titles based on them, exactly where they were. It neither weakens nor strengthens the title: it merely compels the claimant to bring it up for adjudication. This is surely desirable. If the claimant is really entitled to the land, he will get an undisputed title to it; if he is not entitled to it the sooner this is finally decided the better. Even petitioners would hardly assert that

it was advisable to leave persons the nominal owners of undefined extents of land on a simple allegation that they held grants. It is not clearly stated in the petition on what the claim to exclusive possession of communal lands or village reserves is based. In point of fact, there is no foundation whatever for such a claim. As a matter of expediency, and in the interests of good government, village reserves are being rapidly assigned. The new Ordinance is intended to facilitate this operation by enabling Government to protect the reserves from the encroachments of persons who may set up exclusive rights based on sannases or grants. What petitioners mean by stating that there is a perceptible decrease in the population, is not clear.

FRAS. R. ELLIS,
Acting Government Agent, Western Province.

August 2, 1897.

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BOMBAY
Enclosure 7 in No. 3.

MEMORANDUM by the ASSISTANT GOVERNMENT AGENT OF MATARA.

* * * * *

2. Lord Stanmore appears to me to have taken up every point urged by the petitioners, and in dealing with his remarks I am at the same time answering the pleas of the petition.

3. In his Lordship's prefatory statements there are the following important admissions:—

(a) "That the law framed was to meet an admitted evil."

a law, then, is necessary.

(b) "That an ordinary property consists of a definite amount of paddy land,
" with an altogether undefined, or very loosely defined, extent of forest
" land or wild land attached to it."

This admission of vagueness of title, the curse alike of the villager and the Crown, points to the necessity for powers to crystallise these loosely defined claims and to settle them finally.

(c) "That in ancient times the villager held as his own the paddy land only,
" but had a recognized user over the adjacent forest."

An admission, this, of the gravest import, for it is a complete justification to my mind of the provisions of the Ordinance, that the claimant should appear in court as plaintiff: *i.e.*, the onus should lie on him to prove that the Crown's original right had passed to him.

(d) "That village or communal property had ceased to exist."

This I infer from the words:—

"But with the growth of ideas of exclusively individual and alienable property
" a different state of things has grown up."

There is no doubt that the idea and fact of communal property alike are dead at the present time. A piece of land is either the property of the Crown or of an individual. It is this fact, perhaps more than any other, that renders this new law an absolute necessity. As Lord Stanmore remarks, a village must have "grazing for its cattle; it requires jungle wherein to cut firewood and to obtain timber for house-building and fencing; and it requires space for the satisfaction of the various wants which are met by the heterogeneous collection of articles known as 'forest produce.' Above all, it requires water."

These necessities, I submit, will never be assured to it unless lands which are inalienable—*i.e.*, the property of the Crown—are set aside for the purpose. Proposed grazing grounds, village forests, and watershed reserves are being suggested in every district in the Colony, but without definite title they remain suggestions. I look to the provisions of this Ordinance, No. 1 of 1897, to do more in the course of the next two years towards effecting what is so admittedly desirable as to water supply, grazing, timber, and forest produce for villagers, than administrators, skilled as many of them undoubtedly were, have been able to effect during the last thirty years with no law behind them to render their settlements and suggestions effective.

- (e) "That the proposed Ordinance will go far to remedy this abuse" [*i.e.*, of false claims to large tracts of forests].

So far as to admissions.

4. The statement, "the king could not alienate the forest," would be a powerful argument that the Crown, the successor of the native king, is the possessor of all forest, except such as (whether rightly or wrongly it is too late in the day to discuss) it has sold or otherwise granted to individuals. But the existence of many sannas, making large grants of forests, appears to me to negative the idea that the king could not alienate.

5. The chief evil which is expected to flow from this Ordinance is "the mischievous consequences of the fact of all idea of joint occupation by the Crown and private proprietors, whether villages or individuals, being, so far as this Ordinance is concerned, rejected." If this were the fact I would strongly oppose its introduction, but I can nowhere find that this idea has been rejected; it is not in any way that I can see touched upon.

The effect of the Ordinance is to declare conclusively that, in certain cases, certain lands at a certain date were the property of the Crown.

Rights of user for grazing, for collection of firewood, or for forest produce, are in no way affected by such declaration. That this is the view of the Government, and the one on which they intend to work, is proved by the fact that all proposed forest reserves are being in the first instance proclaimed under the provisions of the Ordinance, to clear up the question of title before the Forest Settlement Officer takes up the work of settlement, *i.e.*, of settling these very rights of user which Lord Stanmore appears to think will be extinguished.

6. The principle of admitting as a right users for grazing, timber, &c., on certain forests has already been conceded by the Forest Ordinance of 1885, and needs no repetition in this Act, which is in no way in conflict with the terms of that Ordinance. These users are, in fact, rights under the common law dependent on immemorial custom and require no recognition in any of our statutes. Lord Stanmore's fears that the communal rights of user on certain forests are affected by the terms of the Ordinance, appear to be his only objection to the application of this Ordinance to chenas. If this be so, there could be nothing simpler than to add a clause to the Ordinance to the effect that, under the provisions of this Ordinance, no order declaring a land to be a Crown land shall be held to affect in any way any village rights of user for grazing, timber, water supply, or forest produce.

7. I will now comment on the remarks upon the various sections of the Ordinance:

(a) Section I.—A notice is necessarily prescribed and cannot be of the vague extent that Lord Stanmore supposes. Such a notice as he suggests, and, as he adds at the end of the memorandum, would be bad in itself, in that it would include lands not waste or unoccupied, and any order, passed on a notice itself bad, would be null and void. The "many little villages buried in the forest" will not therefore suffer in the manner indicated.

(b) Section 1, sub-section (2).—I believe his Lordship's reading of the law to be incorrect; if not, the law should be at once re-drafted to convey what was clearly the intention of the framers.

(c) Section 1, sub-section (3).—I submit that, although the notice under section 1 can issue without survey, no order under section 2 by the Assistant Government Agent, nor indeed any other step under the Ordinance, can be taken without a survey, for the law directs that the Government Agent *shall* cause such land to be surveyed *for the purposes* of this Ordinance. The suggestion that these surveys will be forced ones at the expense of the people under the provision of the Ordinance of 1840 is simply ridiculous. I cannot think it is urged seriously.

The idea that the owner of a large estate would be mulcted in a large portion of that estate to pay for a survey which he could not afford is one that it would have been interesting to hear his Lordship's views upon, had it been suggested when he was the Governor of Ceylon.

As a matter of fact, all surveys are being carried out at the expense of Government, a special land claim surveyor being attached to this office for the claims in this district.

His Lordship's fears might be allayed by a proviso that no surveys undertaken for the purposes of this Ordinance should be at the expense of the claimant.

Section 2.—I think a proviso should be added to the clause that no declaration under it can be pleaded in bar to an action under section 20. The law at present seems obscure. With this proviso the term of three months is ample for the putting in of claims.

Section 2, sub-section (3).—The substitution of "Province" for "Colony" is, I think, unnecessary; the provisions of section 20 fully meet the case.

Sections 3 to 19.—These sections supply a speedy and equitable procedure for the settlement of disputed claims. The inquiry and finding by the Government Agent enable him to ascertain accurately the value of a claimant's title; it would therefore be only in the rarest instances, and due to some failure of the Government Agent to grasp the position, that a claim rejected by him would succeed in the Court, the more so as it is intended, I believe, to work the Ordinance in a liberal spirit.

On the rare occasions in which the claim has, after full inquiry, been rejected by the Government Agent, but subsequently been admitted by the Commissioner or Court of reference, the claimant should, in my opinion, be reimbursed any stamp duty which he has had in the course of the proceedings to pay.

Section 20.—See my suggestion to add a proviso to section 2.

Section 23.—The provisions of this section are not a whit too stringent. If a man and his forefathers have owned forest for generations, no serious damage will accrue by its remaining intact another six months. If a "land-grabber" has purchased forest on a native claim, he does so knowing the provisions of this section, and he may be depended upon to have allowed amply for it in fixing the purchase amount.

Section 24.—I cannot quite follow the objections to this clause. They appear to point to the conclusion that lands held on sannas are ill-defined, and therefore ought to remain ill-defined: *i.e.*, that there should be a kind of "no-man's land" admitted into our land system, where ownership should remain a mystery. This appears to me the weakest argument ever put forward to befriend the sannas-holder. This want of definition of title is the bane of the sannas-holder and of the Crown alike. This law affords to sannas-holders every opportunity of getting, under the eyes of His Excellency himself, a fair and generous settlement of his claim. I contend that this is as much to the interest of the native as of the Crown. A clear title to a certain area is preferable in every way to a vague right to admittedly vague areas. The presumption that unoccupied land is the property of the Crown is rebutted by the title deed, whether sannas or ola, of the claimant, and the way is at once open to a just settlement, such as it has been generally impossible in the past to effect. I am aware of a sannas settlement effected in the Sabaragamuwa Province by Lord Stanmore himself, but I venture to point out that that settlement, though equitable no doubt as a settlement of a vague claim, was very far from an admission of the claimant's right to deal as he liked with the whole area of land indicated, and in this instance very clearly, I believe, by the sannas. I submit that this law would immensely facilitate settlements of this nature.

8. The fear that Government will not be strong enough to resist the pressure put upon it to acquire land for sale to European planters, is not justified by the experience of the last ten years, during which period there was a probably unprecedented demand for land. This doubt indicates, to my mind, that the years which have elapsed since his Lordship governed this Colony have left him no longer in touch with the present conditions as to land. The making of this law, so far from leading to sales to planters, except where such sales are to the general benefit, will effectively prevent the land-grabber, both native and European, from acquiring land absolutely necessary for the well-being of the villager—land which is now being alienated on a very large scale in almost every district in the Island.

9. As regards the Matara district, I have already under claim from Mr. Le Mesurier, an erstwhile Civil servant, who is now cocoanut planting, no less than three thousand acres of land, which he has purchased from villagers, of which many are essential to the well-being of the community, and for which he has probably paid less than a rupee an acre all round. Meanwhile, native capitalists have, in every corner of the district, claims which they have purchased from the villagers, who claim them either as "inheritance" or "on Dutch extracts." These purchases are being rapidly put into citronella, and already the restriction on grazing grounds and effect on the water supply to fields is, in places, being severely felt. Until, however, this new law was passed, it appears to have been quite impossible to prevent these impudent encroachments on Crown property owing to that "pedantic adherence to the strict letter of the law," which Lord Stanmore now fears will press hardly on the individual.

10. In conclusion, after having worked unceasingly for the last three months under the provisions of this Ordinance, I am able to say, with confidence, that it has inspired no suspicion or ill-will in the minds of the people generally. Many with genuine claims are hailing it as an opportunity to effect a lasting settlement of their rights with the Crown. These claims are pouring in so fast that I have been unable to

deal with any but a very small proportion of them, especially as the large majority are unsurveyed. The Ordinance is, I have no doubt, highly unpopular with Mr. Le Mesurier; nor does the villager of the Morawak korale, who, upon the strength of a "Dutch extract" entitling him to four amunams of chena, has sold 250 acres of forest, and lays claim to 1,500 more, welcome it with enthusiasm.

11. Unless emasculated by amendment or by some grotesque ruling of the Courts, the Ordinance should effect most useful work. In the hands of a careful and sympathetic administrator it should work the very greatest benefit to the community.

W. H. JACKSON,
Acting Assistant Government Agent.

Matara Kachcheri, August 3, 1897.

No. 4.

MR. CHAMBERLAIN to GOVERNOR SIR J. WEST RIDGEWAY.

[Answered by Nos. 5 and 6.]

SIR,

Downing Street, June 10, 1898.

I HAVE the honour to acknowledge the receipt of your despatch of the 15th October last,* in which you reply to Lord Stanmore's Memorandum of the 11th June, 1897, with regard to Ordinance No. 1 of 1897, being "An Ordinance relating to claims to Forest, Chena, Waste, and Unoccupied Land" in Ceylon.

2. On the receipt of your despatch I forwarded a copy of it to Lord Stanmore, and I enclose for your information copy of a further memorandum with which he furnished me. I sent a copy of this memorandum to Mr. Layard for his observations, and a copy of his reply is also enclosed.

3. Lord Stanmore has now been informed in a letter, a copy of which is enclosed, that after carefully considering the whole correspondence, I am satisfied that the Ordinance is a useful and valuable measure, and that being worked carefully under your supervision, as I am confident is the case, I have no reason to apprehend that injustice will be done under it.

4. You will no doubt strongly impress upon your officers the need for administering the Ordinance with the utmost care, and with a scrupulous regard for the rights of the natives, as well as for the interests of the Crown. Indeed, I would add, with a regard not only for the rights of the natives but also for claims which, however illegal, have been put forward in bona fide ignorance of their illegality, and which represent such unconsidered encroachments on waste jungle land as are habitually made by a native peasantry.

5. Some of the notices already issued under the Ordinance with regard to unoccupied lands, *e.g.*, the one cited by Lord Stanmore in his memorandum of the 8th March, may possibly have been framed on too comprehensive a scale. I had not, I confess, anticipated that an area of 150 square miles would ever be included in a single notice, and it appears to me to form a somewhat dangerous precedent. I assume that you have satisfied yourself that no injustice will be done thereby to villagers within the area, for a large scale map of the district which I have consulted shows certainly three villages within it, and I should have supposed that there must be in addition groups of families scattered here and there at intervals through the jungle.

6. I have also had brought to my notice a judgment, which I understand to be the first under the new Ordinance, delivered by Mr. Pagden in the case of "Le Mesurier and another v. A. G. A. Matara," and reported in the "Overland Ceylon Observer" of the 26th February last. You will observe at about the middle of column 2 of the report that Mr. Pagden is reported to have stated that the definition of unoccupied land has been "considerably modified by Section 24 of Ordinance 1 of 1897," and "now includes all land which at the time of the passing of the Ordinance was not in the actual occupation of any person or persons, and land which shall not have been in the uninterrupted occupation of some person or persons for a period of five years next preceding."

7. If this judgment is correctly reported, it would appear to afford some support to Lord Stanmore's contention (to which the Attorney-General took exception) that the definitions contained in Section 24 have materially extended the previously existing definition of unoccupied lands. It also appears from the first part of the above-cited judgment that Sub-section 2 of Section 1 is liable to misconception, it being, according

to the District Judge's statement, doubtful whether under this Sub-section the notice must be published more than once in the newspapers, and whether the Gansabawas are Courts, for the purposes of the Ordinance, while the fact of the notice not having been posted on the land, or advertised by beat of tom-tom, appeared to him not necessarily calculated to vitiate the proceedings of the Government Agent or Assistant Government Agent. The formalities prescribed by the Ordinance should, in my opinion, be strictly observed, even though it is possible that on this particular occasion, when the claimants both appeared, no injustice was caused by their non-observance; and I must request you to give the necessary directions to secure this result in all future cases.

8. I have now to inform you that Her Majesty will not be advised to exercise her power of disallowance in respect to the Ordinance in question, and I leave it to your discretion whether or not to adopt any or all of the following amendments which have been suggested as likely to obviate many of the suggested objections to the Ordinance, without weakening it in any essential particular.

9. By Section 6 (b), in making his reference under Section 5, a Government Agent is directed to state "the names of the claimant, or claimants, and of any other person whom he has reason to think interested in such land"; a corresponding direction might be inserted in Sub-section 1 of Section 1, to the effect that if a Government Agent who issues a notice under this Section shall have reason to think that any persons are interested in the lands specified in the notice, he shall call upon them, not only by general notice, as aforesaid, but also individually, to make their claim within the said period of three months.

10. In Section 1, Sub-section 2, line 4, in order to avoid any possible contention that the words "six times at least" apply to the publication of the notice in the newspapers as well as in the Government "Gazette," those words might be inserted between the words "extent" and "in any two," and for greater clearness the word "every" might be inserted between "copies of" and "such notice." The words "and Gansabawas" might be added after "Courts" in the same sub-section.

11. In Sub-section 3 of Section 2, for the sake of removing all possible doubts, the words "within the said period of three months" might be inserted between "before or" and "after," and the words "at the expense of the Government" might be added after the word "surveyed."

12. In Sub-section 1 of Section 2 it appears to deserve consideration whether the period within which a claim is to be made should not run from the date of the first publication of the notice in the Government "Gazette" instead of from the date of the notice.

13. In Sub-section 2 of the same Section the words "subject to the provisions contained in Sections 20, 21, and 26 hereof," might be introduced after the words "final and conclusive," and the words "subject as aforesaid" after the words "such order shall be," in order to preclude the mistake into which Lord Stanmore has fallen, and possibly other persons may fall, as to the combined effect of the three sections.

14. It seems necessary that the words "or otherwise" should be added to Sub-section 1 of Section 21, as Crown Land may now under special circumstances be disposed of otherwise than by auction.

15. In Section 22, line 6, the words "with intent to establish a right of possession or occupation of the land, or to exercise rights of ownership," might be added after the words "or thereon." These are substantially the words which Mr. Layard employs to explain the "entry" prohibited by the Section, and it seems desirable that they should form part of the Ordinance to prevent any narrower interpretation of the term.

16. I shall be glad if, when you answer this despatch, you will report how far the clauses in Chapter 3 of Ordinance 10 of 1885, which relate to village forests, have been utilised and have produced beneficial results.

I have, &c.,
J. CHAMBERLAIN.

Enclosure 1 in No. 4.

MEMORANDUM by Lord STANMORE.

I have read with great interest Sir J. West Ridgeway's despatch of the 15th October last, and its various enclosures.

I believe that Sir West Ridgeway and I have altogether the same objects at heart. Our only difference of opinion is as to the best means of effecting them. Were he per-

manently Governor of Ceylon what I consider to be the defects of the Ordinance might not effect much mischief, and might, indeed, to a large extent be practically harmless. What I think Sir W. Ridgeway does not see quite so forcibly as I do is the danger which may result from the exercise by other hands of the powers which the Ordinance confers.

Before, however, making any observations upon the papers which I have been permitted to read, I wish to offer one remark with respect to my own position in this matter, for though nothing can be more courteous, and, indeed, flattering, than Sir W. Ridgeway's language with regard to myself, I think I see in his despatch some signs of resentment at the unauthorized interference of a former Governor of Ceylon in its affairs at the present day.

A petition has been forwarded to me as a Peer of Parliament, which, in the ordinary course of things, it would be my duty to present to the House of Lords. My wish is to avoid giving publicity to complaints of this nature, even if they be, to my thinking, well founded, and by seeking the intervention of the Colonial Office to remedy any grievance which may exist, without making it the subject of public discussion, or appearing in any way to imply censure of the present administration of the Colony.

I cannot say that a perusal of the papers before me has materially changed the opinions originally expressed by me in my memorandum of the 11th June last.

The objections which I offered to the Waste Lands Ordinance were of two classes—those which related to its form and wording, and those which related to the substance of its provisions.

The two most important objections urged by me against the wording of the Ordinance were not originally mine. They come from a much higher source. They are the objections of a lawyer of eminence, and at least show that to those well versed in such questions the interpretation of the passages mentioned is not free from doubt.

As regards the first (the requirements attached to the issue of a notice under Section I.) the change of a very few words would remove all ambiguity, and such a change is therefore worth making.

As regards the second and more important verbal objection, viz., the effect of the provisions of Section II. upon those of Sections XX. and XXIII., it is the clear opinion of the authority I have referred to that the only way in which the sections can be construed together is that which I have indicated. Section II. contains no proviso excepting from its provisions appeals under Section XX. It does contain a provision excepting from its operation, for a certain time, lands the proprietors of which are absent from the Colony, and the fact that an exception is made in this case, and in this case only, seems to exclude all other exceptions. If so, the "final and conclusive proof" of ownership established under Section II. would be a sufficient reply to any appeal under Section XX., so far as possession of the land was concerned.

I do not pretend to decide this question. Sir W. Ridgeway naturally and rightly prefers the interpretation of his Attorney-General to mine. I, as naturally, prefer the interpretation of a man whose authority as to questions of contested interpretation Mr. Layard would be the first to admit to be superior to his own.

But as all parties are fully agreed as to the intention of these Sections, why not insert in them the few words which alone are requisite to render their provisions altogether incapable of misconstruction?

I now turn to the far graver question of those provisions of the Ordinance which in substance appear to me to be open to exception.

The Governor and those gentlemen whose minutes are enclosed in his despatch consider my general statement as to land tenures to be incomplete and even inaccurate. I freely admit it. I was not writing an essay on Sinhalese tenures, which are unquestionably very various and complicated, and on the elucidation of which much erudition has been spent, and some perhaps wasted. I merely stated, in loose and general terms, the principles underlying the tenure of those possessions which will be chiefly affected by this law. But in their zeal to convict me of error, some of these gentlemen have gone too far. I have spoken of *joint occupation*, which is quite another thing from the *joint ownership* and *joint possession* against which they argue. Whatever my opinion on that point, I have guardedly refrained from expressing it. Whatever the theory, the fact that, from time immemorial, villages in or near the forest have exercised rights of various kinds in the forest cannot be disputed. If all these tracts of land be now declared to be the absolute property of the Crown under this Ordinance, without any saving clause, the Crown will have the right to forbid trespass on the ground, and it is

far from clear to me that some "perverse judgment" of the Courts may not rule that the provisions of the Forest Ordinance of 1885 are repealed by this later Ordinance, so far as they conflict with it.

The Governor will no doubt say that, whatever may be the powers conferred by the Ordinance, he would never harshly exercise them. I fully grant it, but what would be the case if a different policy were to appear to one of his successors that which should be pursued? I am afraid his confidence that "the voice of the aggrieved would soon be heard in Downing Street" is a confidence I cannot share. He will not deny that, thirty years ago, when the policy of acquisition by Government of all that could be acquired was at its height, grave injury was done to the interests of many native owners of land, both great and small. The complaints made were loud and deep, the sense of wrong was widespread, and is felt in many places to this day, but I cannot find any trace of their having ever raised an echo in Downing Street. But setting aside all question as to the future, can Sir West Ridgeway feel sure that, even in the present day, cases of hardship may not occur, which will never come to his knowledge?

He will not, I am sure, wish to imply that I had less care for the interests of the villagers than himself, or was less vigilant in guarding them. But it was by the merest accident—that of my travelling through a wild part of the country—that it came to my knowledge that villagers were prosecuted under the "iniquitous provisions" (I use the language of one of my most distinguished predecessors) of the Ordinance of 1840, for "trespassing" on the forest in the immediate vicinity of the village, where such "trespass" was essential to their comfort and well being. A village, which was for any reason obnoxious, might easily be harried out of existence by a strict exercise of the provisions in question—even honest stupidity on the part of subordinate forest officers, zealous to enforce in their strictest letter the rights of the Crown, might lead to such a result. There should, therefore, I maintain, be some express reservation of customary rights, and a distinct statement that the provisions of the Forest Ordinance are not touched by the new enactment.

That the Governor cannot always be aware of what is done by subordinate agents is, I think, shown by the next point I shall mention.

The Governor and Mr. Layard both maintain that no such notice as that which I appended to my memorandum could possibly be issued under the Ordinance. Of course, that imaginary notice was meant by me as a sort of caricature, not given as an example of what would happen, but of what might happen. I did not myself expect that any such notice would ever be issued. But, strange to say, such a notice actually *has* been issued. I append an extract* from the Ceylon Government "Gazette" of the 3rd September last.

It will be seen that the terms of my imaginary notice are here almost exactly followed. The sea, the boundaries of the Province, and a great river are the limits assigned to the district in respect of which the notice is issued. I have coloured this district yellow on the map sent herewith (and of which I have to request the return). Under Section XXII. of the Ordinance it is unlawful for any person to "enter therein or thereon" for six months after the issue of the notice. That is to say, the notice practically forbids all transit by land for that time from the Eastern to the Southern Province. The moment that a man crosses from the northern to the southern bank of the Kumbukkanaar river he becomes liable to imprisonment for three months and one hundred rupees fine, and the same fate would befall anyone from the Southern Province crossing the Kataragama Ganga, or Yala river. They may have disappeared since that time, but when I traversed this wild tract in 1890 there were certainly villages in it. The Assistant Agent appears to have overlooked the fact that a bridle path supposed to be a high road passes through the district from end to end.

It is worthy of remark that this notice is dated the 10th *July*, and that the "Gazette" of which I send an extract is that of *September 3*. Now, of two things one. Either this notice had appeared in other and earlier "Gazettes" since the 10th July, in which case it would seem to have been repeated without objection or comment; or it then appeared for the first time, in which case, not *three months*, but barely *one month's* warning is given to claimants before the issue of the "final and conclusive" declaration, which the Assistant Agent announces for the 12th October. It would be interesting to ascertain whether such a notice was on that day issued.

Now, if the Governor, when he wrote that no such notice as that which I had imagined could possibly be issued under the Ordinance, and that if any officer was

* Not re-printed.

foolish enough "to propose its insertion in the 'Gazette,' he would not have an opportunity of repeating his mistake," knew that the notice I have just quoted had been inserted (and apparently repeatedly inserted, for unless it appeared in previous issues to that sent by me, only one month's notice is given to claimants), he would have either been guilty of some disingenuousness in not mentioning it, which I well know to be impossible, or must have approved the notice as being unobjectionable, which, in the face of his expressed opinions, really seems to me nearly equally impossible.

I therefore prefer to believe that he was unaware of its issue. It is perfectly natural that he should have been so, for unless he has much more leisure than Governors usually possess—and I am sure he has not—it would be impossible for him to wade through every notice in the voluminous pages of the Government "Gazette." I can safely say for myself that, except on very special occasions, I never read a line of it. But if this be the case, it would tend to show how much may be done even by an Acting Assistant Government Agent, which may never reach the Governor's knowledge, and would be disapproved by him if it did so.

"Gazette,"
July 16,
1897.

I append also another notice* with respect to a considerable tract of land, the boundaries of which are very shadowily defined; and the following notices,* which appear in one and the same "Gazette," that for the 4th February of the present year, and which relate to adjacent lands, though much more precise as to boundaries, comprise altogether one block of between 3,000 and 4,000 acres.

I am not absolutely certain, but I have little, if any, doubt that these notices refer to the "Chettichena," which in my time were the subject of constant dispute and litigation between the Crown and the claimants, in the course of which many prosecutions were undertaken by the Crown for illegal trespass, illegal cutting of wood, &c. I need hardly point out what an enormous advantage the new Ordinance secures to the Crown in the course of any such litigation.

I should add that I do not often see the Ceylon Government "Gazette." That of the 3rd September was no doubt sent to me in consequence of the notice it contains, but the two other numbers from which I have made extracts were sent to me with reference to quite a different matter, and must not be supposed to have been specially selected.

There are many observations in the papers which I have been kindly allowed to peruse that I am strongly tempted to notice, but I am anxious to avoid needless controversy, and therefore, on the whole, think it better to refrain from entering on a discussion of side issues. I could say something with respect to the criticisms on the petition and its signatories, but the goodness or badness of the petition does not affect my argument, which is based on the provisions of the Ordinance itself, though no doubt the petition directed my attention to those provisions. Nor will I defend my own view of the Ordinance of 1840, though I cannot but regret the apparent disposition to furbish up antiquated weapons which have been allowed to rust unused for many years, and must emphatically repeat that, however liberal the intentions of the Governor, unless there is distinct legislative provision to the contrary, every claimant may under that Ordinance be compelled to survey, at his own expense, the land he claims, and that in cases where claims may be deemed unreasonable, there will be a strong temptation to enforce that liability. I agree with the Governor in thinking the Ceylon Civil Service to be in the main—though not without exceptions—a high-minded and right-thinking one. But a very intimate knowledge of its members for seven years has left on my mind the impression that, with the most honest intentions and sincere zeal for what they consider the interests of the Crown, there will often be on their part a disposition to view very grudgingly any limitation on the Crown's power of absolute disposal of the lands belonging to it.

But whilst I do not think it either necessary or desirable to cover the whole ground gone over by the Governor and the writers of the Memoranda accompanying his despatch, there are two or three points mentioned on which I must briefly touch.

The Governor seems to think that when I wrote that sub-section 3 of Section II. was meant to protect the estates of European planters absent from the island, I supposed the Ordinance to have been introduced with a view to favour the planting interest. This is altogether a misconception. I made no such charge, and had no intention of implying it. What I wrote was a simple statement of what I believe to be the fact that this sub-section (not in the original draft) was introduced by the Planting

* Not re-printed.

Member of Council, and stated by him to be for the object mentioned. I think the planters are fully entitled to such protection, and that the sub-section is a good one. But I wish to see a similar protection given to the native claimant who may be absent from the locality in which he usually resides. This, however, I admit to be of comparatively little importance if the provisions for appeal be ample and efficient. It is not, however, a thing to be lost sight of, for the trouble and expense involved in an appeal will deter the poor and ignorant from having recourse to it. I was fully aware from communications received from the Hon. T. North Christie that the Ordinance had not been favourably received by the planters.

I wish also to repeat the expression of my strong sense of the hardship and injustice which will be inflicted by a rigid adherence to the rejection of all deeds or titles not registered some thirty years ago or more. On this point I entirely join issue with Mr. Layard, and maintain that if he refers to the Government Agents of the Northern, North Central, and Eastern Provinces, and probably those also of the North-West Province, Uva, and Sabaragamuwa, they will tell him that hundreds of perfectly good titles were never registered as required. Indeed, Mr. Layard's own figures go far to prove this. He says 74,130 deeds were registered. Now, 74,130 *deeds* would imply a much smaller number of *owners*, for the deeds in a single case are often very numerous, as I know from personal inspection of the Sabaragamuwa claims. But even if this were not so, and every deed represented a single owner, does Mr. Layard fancy that there are only 74,000 landholders possessing deeds in Ceylon? It is impossible that he can labour under so strange a delusion. And in this connection I would beg leave to call attention to Mr. Ellis's express statement, which I believe to be absolutely correct, that the Ordinance of 1866, calling for such registration, was *not* strictly enforced. Consequently deeds were not registered, but though the *law* is not *altered* with regard to them, I cannot admit that the position is unchanged, for under this new Ordinance everyone possessing a morsel of forest or uncultivated land may, and probably will, be called upon to *prove* his claim to it against the Crown, and an unregistered deed cannot be adduced as proof.

There is only one other point which I will notice, and I have reserved it to the last, because I think it is the most telling argument adduced by those who think the Ordinance can do no harm, certainly the most telling argument *ad hominem* against myself. It is said that I have myself approved of similar definitions in the Forest Ordinance, 1885, to those enacted in the law now under consideration. The definitions, though similar, are not, I think, the same, and I need not say that the change of a very few words may have important results; but as I have not a copy of the Forest Ordinance of 1885 by me, I waive that point. Nor will I dwell on the fact that some of the definitions of that Ordinance were not altogether to my liking, for, having accepted them, I became responsible for them. The real and important difference between the definitions of the Forest Ordinance, 1885, and of the Waste Lands Ordinance, 1897, is that in the former the definitions were all subordinate to the main purpose of the Ordinance, which was clearly to define and distinctly recognize all old customary rights. There is no such recognition in this Ordinance, the main purpose of which is to enforce the claims of the Crown, and I believe that when under its provisions land is declared to be vested in the Crown, those customary rights will be wholly extinguished, and the villagers entitled to nothing but what the indulgence of the Assistant Government Agent may give them, or his caprice withhold.

I will now conclude a Memorandum which has already extended to far too great a length, and in doing so I will make one final observation. The Governor says that whilst I object to the provisions of this Ordinance, I point out no alternative measure. I have, no doubt, my own views as to the nature of the provisions which I should like to see enacted to facilitate settlements by consent, and the legal recognition of a joint occupancy which has practically long existed; but it appears to me, with all submission, that it is no part of my business to suggest measures of legislation to the Ceylon Government, and that exception might very reasonably and rightly be made to my doing so. What I have done has been to say privately to the Colonial Office what, in the natural course of things, I should have said publicly in the House of Lords in presenting the petition entrusted to me. I have now performed what has seemed to me, so far, my duty in this matter. It is for Her Majesty's Government to consider and decide what weight, if any, is to be attached to the remarks which I have ventured to submit to it.

STANMORE.

March 8, 1898.

P.S.—There is one other point to which I should wish to call attention. Mr. Jackson, the Acting Assistant Government Agent at Matara, although in his memorandum he argues strongly in favour of the Ordinance, *himself suggests* amendments, which meet many of the objections raised by me, and which I beg most earnestly to commend to the favourable consideration of the Secretary of State.

Mr. Jackson's curiosity as to my views with respect to suggestions as to the enforcement of the provisions still unrepealed of the Lands Ordinance of 1840, with regard to survey, may be very easily satisfied by enquiry addressed to those by whom the suggestion was made.

Enclosure 2 in No. 4.

MEMORANDUM by Mr. C. P. LAYARD.

I have duly considered Lord Stanmore's memorandum, dated the 8th of March, 1898, and will endeavour briefly to reply to the different objections raised by him.

2. I will first deal with what Lord Stanmore terms "the two most important objections" urged by him against the wording of the Ordinance No. 1 of 1897.

3. With reference to section 1, sub-section (2), I can add nothing to what I have already written in my memorandum of the 7th of September last, a printed copy of which was forwarded to the Secretary of State together with the Governor of Ceylon's despatch of the 15th of October last.*

4. Turning now to the effect of sub-section (2) of section 2 upon section 20 of the Ordinance, I am not prepared to concede that Lord Stanmore has properly construed those sections. I understand him to argue that the proviso contained in sub-section (3) of section 2 refers to sub-section (2) of that section, and excepts from its operation for a certain time lands the proprietors of which are absent from the Colony. A careful perusal of that section clearly demonstrates that such is not the case. What the proviso actually affects is sub-section (1) of that section. Sub-section (1) enacts that when no claim is made to the Government Agent within three months from the date of the notice issued in pursuance of section 1, the Government Agent shall declare the land to be the property of the Crown; and by sub-section (3) it is provided that if at any time within the said period of three months it shall be brought to the notice of the Government Agent that the land the subject of the notice is likely to be claimed by some person absent from the Colony, he shall defer making the order under sub-section (1) until the expiration of nine months from the date of the issue of the notice under section 1. The publication of the order under sub-section (2) is simply deferred by the proviso, which in no way excepts from its operation lands the proprietors of which are absent from the Colony; briefly, the effect of the proviso is to extend the time for making an order under sub-section (1), and has no bearing on the effect of the order when published in accordance with the provisions of sub-section (2). The argument of Lord Stanmore, therefore, that as there is a proviso excepting from the operation of sub-section (2) for a certain time "lands the proprietors of which are absent from the Colony, and the fact that an exception is made in that case, and in that case only, seems to exclude all other exceptions," appears to me to fail.

5. With all deference to the legal authority referred to by Lord Stanmore, I cannot admit that his interpretations of sections 2 and 20 read together are correct. The only section of the Ordinance by which lands are declared the property of the Crown is section 2 and section 20 provides that in respect of a land declared to be the property of the Crown under the provisions of the Ordinance, if a claimant prefers a claim to such land within one year from the date on which such declaration shall have been made, and shows good and sufficient reason for not having preferred such claim within the period limited under section 1, such claim shall be duly investigated and adjudicated on. As section 20 clearly refers to the order made by the Government Agent under section 2, the only way by which one can arrive at the conclusion come to by Lord Stanmore is by reading the Ordinance as though the provisions of section 20 were not contained in it, I think that that would be a very strained construction to place on the Ordinance. Sections 2 and 20 are reconcilable. When an order has been made under section 2, sub-section (1), and published under sub-section (2), it becomes final and conclusive, subject, however, to the right of a claimant under section 20 to have his claim investigated under the circumstances stated in the latter section.

6. It is not necessary to deal with Lord Stanmore's reference to the effect of the provisions of section 2 upon section 23, for it is obviously a mistake.

7. I now will reply to what Lord Stanmore refers to as the far graver question. There is no necessity to cavil at the expression used by Lord Stanmore, viz., "Joint occupation." It is clear what he means. His desire is to see the rights of the villagers protected, and, from practical experience, I know of no way by which such rights can better be protected than by the working of this Ordinance conjointly with the Forest Ordinance of 1885.

8. The difficulty that has arisen with regard to the protection of the rights of villagers over Crown lands has been due to the judgments of the local Courts, which have failed to uphold communal rights as against the Crown. The only way by which village forests can now be created is by the exercise of the powers conferred on the Governor by the Forest Ordinance of 1885, and those powers have been frequently used by the Ceylon Government for the purpose of creating village forests. The present position is this, that individual villagers are constantly selling their alleged rights in forests adjoining the village to land-grabbers and speculators, and by this means the communal rights of their fellow villagers are destroyed, there being no one whose duty it is to protect the village community against such depredations, the villagers themselves, either from apathy or because they have shared in the amount paid by the purchasers, not caring to advance the right of the community in respect of such forest.

9. I understand that Lord Stanmore admits that the legal estate in such lands is vested in the Crown, and such being the case, it appears evident that it is obviously the duty of the Crown to use its best endeavour to save such lands from being alienated in the manner above described, and that is one of the strongest arguments in favour of the Ordinance No. 1 of 1897. I would here venture to point out that under the third section should a claim be made to any communal rights, such claims must be entertained by the Government Agent, and if no agreement in respect of such claim can be entered into under section 4, the claim has to be referred to the Court. It is right, however, that I should mention that it is highly improbable that any such claim will ever be put forward. In my experience of over twenty years at the Ceylon Bar I have never heard of one.

10. The difficulty, however, that Lord Stanmore contemplates is that the Forest Ordinance of 1885 may be held by some judgment of the Supreme Court to be repealed by the Ordinance No. 1 of 1897, and consequently that the two Ordinances cannot be worked together for the protection of the villagers' rights. Such a judgment is absolutely impossible. After a land has been declared to be the property of the Crown under the Ordinance No. 1 of 1897, the provisions of the Ordinance of 1885 become applicable to it, and it must be remembered that the Governor alone is vested by that Ordinance with the power of bringing its provisions into operation.

11. Assuming, however, such a "perverse judgment" to be given, the Crown still can protect the villagers' rights in respect of such land; which it might have great difficulty in doing if it had not obtained a declaration of title in its favour and could issue a grant of its own motion declaring the rights of the villagers in respect of such land.

12. I do not think that in case of village rights being invaded under the Ordinance the attention of the Ceylon Government would not be drawn to it; at the same time it must not be forgotten that the Ceylon Government is always impressing on its officers the duty of protecting such rights against the land-grabbers, European and native. I am unable to follow the instance given by Lord Stanmore of the prosecution of villagers under the "iniquitous provisions" of the Ordinance of 1840 for "trespassing" on the forest in the immediate vicinity of a village, he does not state to what Ordinance of 1840 he refers, and I think his memory on the subject must be inaccurate because, though I have no copy of the Ceylon Ordinances with me to refer to, I have no recollection of any Ordinance of 1840 under which a villager could be prosecuted for "trespassing" on Crown Forest.

13. With reference to the notice appearing in the Ceylon Government Gazette of the 3rd of September last, I am not prepared to admit that such notice is similar to the imaginary notice appended to Lord Stanmore's previous memorandum. The imaginary notice included cultivated and inhabited lands. I believe a reference to the Ceylon Government would show that the land dealt with under the notice appearing in the Gazette of September 3rd, 1897, is unoccupied and uninhabited. This particular notice was referred to at the last Conference of the Government Agents in Colombo, and I understood Mr. Wace, Government Agent of the Southern Province, to state that the land included in the notice was unoccupied and uninhabited. And though this notice has been appearing from time to time in the Government Gazette, and been published

on the land and throughout the Province, I have heard of no complaint in respect of it, and I see no reason why a large tract of forest and unoccupied land should not be dealt with under this Ordinance any more than such tract should be dealt with under the Forest Ordinance of 1885. It is common to deal with large tracts of land under the latter Ordinance, and no hardship has arisen thereby to the villagers, although I believe there is a similar provision to section 22 in the Forest Ordinance of 1885. I do not interpret the expression to "enter therein or thereon" to prohibit a person crossing the land. It appears to me the entry referred to in that section is an entry for the purpose of establishing a right of possession or occupation of the land and for exercising rights of ownership thereto.

I think that a reference to the Governor of Ceylon would show that his attention had been drawn to the notice, and that he made due enquiry in respect of it, and found that it was not obnoxious.

14. With reference to the map attached to the notice, though the information it conveys may be limited the notice itself gives specific boundaries, and the publicity given to the notice by the advertisement by beat of tom tom, &c., has been found practically to give sufficient information to parties interested. Villagers do not read the newspapers or Gazettes, but the advertisement by beat of tom tom has been found in practice to reach them.

15. With reference to the notices which Lord Stanmore believes refer to the Chettichena claim, I have no doubt he is correct. It was attempted to settle the claim to these waste lands under the Forest Ordinance of 1885; the Supreme Court held that the claim could not be settled under that Ordinance, and reversed the finding of the Forest Settlement Officer in favour of the Crown on that ground. It is desirable that this long pending dispute which Lord Stanmore points out has led to constant litigation between the Crown and the claimants should be finally settled. Disputes of this kind lead to constant irritation, and the sooner they are settled the better. The greatest care was taken in issuing the notices dealing with that claim to exclude any lands that were occupied or cultivated, and the claimants will not be prejudiced by their claims being dealt with under the provisions of the Ordinance No. 1 of 1897 as undoubtedly, irrespective of that Ordinance, the lands being waste lands are presumably the property of the Crown.

It should not be forgotten that the object the Ceylon Government had in view in passing the Ordinance was to protect Crown lands for the benefit of the public, lands which were by wholesale robbery being appropriated by private persons for their individual benefit, and even admitting for the sake of argument that some persons may suffer slight inconvenience by the operation of the Ordinance, it is for the benefit of the public that such should be the case.

16. I regret to say that owing to the number of forged deeds that are constantly being manufactured it would be very inexpedient to repeal the provisions of the Ordinance of 1866 as suggested by Lord Stanmore. The Supreme Court has lately held that the deeds not registered under that Ordinance are inadmissible in evidence, and legislation to the contrary effect would encourage the manufacture of false deeds. I am aware that there are more than 74,000 landholders possessing deeds in Ceylon, but I am not willing to admit that there are now in existence any considerable number of deeds which could have been registered under the Ordinance of 1866. This, however, is a matter entirely outside the Ordinance now under consideration which contains no provision in any way affecting the Ordinance of 1866.

17. The Ordinance No. 1 of 1897 has now been in operation since the 9th of February, 1897 and the Governor has taken a personal interest in watching its operations. He has appointed a Committee consisting of two of the ablest Government Agents, viz. : Messrs. Ellis and Wace, and myself to report on every application made by the Government Agents to take steps under section 1 of the Ordinance. This Committee has drafted a form to be filled up by Government Agents personally, showing that they are justified in assuming that the land is one falling under the provisions of the Ordinance, and that there is no reason for believing that the Crown has ever issued any grant in respect of such land, and it is only when the Government is satisfied that the land is one which should be dealt with under the Ordinance that the notice in the Government "Gazette" is published. Further, before any order is made by the Government Agent under section 2, the Kachcheri file dealing with the case has to be submitted to me so that I may see that all the preliminaries have been duly complied with. In the same way the record of every enquiry made by the Government Agent under section 4 is submitted to me before any order is made by the Government Agent under that section. Should I be of opinion that sufficient enquiry has not been made under that section or

that it would be just to admit the claim of the claimant either wholly or in part I suggest to the Government Agent the desirability of making further enquiry or of admitting such claim. The result has been that only cases in which it would be prejudicial to the public to admit the claim to the land have been referred to the Court. The only case that was decided by the Court before I left the Island was one in which Mr. Le Mesurier was one of the claimants. This claim was rejected by the District Judge, Mr. Le Mesurier admitting that he had no claim to the land, he having agreed with the other claimant, a native, to help him to establish his claim in consideration of the claimant's promise to give him half the land in event of the claim being sustained.

18. As far as the Ordinance has been at present worked it has only been put into operation in cases where it was necessary to protect the rights of the public from invasion, and the greatest care has been taken not to prejudice the rights of private individuals. The only persons who have had any reason to complain of its working are the speculators—European and native—who have been purchasing lands from persons who have not a shadow of title to the same.

19. If the Ordinance is to be modified in any way, which would be much to be regretted until it has been given a fair trial, I would prefer to adopt the provisions of the measure originally drafted by me and introduced into the Legislative Council. Unfortunately I have not a copy of that bill with me. It simply legalised the investigation of claims by Government Agents referred to in the 21st paragraph of Mr. Levers' paper on the Chena question, a printed copy of which is attached to the Governor's despatch of the 15th of October last, and its great advantage over the present Ordinance was that it made the Government Agent's decision final, subject to the right of any party aggrieved bringing an action in a competent Court to establish his right to the land. What I fear in the present Ordinance is that the reference by the Government Agent of a disputed claim to the Court will lead, in the case of natives, who are naturally very litigious, to frivolous litigation against the Crown, which they would not embark in if the Government Agent had power to decide in the first instance.

C. P. LAYARD.

April 20, 1898.

Enclosure 3 in No. 4.

COLONIAL OFFICE to LORD STANMORE.

MY LORD,

Downing Street, June 10, 1898.

I AM directed by Mr. Chamberlain to inform you that he has very carefully considered your letter of the 9th of March,* and the connected correspondence relating to the Ceylon Land Claims Ordinance No. 1 of 1897.

Mr. Layard, the Attorney-General, who is now in this country, has also been consulted on the subject.

2. Mr. Chamberlain has advised Her Majesty not to disallow the Ordinance, being satisfied that it is a useful and valuable measure for the purpose for which it was framed, and that it is being worked with great care under the Governor's supervision.

3. He sees no reason to apprehend that injustice will be done under its provisions, but he is placing Sir West Ridgeway in full possession of your views, and is suggesting, without insisting on, various amendments of the Ordinance.

I am, &c.,

C. P. LUCAS.

The Lord Stanmore, G.C.M.G.

No. 5.

GOVERNOR SIR J. WEST RIDGEWAY to MR. CHAMBERLAIN.

(Received December 12, 1898.)

SIR,

Queen's House, Colombo, Ceylon, November 18, 1898.

WITH reference to the concluding paragraph of your despatch of the 10th June, 1898, † I have the honour to inform you that I caused a circular to be addressed to the several Government Agents, requesting them to report how far the clauses in Chapter III. of Ordinance No. 10 of 1885, which relate to village forests, have been utilized and have produced beneficial results.

* Not printed: forwarding the further Memorandum of March 8: see Enclosure 1 in No. 4. † No. 4.

2. In the great majority of the Provinces no village forests have been proclaimed, as all village demands are met from Crown Forests or the villagers are well provided with chenas.

3. The Government Agent of Sabaragamuwa, however, reports that there are in his province 16 village forests, aggregating over 1,400 acres in extent, which have proved most useful.

I have, &c.,
WEST RIDGEWAY.

No. 6.

GOVERNOR SIR J. WEST RIDGEWAY to MR. CHAMBERLAIN.

(Received January 2, 1899.)

[Answered by No. 7.]

SIR, Queen's House, Colombo, Ceylon, December 13, 1898.

WITH reference to your despatch of 10th June last,* I have the honour to submit for your approval draft† of an "Ordinance to amend Ordinance No. 1 of 1897, intituled 'An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands.'"

2. I enclose at the same time a copy of a report by the Attorney-General, explaining the provisions of the amending Ordinance and giving cover to a copy of Ordinance No. 1 of 1897, with the proposed alterations shown in the margin.

3. I may explain with reference to the proposed amendment of sub-section 1 of clause 1 of the Ordinance that the inclusion of several allotments of land in a village in the same notice will facilitate identification of the different lots by claimants for each lot, as its situation as regards other lots will be distinctly shown on the plan which will be published in the "Gazette," and notice will also be served on each person known to be interested. But the principal reason for making the amendment is that it will enable settlements to be made of a village as soon as the cadastral survey of that village is complete. As I have before explained the principal benefit to be derived from this legislation is that a settlement can be effected between the Crown and the villager by its means so soon as a village has been surveyed. The Ordinance has already been used for this purpose, but the expense, trouble, and confusion caused by having to publish a separate notice and a separate map of each plot in a village will be prohibitive in many, if not most, cases. Except by means of this Ordinance there is no legal and feasible way of obtaining the admission of the villagers to the correctness of the survey, and there is therefore no other method of making a permanent settlement. If, for instance, a few years hence it is discovered that a villager has taken possession of a plot marked on the cadastral map as Crown land, and if the villager alleges that he did not think it necessary to advance his claim when the enquiry was made, the Ordinance will have to be put in motion as regards that particular land, and there will be constant and irritating litigation, instead of the general amicable settlement which I hope will follow the cadastral survey of each village.

4. The proposed amendment of section 22 will tend to disarm much hostility to that provision of the Ordinance without making it less effective, while clause 10 provides for curing certain technical irregularities which have prejudiced no one. The Supreme Court have held that when the date of the publication in the "Gazette" of the notice is subsequent to the date of the notice, all proceedings are bad, even when the claimant has appeared in obedience to the notice, and a settlement has been, perhaps, amicably made.

5. I may add that the Bill has been read a second time in the Legislative Council, but that its progress through Committee will be suspended until I receive your orders. I hope that these may be communicated to me by telegraph, as, pending the passing of the amending Ordinance, no fresh notices will be issued under the original Ordinance.

I have, &c.,
WEST RIDGEWAY.

* No. 4.

† Not printed: see Enclosure 1 in No. 10—the Ordinance as passed.

Enclosure in No. 6.

REPORT of the ATTORNEY-GENERAL on " Ordinance to amend Ordinance No. 1 of 1897, intituled ' An Ordinance relating to Claims to Forest, Chena, Waste, and Un-occupied Lands.' "

I forward a copy* of " The Waste Lands Ordinance," showing in the margin the alterations* the proposed measure will make in that Ordinance.

1. By the amendments made by clause 1 in section 1 of the Ordinance:—

(a) Provision is made that one notice may issue in respect of several lands when such lands are situated in the same village.

This amendment has been made at the suggestion of the Government Agent of the Western Province, and the reasons for its adoption by the Government will be explained by the covering despatch.

(b) That the period of three months within which a claim is to be made should run from the date of the first publication of the notice in the " Government Gazette," instead of from the date of the notice. This is in accordance with the suggestion made in paragraph 12 of the Secretary of State's despatch, dated the 10th June last.

(c) Gansabawe Courts are included amongst the places where notices are to be posted.

This is in accordance with the suggestion in paragraph 10 of that despatch.

(d) Provision has been made that the notice should be published once at least in two of the local newspapers in the language in which such newspapers are published. This has been done for the purpose of making it clear that the publication in the local newspapers need not be more than once.

(e) Provision has been made that, when an officer issuing a notice has reason to think that any person is interested in the lands specified in the notice, he should post a copy of such notice to such person.

This is in accordance with the suggestion made in paragraph 9 of the despatch.

2. Clause 2 amends sub-section 2 of section 2 in the manner suggested in paragraph 13 of the despatch.

3. The amendments made in section 3 are necessitated by more than one land being included in one notice.

4. Section 4 of the Ordinance has been amended to provide for the case in which the claimant does not appear or does not produce any evidence or document in support of his claim.

There have been cases in which speculative claimants have not appeared before the Government Agent, or adduced any evidence in support of their claim.

5. At the hearing of a reference before the District Judge, Mr. Le Mesurier was allowed under section 12 to appear for the claimant as his " agent," although it was admitted that Mr. Le Mesurier personally had no interest in the land.

Section 12 has been amended by clause 5 to prevent a claimant appearing otherwise than personally or by pleader.

6. By clause 6, section 18 is amended for the purpose of expediting the hearing of appeals.

7. Sub-section (1) of section 21 has been amended by clause 7 in accordance with the suggestion contained in paragraph 14 of the despatch.

8. By clause 8 the prohibition under section 22 is extended to mines, and the suggestion made in paragraph 15 of the despatch has been adopted, and it is further provided that before a person can be convicted for a breach of the prohibition an order must be obtained from the District Court directing the offender to deliver up possession of the land, and it is only in the event of such order not being obeyed that the offender becomes liable to punishment.

9. By clause 9 a new section has been inserted so that no land could be dealt with under the Ordinance until its boundaries have been defined and delineated by a survey.

10. Clause 10 provides for the curing of all irregularities in notices and orders previously issued.

Under the Ordinance as it stands no provision is made as to the date on which a notice issued under section 1 is to be published in the " Government Gazette," but it

* Not printed.

has been held that when the date of the publication in the "Gazette" is subsequent to the date of the notice, all proceedings under the Ordinance are bad, even though the claimant has made a claim in pursuance of the notice and has appeared in Court to a reference.

The object of the various publications prescribed by section 1 of the Ordinance is to give notice to claimants of proceedings under the Ordinance, and the mere fact that the "Gazette" in which the notice is published bears a date subsequent to that in the notice should not of itself be sufficient to invalidate proceedings under the Ordinance.

11. Further, the Ordinance has been largely availed of for the purpose of settling disputed claims, and such claims have been amicably settled to the satisfaction of numerous villagers, in whose interests it is desirable that the settlements come to should not be disturbed, and that any irregularity in the original notices and orders should be cured in manner provided for by clause 10.

12. In this connection I may state that the decision above referred to in paragraph 10 was on an objection taken not by a bona fide claimant, but at the instance of Mr. Le Mesurier in a purely speculative claim.

C. P. LAYARD,
Attorney-General.

Attorney General's Office,
Colombo, December 7, 1898.

No. 7.

MR. CHAMBERLAIN to GOVERNOR SIR J. WEST RIDGEWAY.

(Sent 5 p.m., January 18, 1899.)

TELEGRAM.

In reply to your despatch of December 13,* draft approved.

No. 8.

GOVERNOR SIR J. WEST RIDGEWAY to MR. CHAMBERLAIN.

(Received March 18, 1899.)

[Answered by No. 22.]

SIR, Queen's Cottage, Newera Eliya, Ceylon, February 28, 1899.

I HAVE the honour to forward a memorial from Mr. C. J. R. LeMesurier, dated the 1st December last, which was received at the Colonial Secretary's Office on the 15th of that month, relative to the alleged "spoliation by the Crown" of village lands "in the Matara district."

2. I attach a report by Mr. J. P. Lewis, Special Commissioner, in which he deals effectively with the question of the various tenures of land in the Southern Province, and shows that the interpretation which Mr. LeMesurier places on the particular tenure known as "Kanawis Paraveni" is incorrect.

3. Apart, however, from the question whether Mr. LeMesurier or Mr. Lewis is right as regards the exact status of the holder of land under this somewhat obscure tenure (Kanawis meaning "that which is staked out") Mr. LeMesurier's memorial appears to be mainly an indictment of an Ordinance passed fifty-nine years ago, viz., the Ordinance No. 12 of 1840, entitled "An Ordinance to Prevent Encroachments on Crown Lands." Mr. LeMesurier denounces it as a piece of legislation by which the then Government of Ceylon "attempted to reverse their policy of the past in order to carry "out their new-born land-grabbing propensities." There can be little doubt that this Ordinance introduced no new principle, nor did it give to the Crown rights which it had not hitherto possessed. The object of the Ordinance was to prevent encroachments on Crown land, and the recent Waste Lands Ordinance, which the memorialist has similarly impugned, as endowing the Government with vast powers to seize the property of private individuals, had the same object in view, whilst affording a cheap and expeditious method of settling bona fide claims.

4. It is a little difficult to treat Mr. LeMesurier's arguments seriously. He would have it believed that up to 1840 the villager had been entitled to chena Crown land without let or hindrance. The result of this policy should have been, according to the concluding paragraph of the memorial, that "a wilderness of useless scrubby jungle" would have "become a revenue-producing tract of cultivated lands," whereas, as everyone with any knowledge of the country is aware, the "useless scrubby jungle" is the direct result of chena cultivation, which the Ordinance of 1840 endeavoured to discourage.

5. Again, Mr. LeMesurier states in paragraph 3 "it was not until 1872 that the policy of spoliation was complete," but in paragraph 5 it appears that "it is only within the last three years * * * * that it is deliberately asserted on behalf of the Crown that cultivation at one-tenth is no proof of private title," thus achieving (paragraph 6) "the completion of the act of spoliation in regard to these lands," which had already been completed in 1872 (paragraph 3). Mr. Lewis has conclusively shown that this is no new theory, and that certainly in 1841 permits were issued for the cultivation of Crown land on payment of one-tenth share.

6. The statements as regards the poverty and helplessness of the villagers—paragraphs 3 and 4—are quite unfounded. "The villagers of the Matara district, except those living in the narrow strip of cocoanut lands by the sea, were amongst the poorest in the Island." No doubt, before the extension of irrigation in the Matara district, in the time of Messrs. Cairns and Elliott, and during the era of unrestricted chena cultivation, great poverty did prevail, but at the present time this is certainly not the case. In no part of the Island have irrigation works been more successful than in the Matara district, and their success has been in great measure due to the officers above-mentioned, whom Mr. LeMesurier represents as the tyrannical agents of Government in a policy of spoliation. The Matara district is now one of the most populous and flourishing in the Island. In no district are the inhabitants better aware of their legal rights or more competent to maintain them.

7. In the concluding paragraph of his memorial, Mr. LeMesurier asks the Government apparently to surrender all the Crown lands in the district. This would no doubt prove an eminently acceptable policy to Mr. LeMesurier, who has been buying large tracts of Crown land for purely nominal consideration. He asserts that "the soil is as a rule too poor for anything but citronella and purely native industry," but Mr. LeMesurier has himself been digging plumbago—a most valuable article of export at the present time—on Crown land in this district, and making very considerable profits therefrom. Cocoanuts, paddy, and areca nuts are largely cultivated, and there has been no instance within the last generation of distress or want of food calling for the assistance of Government, such as occasionally occurs in other parts of the Island.

8. The recklessness of Mr. LeMesurier's statements may be gauged by the fact that he boldly represents one of the most flourishing parts of Ceylon at the present day as having fallen into poverty and decay through the action of the officers of Government. I am of opinion that representations of this nature are not deserving of serious consideration at the hands of Her Majesty's Government.

I have, &c.,

WEST RIDGEWAY.

Enclosure 1 in No. 8.

SPOILIATION OF VILLAGE LANDS IN THE MATARA DISTRICT.

To the Right Honourable

The Secretary of State for the Colonies.

SIR,

DURING the time of the Dutch occupation and for a number of years after the British conquest, jungle lands in the Matara District were of little value. They were as a rule only of use to the villagers as appurtenances to their rice lands, for firewood, for fence sticks, ploughs, charcoal burning, timber for their huts, as pasture lands for their cattle and the like. It was the policy of the authorities to encourage *cultivation*, for the Government derived its revenue from the *produce* grown on the lands, and they cared very little what encroachments were made so long as they got a share of what was grown on them. It was for this reason that "appropriated lands" (as they were called) were allowed to the encroachers and permitted to be inherited by their descendants on very easy and sometimes quite nominal terms. Thus "Canoes Paraveni" lands, that is "forests or jungles of large extent cut down and cleared by individuals, which they sowed once every seven or eight years, were free of all tax under the Dutch Govern-

“ ment, but since the British Government took possession, they were subjected to pay
 “ one-tenth of their produce and the remaining nine-tenths were divided between the
 “ cultivators and the persons who originally cleared them or by their heirs. They were
 “ heritable in the same manner as ‘ Paraveni ’ (that is, Ancestral), or other lands.” (See
 Government Almanac of 1819 and proclamation of 3rd May, 1800, Clause 8). These
 and other private lands were registered by the Dutch Government, and at the beginning
 of the century by the British Government, but the authorities of the present day
 in whose custody the records are, refuse to give access to these docu-
 ments, and contrary to the solemn declaration of His Excellency the
 Governor in the Legislative Council in 1896, that all records of private
 titles should, without limitation, be readily available to claimants of lands against the
 Crown, they put every possible obstacle in the way of the production of these documents
 for the benefit of the claimants. On one occasion when the claim to a large tract of
 land in the Kandyan Province was being adjudicated upon by the District Court of
 Kandy, the Attorney-General even went to the extent of arguing that a public register
 of the land in dispute was not what it really is, the register by Government of the private
 title to the land in dispute under the proclamation of the 14th January, 1826, and the
 Judge, knowing no better, accepted this erroneous view, to the prejudice of the subject
 plaintiff.

When lands themselves became valuable for coffee cultivation, etc., and were being
 rapidly bought by capitalists, and Government found that they could largely increase
 their revenue by land sales, they attempted by legislation to reverse their policy of the
 past, and in order to carry out their new-born land-grabbing propensities, they con-
 ceived and enacted what is called the Presumptions Ordinance No. 12 of 1840;* but
 their expectations were to some extent defeated by the Supreme Court repeatedly hold-
 ing in effect that the Ordinance could not override the *fundamental principles of justice*,
 and despite its disingenuous presumption clause, could not be construed into giving the
 Crown what it had not before. The Revenue officers, however, of the Matara District
 administered the Ordinance in their own way. They construed the presumption clause
 into the specific declaration that all lands cultivated at intervals were thenceforward to
belong to the Crown, and they ruled that all these lands (which under the Dutch
 Government and the British proclamation of 1803, had been secured to the villagers in
 perpetuity) were thenceforward to become the property of the Crown. (Vide Mr.
 Cairn’s † minute of 1868, and Mr. Elliott’s † letter of the 6th of December, 1870, and
 Wijesinghe Mudaliyar’s ‡ report of 1864). A quotation from Mr. Elliott’s letter will
 serve to illustrate this.

He says, in paragraph 4 of his letter.—

“ In this District, lands held on “ Canoes Paraveni ” tenure were formerly cleared
 “ and cultivated by private individuals *as a matter of right*. These lands were free of
 “ all tax under the Dutch Government, ‘ but ’ adds a writer on tenures in this District,
 “ in the Ceylon Government Almanac of 1819, ‘ since the present Government took pos-
 “ session, they are subjected to pay one-tenth of their produce.’ Following, however, the
 “ practice of my predecessors I have not recognised such claims, *a practice based upon*
 “ *the supposition that such tenure was incompatible with the provisions of clause 6 of*
 “ *the Ordinance 12/1840*, but I am not aware of any judicial decision on the subject.
 “ This view of the tenure has demolished claims to a very large extent of Chena § land
 “ and the area in private hands is comparatively small, nor is the fee simple of the lots
 “ offered for sale worth the upset price as a rule, so that in fine, *Chena cultivation is*
 “ *carried on by the poorest classes of the community.*” It is this *poverty and helplessness*
 of the villagers that enabled the Revenue officers to carry out their views, but it was
 not until 1872, that the policy of spoliation was complete. Poor as they were, the villagers
 at first struggled for their rights and the Government Agents were only able to force
 them to take out *permits* for the cultivation of their lands, on the specious plea, that in
 any case the Government was entitled to one-tenth. They treated this acknowledged
 share of one-tenth as *a right in the soil*, although it was in reality only a right to one-tenth:

* Clause 6 enacted as follows :—“ All forest waste, unoccupied and uncultivated lands shall be
 presumed to be the property of the Crown until the contrary thereof be proved—and Chena lands
 shall be deemed to be forest or waste lands within the meaning of this clause ”—and the Ordinance
 No. 1 of 1897 extended this presumption to lands that have remained uncultivated or unoccupied for
 the five years preceding the passing of the Ordinance.

† Both Administrators of the Matara district.

‡ A district Chief of the Matara district.

§ N.B.—“ Chena ” lands are lands that can only be cultivated at intervals.

of the produce, and they would not allow the lands to be cultivated at all, unless the villagers took out permits for the cultivation at one-tenth from the Kachcheri.

The villagers of the Matara District, except those living right on the narrow strip of cocoanut lands by the seaboard were amongst the poorest in the Island. Not only could they not resist the Crown at law, but they had besides a child-like faith in the bona fides of the Agents of the Government and therefore, though much against their will, took out the permits to cultivate their own ancestral lands at one-tenth share; and it is on this fact, viz.: that permits were so taken out that the Government now advance the unjust and unreasonable plea that the rate of tax levied on *Crown* lands during this period was one-tenth. The claimants, on the other hand, assert that the rate of tax on *undoubted* Crown lands was half to quarter, and that, since by law the rate levied on Paraveni or Ancestral, and heritable land was one-tenth (vide the proclamations of 3rd May, 1800, of 3rd September, 1801, of 22nd April, 1803, and the Ordinance No. 14 of 1840 clause 1) the proof of payment of tax at this rate is proof of the private title to the lands.

This view was that adopted by the Courts during the years that I acted as Revenue Administrator of the Matara District. and during the long tenure of office of my predecessor, Mr. C. E. D. Pennycuik, for when a bolder villager than the rest cultivated one of these lands without permit, and was prosecuted in the Courts for so doing, he was invariably acquitted on proof that the land had been cultivated before 1872 at one-tenth share. It is only within the last three years when the claims had increased and now practically cover the whole of the lands cultivated in the time of the Dutch and the early part of the century, that it is deliberately asserted on behalf of the Crown that cultivation at one-tenth is no proof of private title since that was the rate before 1872, on both *Crown and private lands*. I pause here to remark that it is exceedingly unlikely that the Crown, if it really believed it had a good title to the whole of the soil in these lands, would have been content to tax them at the same rate as lands belonging to private individuals many of whom had purchased them from the Crown. The Government in Ceylon, at any rate, is not in the habit of acting with such generosity and more particularly when the Courts were in the habit of deciding that payment of tax at one-tenth was a sufficient proof of the *private* title to the land. Is it not far more likely that the Revenue officers levied this rate because they knew the lands were not really the property of the Crown, and in order to save themselves from any complications that might arise, even amongst the poverty-stricken villagers of Matara, from their arbitrary reading of the Ordinance 12, of 1840?

I will now proceed to describe the completion of the act of spoliation in regard to these lands. After a number of years in which the permit system at one-tenth was in force, during which the exactions of the headmen in reporting on the applications for permits and in the issue, &c., of the permits, became more and more burdensome, the policy of restricting Chena cultivation, as being *demoralizing* to the people, grew up, and acquired strength as the hold of the people upon these lands grew weaker and weaker. The Agent of Government was all powerful, the headmen were under his thumb and the villagers were, for the most part, in complete subjection to the headmen, and it can easily be understood how, in these circumstances, what was at first, only a mere formality, grew into a direct assertion of the right of the Crown to the lands, and when, on the top of this, came the orders of the Revenue officers to restrict Chena cultivation, and when permits were either refused or only granted after great trouble and expense, it can be plainly seen how the people gradually gave in, and at last, in many cases, not only acquiesced in the Crown claim but in many instances allowed their lands to be sold by the Crown to outsiders. Now and then they appealed to the Agent at the time of sale, to let them have their lands, and if the extent was small and there was no likelihood of its realizing a high price at the sale, sometimes he gave way and sometimes he allowed them to buy their own lands *at the upset price put upon them by the Crown*.

There is another circumstance that added to the strength of the position of the Crown, and that is, the belief of the Revenue officers, under quite a mistaken view of the law of prescription, that he who abandoned his land for 30 years lost it to the Crown. It is curious how this belief prevails with some officers even to the present day, although it was distinctly held by the Supreme Court 40 years ago in a celebrated case in the Kandy Court (the Udasgiriya Kanda case) that nowhere in Ceylon in the case of "non-user" do lands revert to the Crown. This belief however prevailed universally until quite recently amongst Revenue officers in the Matara District, and when a poor villager had, owing to his poverty and helplessness, the exaction of the headmen and the opposition of the Agent to Chena cultivation allowed his Chena lands to lie fallow for 30 years, the

Crown claim to them was held to be indisputable under this arbitrary and erroneous view of the law.

I now ask that Government do redress this injury and do right this grievous wrong. The lands belong to the people and not to the Crown, and the Crown should give them up. They are of little value to Europeans, for the soil is, as a rule, too poor for anything but citronella, a purely native industry, but the villagers will readily cultivate them with their own village products, and what is now a wilderness of useless scrubby jungle will in time become a revenue-producing tract of cultivated lands, and instead of being, what they are now, a poor, destitute, ignorant class, and the most criminal in the Island, the people of the Matara District will soon develop into a happy, prosperous and contented peasantry.

I am, &c.,
CECIL J. A. H. LE MESURIER.

Colombo, Ceylon, December 1, 1898.

Enclosure 2 in No. 8.

Mr. LE MESURIER and SPOLIATION.

Mr. Le Mesurier's disquisition on the tenure of land under the Dutch East India Company shows remarkable ignorance, real or assumed, of the subject.

2. He talks as if the presumption to which Ordinance 12 of 1840 gave legal effect, that waste lands are the property of the Crown, were a new thing, then for the first time invented, whereas "it was an acknowledged principle in Ceylon as in the feudal kingdoms of Europe that all lands belonged to the Sovereign, and that the inhabitants held their possessions in virtue of a conditional grant from him." (Cleghorn's minute.)

3. Neither the Dutch Company nor the British Government departed from this principle in any way, and far from the former caring little about the occupation of lands by private parties, the Dutch Administrators were, on the contrary, most careful to see that such lands were duly registered and paid the proper taxes.

4. In accordance with this principle all lands for which the claimants could not show title by grant or purchase or by registration were held to be Crown, and Ordinance 12 of 1840 merely gave effect to it by presuming it in the case of unoccupied lands.

5. There is nothing unjust in the Ordinance on the theory that the land belongs primarily to the State, and not to individuals.

6. The second assumption he makes is that all unoccupied lands were necessarily "Kannis paraveni." I have dealt with this in my memorandum on the subject, copy of which is annexed. Several thousands of acres that he claims on the strength of transfers from villagers are not chena lands, but sheer forest, and have never within the knowledge of man been cleared as Kannis paraveni, *e.g.*, his claims to Morawakanda, Kattadikanda, Diyadawakele, Beraliya-Mukalana, Badullakele, &c.

7. He assumes from the word "paraveni" that *Kannis paraveni* lands were private lands pure and simple, which could be dealt with any way by the cultivator.

8. Now, in the first place, the use of the word paraveni does not by any means necessarily imply this.

9. For instance, "Asweddu paraveni" lands are defined by Cleghorn as "clandestinely cultivated without grants," and as falling, "of course, into the mass of property belonging to the superior." (See his minute, dated 1st June, 1799, on the "Administration of Justice and of the Revenues under the Dutch Government.")

10. In other words, the State did not lose its rights in such lands merely through their being clandestinely cultivated, even though they were in consequence dubbed as "paraveni" lands.

11. Similarly "*Anda paraveni*" lands are, to quote Mr. Le Mesurier's supreme authority — the Government Almanac of 1819—lands originally the property of Government, abounding with jungle, which have been cleared and cultivated *without permission.*"

12. Government could not lose its right to such lands through their being cultivated without permission; nor does prescription run against the Crown except as a matter of grace.

13. Again, service paraveni lands were "not capable of alienation by gift, sale, bequest, or other act of any party." The privilege of succeeding thereto is in the male heirs only of those who die possessed of such lands." On failure of male heirs they reverted to His Majesty. (See Regulations 8 of 1809.)

14. Yet these share the title "paraveni," and Mr. Le Mesurier would have us believe that all lands bearing this title are necessarily private, and capable of alienation.

15. All these lands above described were "lands enjoyed without title or grant," and section 8 of Proclamation 3 of 1800 classes *Kannis Paraveni* lands with *Ratmahera* ("all land now enjoyed without title or grant under the denomination of *Kannis Paraveni*, *Ratmahera*, or *any others* whatsoever.")

16. This classification of *Kannis Paraveni* lands with *Ratmahera* lands is specially significant, for *Ratmahera* "signifies what of right belongs to the Crown. It is a term which is used to describe all waste and uncultivated lands to which no private title can be shown, and includes all Government forests, *chenas*, &c." (Cairns, see minute of 11th June, 1869, page 16.)

17. No one can dispute the accuracy of this definition, and it has never been denied, even by Mr. Le Mesurier, that *Ratmahera* lands are Crown lands.

18. *Kannis paraveni* lands are in the same sense Crown lands, unless they have by registration been converted into private lands.

19. I have endeavoured while in the Matara District to find out what was really meant by *Kannis Paraveni* lands, and the definition that I have obtained is this:—

20. Certain families, by clearing and occupying certain high lands, acquired a right *as against other villagers* to *chena* those lands from time to time. This right was recognized by the Dutch Company and by the British Government, but no absolute title was recognized. If a man wished to acquire such a right he had to register his possession, to improve and cultivate the land, and to pay certain taxes.

21. I see no reason whatever for supposing that the British Government did not continue the practice of the Dutch East India Company in this respect, or any evidence that it introduced any new policy or set up any claim to such lands that had not been fully asserted in the time of the Dutch.

22. Mr. Le Mesurier, however, asserts, on the authority of an anonymous writer quoted in the Government Almanac of 1819, that *Kannis paraveni* lands "were free from all taxes under the Dutch."

23. This writer must, in my opinion, have been misinformed on this point, for all the evidence goes to show that all high lands cultivated clandestinely or without permission were required, at any rate as soon as such occupation was discovered or reported, to pay taxes. It is possible, however, that so long as no absolute right was claimed or desired, but merely a right to *chena* as against other villagers, the payment of taxes was not insisted on. But whenever a land was registered as in the possession of a villager without permission he was required to pay taxes. This can be shown from the extracts from *Thombos* relating to high lands. And certainly all other lands cultivated without permission paid taxes.

24. Thus, Cleghorn enumerates the different tenures of land under the Dutch as follows:—

1, *Moedal Paraveni*; 2, Lands clandestinely cultivated; 3, *Paraveni*; 4, *Accomodevans*; 5, *Andevelden*; 6, Other tenures; and says:—" *Moedal Paraveni*.—The lands called *Moedal Paraveni* are held by individuals paying 5 per cent. to Government on every change of proprietorship, and being subjected in the European Settlements also to several collateral taxes, viz:—To the payment of the tythe in kind, whether rice, beetle nut, cocoanut oil, &c.

" *Ottoe*.—All lands granted in *paraveni* and many held in *Accomodevans* pay to Government the tythe of their produce under the denomination of *Ottoe*.

" *Ande-Velden*.—Cultivated lands not held by the above tenures pay to Government one half of their produce.

" *Other Tenures*.—Besides these, other tracts of lands belonging to Government are cultivated by the inhabitants, and are *subjected to different impositions*.

"The lands called *Moedal*, *Chenasses*, &c., are generally high lands planted with fruit trees, and whether cultivated with or *without* consent pay to Government one-third or one-half of their produce. Lands of this description are mostly found in the western or *south-western parts* of the Island."

25. Cleghorn does not mention *Kannis paraveni* lands by name unless they be the lands referred to by him as "*chenasses*," but it is clear that they fall under the last description, viz.: "high lands planted without consent," and that therefore they paid to Government one-half or one-third of their produce.

26. Even if they be classed on account of their name under *Paraveni* lands, yet he says that all *Paraveni* lands "paid to Government the tythe of their produce." But

Paraveni lands are strictly lands that have been acquired by grant, as Cleghorn says: "Grants of land were very generally bestowed under the name of Paraveni by the ancient princes of the country," whereas these lands were acquired, not by grant, but by the occupiers merely taking possession of them without the consent of the Company. It is inconceivable that they should have been in a better position as regards freedom from taxation than lands possessed by title or grant.

27. It should be noted that Cleghorn's minute is dated *1st January, 1799*, when the Dutch Company had only just given up its administration of the country, and that he was at that time "Secretary and Registrar of the Records of the Island of Ceylon." He must have had a better opportunity for acquiring information, and must be taken to speak with more authority on the subject of Dutch administration than an anonymous writer in the Almanac of twenty years later.

28. He is, moreover, confirmed as regards lands cultivated without permission by this writer himself, who says *Anda paraveni* "signifies lands originally the property of Government abounding with jungle, which have been cleared and cultivated without permission." (This exactly defines Kannis paraveni and Ratamahera lands.) "One-seventh of the produce of these lands (in the first place) is given as Walahan, and then the seed corn is deducted, after which one-half of the remaining produce is appropriated to Government and the other to the Goyiyas." And as regards Ratamahera lands, which, be it remembered were classed with Kannis paraveni in the Proclamation 3 of 1800. "The tax on such fields and gardens where the claim of the appropriator is admitted on the ground of long possession, is one-tenth of the produce." There are, however, in the Maritime Districts Ratamahera lands granted by the Dutch to private individuals, on condition of their conversion into fields and gardens, the produce to be taxed at one-tenth (Cairns loc. cit). This statement as to Ratamahera lands paying one-tenth is confirmed by the evidence afforded by Dutch extracts (see, for instance, the document, dated 29th May, 1789, registered under No. 10506, and now in the Registrar General's office. (I suggest that a translation of this document be obtained from Mr. Anthonisz, as I have only an incorrect copy of it here.)

29. I cannot, therefore, accept the statement that Kannis paraveni lands were free from all tax under the Dutch Government in the face of this evidence that all other lands similarly held paid tax.

30. I have dealt with Mr. Le Mesurier's assertion that payment of one-tenth before 1871 is proof of private title in the accompanying memorandum which I wrote a year ago in reply to a dissertation of his on the subject, by which he tried to influence the Court in the Aturaliya case tried last February. This assertion was made by him originally in ignorance of the existence of the Proclamation of 22nd April, 1803, as his memorandum on the subject dated 28th August, 1897, shows. He quotes this proclamation, now that it has been brought to his notice, among others as proof of private title, because it fixed the rate at one-tenth. I submit that it proves nothing of the kind, nor does it secure any lands whatever to the villagers "in perpetuity." It merely makes provision for "the better regulation and collection of the land revenue."

31. He quotes the Supreme Court as having decided that payment of one-tenth is proof of private title, but this cannot have had reference to the Matara District. Payment of one-tenth in the Kandyan or other districts might be proof of private title, but it could not be so in the districts of Colombo, Galle, Matara, Chilaw, or Hambantota, where Crown as well as private high lands by this Proclamation paid one-tenth.

32. He also states that this view was adopted by the Courts during the long tenure of office of Mr. Pennycuick, and during the years that he himself was the Assistant Government Agent of Matara. Of the latter part of this statement I have no doubt, and I suppose that we are also to infer from it that it was not the view adopted by the Courts during the time of Messrs. Baumgartner, Lushington, White, and others, who held office during the interval between Mr. Pennycuick and himself.

33. All I can say is that if this was the view adopted by the Courts during the two periods referred to, then the prosecution cannot have presented the cases properly to them, which, as far as Mr. Le Mesurier is concerned, is very likely.

34. In his former memorandum he attributed this view to Mr. Pennycuick himself, and in consequence I asked Mr. Pennycuick whether he was correct in so doing. Mr. Pennycuick replied as follows: "I cannot recollect matters sufficiently to give you a decided answer. It is 12 years ago since I left Matara, or, indeed, dealt with claims of this description at all. I should think it very unlikely that if both private and Crown lands paid one-tenth I considered proof of payment of one-tenth to Government

in itself a proof of ownership. It seems opposed to common sense. I always want to consider the surrounding circumstances, the nature of the land claimed, &c."

35. Even, however, assuming that Kannis paraveni lands were private lands up to 1840, and that Government then, as Mr. Le Mesurier asserts, for the first time took possession of them, it is quite clear that if such assumption of their lands was acquiesced in or not resisted by the villagers, the Crown could obtain a title to them by prescription, and, in fact, has done so, for many of these lands, *e.g.*, Badullakele, which Mr. Le Mesurier now claims have not been cultivated for 40 or 50 years, or had not been cultivated except on permit. In the case of some of these lands, not merely has there been no assertion of their supposed rights, but the Crown has all along exercised rights of ownership by cutting timber from them.

36. Mr. Le Mesurier's statement of the law, as he chooses for his own purposes to conceive it, and his quotations of Supreme Court judgments are, as I have several times experienced, very misleading, and are not at all to be trusted, but I presume his errors in this respect will be pointed out by the Honourable the Attorney-General. I simply do not believe that the Supreme Court ever decided, as he alleges, that the Crown cannot in the case of lands for which the claimants have no title or grant, acquire a title by prescription. If it was so decided 40 years ago in a Kandy case, then that case must long ago have been overruled.

37. How can the Crown be in a worse position than a subject in this respect, and is the Ordinance 12 of 1840 to have no meaning whatever? I assert that if a claimant can show no title or grant for land, and if the presumption created by section 6 of Ordinance 12 of 1840 remain unrebutted, then the land is indisputably the property of the Crown, whether a hundred or fifty years ago it was a Kannis paraveni land or not. It is to be hoped that within the next year or two the Supreme Court will itself correct these crude opinions of Mr. Le Mesurier, whether they be real (which I do not believe) or assumed.

38. I have already alluded to his assumption that all unoccupied lands in the Matara District are necessarily Kannis paraveni, and I can only characterize this as an assumption which would be merely ridiculous if it were not, as shown by his own practice, which is based on it, at the same time dishonest. There is method in his madness.

39. I can only add that for Mr. Le Mesurier, who buys thousands of acres of forest land at a rupee an acre nominally, and in reality sometimes at 12½ or 25 cents an acre, or without paying any consideration whatever; and who himself takes forcible possession of lands to which villagers have claims at least as good as those of his vendors, to prate about the "Spoliation of village lands in the Matara District," reminds one of nothing so much as of Gracchus declaring against sedition. But at least he may be allowed to be an authority on "land grabbing," both in theory and in practice, and in all its branches, even if he is not on land tenure.

J. P. LEWIS,
Special Officer.

Matara, February 3, 1899.

CROWN LANDS PAYING ONE-TENTH TAX.

1. Previous to 1870 all chenas cultivated on permit from the Crown paid one-tenth tax.

2. If a permit was applied for the tax was one-tenth; if the land was cultivated without permit the tax was one-half, as will appear from the annexed copy of a permit issued in 1845.

3. The mere fact that a permit was applied for was an admission that the land was Crown, for, obviously, no permit was necessary for the cultivation of a private land.

4. If then, an applicant asked for a permit to cultivate a chena, it meant either that he admitted the land to be Crown, or to put it in the light most favourable to the applicant, that he was not at the time aware of his title to the land.

5. Private lands were also cultivated, but without permit, and they, too, paid one-tenth.

6. Mr. Elliott says, writing in 1870 (letter No. 436 of 6th December, 1870, to the Colonial Secretary.) All chenas have hitherto been taxed at one-tenth, so that it is impossible to tell from the Wattorus if land cleared at any time was crown or private.

The conclusion is strictly true, but the premise requires to be qualified by the statement that some chenas were taxed at one-half, viz., those Crown chenas which were cultivated *without permission* of the Crown.

7. If then it is shown in addition that a chena that paid one-tenth was cultivated on permit, the presumption is raised that it was a Crown land.

8. If it is shown that in addition to paying one-tenth it was cultivated without permit, then the presumption is that it was a private land.

9. It is erroneous, therefore, for a claimant to argue that the mere payment of one-tenth previous to 1870 (as well as after) is proof that the land was private. It proves nothing of the kind.

10. The mere production of a wattu bearing date previous to 30th May, 1871, showing payment of one-tenth, is of no assistance whatever to a claimant, and if a copy of a permit of the same year for the same land is produced, it positively damages his cause by raising the presumption that the land was Crown.

11. By letter 144 of 30th May, 1871, Government authorised the raising of the rate for Crown chenas cultivated on permit from one-tenth to one-fifth, on the recommendation of Mr. Elliott.

12. As proof of the first statement, viz., that all Crown chenas cultivated on permit paid one-tenth, I annex copy of a petition dated 19th January, 1841, in which the petitioner prays for a license "to clear and sow with paddy the Government forest called Ganimme Hena paying one-tenth to Government as usual." The Register of Chena Permits from 1842 to 1863 containing a number of similar applications for the cultivation of Crown chenas, stating the tax to be one-tenth, can be produced if necessary.

13. No other rates than one-tenth and one-half were known before 1871 (Mr. Elliott adopted one-eighth in 1870 provisionally instead of one-tenth). If one-half was the rate paid for cultivation without permit, the only rate that Crown lands cultivated with permit can have paid was one-tenth, for there is no other rate, and it is not likely that (pending approval of Government of the Charge recommended) lands cultivated with permit would be condemned to pay the same rate as those cultivated without, otherwise what was the use of getting a permit?

14. Mr. Le Mesurier depends upon paragraph 8 of Proclamation of 3rd May, 1800, which is as follows:—

"All lands now enjoyed without title or grant under the denomination of Kannis Paraveni, Ratmahera, or any other whatsoever, may be appropriated by the occupier on condition that he should state the said possession before the Land Raad before the 1st of November next, and have the same enregistered duly in the Registry of the District. And the land so appropriated shall pay one-tenth of its produce annually to Government from the time of its appropriation. If it be not presented to be enregistered by or before the first of November next, it shall pay one-half of its produce to Government from that day."

15. Now this Proclamation applied to all such forest or waste land as had been at that time occupied by individuals, without title or grant, or, as we should now say, to all Crown land which had been encroached upon by private individuals. It necessarily did not apply to all the other forest, waste, or unoccupied land in the country,—land which had never been granted to anyone for service, and to which no one had ever made a claim, because if a land was not occupied, the Proclamation could have no meaning as applied to it.

16. None the less, this Crown land* did not cease to exist, and, in fact, then, as now, constituted the greater part of the country. Mr. Le Mesurier, however, entirely ignores its existence, and assumes that these Proclamations applied to all the unoccupied land in the country.

17. The wording of section 8 of the Proclamation shows that Kannis Paraveni and Ratmahera meant occupied lands only. "All land *now enjoyed* . . . under the denomination of Kannies Paraveni, Ratmahera, &c."

* The theory that all unoccupied land was the property of the Crown was not invented in 1840 as Mr. Le Mesurier seems to suppose. It was held by the Dutch Government as well as by the English Government which succeeded it as is shown by the following extract from Cleghorn's Minute on the Administration of Justice and of the Revenue under the Dutch Government, dated 1st June, 1799:—"It was an acknowledged principle in Ceylon as in the feudal kingdoms of Europe, that all lands belonged to the Sovereign, and that the inhabitants held their possessions in virtue of a conditional grant from him."

18. Mr. Le Mesurier argues that all such lands which have been paying one-tenth up to 1871 must be private, because the mere fact that they have been paying one-tenth tax and not one-half shows that they must have been registered under this Proclamation.

19. He states that the Register cannot be produced, and that claimants are therefore debarred from proving registration in this way, but argues that registration must be assumed from the payment of one-tenth tax.

20. There is, however, another way in which registration can be proved, and that is by the production of the certificate of registration. The Attorney-General states "if lands had been duly registered and registration is relied on in proof of private ownership, the claimants ought to have no difficulty in producing the certificates of registration issued at the time the land was registered. I believe you will find on inquiry that in the Matara District there are cases in which extracts or certificates of registration are in the hands of private owners, whose lands have been duly registered" (letter No. 96 of 2nd March, 1898, to the Colonial Secretary).

21. In arguing, however, that the payment of one-tenth shows that a land is private, Mr. Le Mesurier has entirely ignored the Proclamation of 22nd April, 1803, which, as regards the Matara District (and others) superseded paragraph 8 of Proclamation of 3rd May, 1800, and did away with the one-half tax which the Proclamation required for unregistered lands for which the occupants had no title or grant. All high lands paid one-tenth tax after this, whether they were Crown (unregistered) or private (registered under Proclamation of 3rd May, 1800).

22. The term "Kannis Paraveni," like Aswedoe Paraveni,* Moedal Paravani, Ande Paravani, &c., was a mere name, and there is no inherent virtue in it. Under Proclamation of 3rd May, 1800, lands so called were classed with Ratmahera, which no one denies were Crown lands, and one name, though it contained the mystical word paraveni, of which, owing to subsequent definitions of it in connection with lands undoubtedly private, Mr. Le Mesurier makes so much, had no more value than the other as regards indication of private title. Kannis Paraveni lands were put on exactly the same footing as the Crown Ratmahera lands. They both signified lands occupied without title, and the only way in which they could be converted into private lands was by registration within the period May-November, 1800.† It is not likely that all the lands so occupied were registered during this period, unless they were very few in number, but now it is assumed by Mr. Le Mesurier that every piece of Crown land encroached upon in 1897 must have been a Kannis Paraveni land in 1800, and must have been duly registered!

23. But, as I have pointed out, there must have been a vast extent of unoccupied land then to which the Proclamation never applied. We have just as much right to assume that an encroachment now made is from that unoccupied tract, as Mr. Le Mesurier has for assuming that it must have been a Kannis Paraveni land. The unoccupied tract he ignores or makes also Kannis Paraveni.

24. In view of the Proclamation of 22nd April, 1803, no presumption, from the payment of one-tenth tax, that the land was registered under Proclamation of 3rd May, 1800, and is therefore private, can possibly arise.

25. The Proclamation of 3rd September, 1801, to which Mr. Le Mesurier also refers, merely abolished the obligation to service, by which service tenure lands were held, and substituted for it payment of tax. It does not affect the lands with which we are now concerned, viz., unoccupied lands, and lands held by no grant or tenure of service.

26. The rate for all such high lands brought under cultivation having been fixed in 1803 at one-tenth, they went on paying that rate until 1871, whether Crown or private.

* The definition of this term given by Cleghorn shows that the term paraveni, as in the case of Kannis Paraveni, was sometimes applied to Crown lands. Service paraveni lands were not capable of alienation by gift, sale, bequest or other act of any party. The privilege of succeeding thereto is in the male heirs only of those who die possessed of such lands. On failure of male heirs they reverted to His Majesty. See Regulation 8 of 1809.

† Subsequently extended by Proclamation of 10th April, 1801, to 1st May, 1801, and by Proclamation of 3rd September, 1801, to 1st May, 1802. The most reasonable explanation of this term that I can find is that certain lands were allowed by the Dutch Company to the villagers to chena, and that each family had its chena marked out by posts. Each family in this way acquired a sort of right as against other cultivators but not against the Government to a particular chena, which right descended from father to son, but I presume the Company could at any time take it away altogether. Such a right was called a Kannis Paraveni right. The villagers still use the expression "Mage Kannis" for "my clearing," and the word Kanuwa is used in the sense of "cultivation," e.g., "palamuveni kanuwa"—first cultivation.

27. In 1841, however, consequent on the coming into operation of Ordinance 12 of 1840, the practice arose of requiring cultivators of Crown high lands to obtain permits. But these lands still went on paying one-tenth under the Proclamation of 1803; the only difference was that permits were required if the lands were waste, and therefore presumably Crown lands, and that, if cultivated without permit, they were required to pay one-half.

28. This Ordinance did not constitute any lands Crown that were not, as a matter of fact, Crown before. It merely made it easier of proof that they were Crown by creating a presumption in favour of the Crown from the condition of the lands themselves.

29. But if Mr. Le Mesurier's arguments are correct, there were no Crown lands whatever in the country. A man had merely to state that a certain waste land had once been cultivated by himself or by anyone of his ancestors, and straight it became "*Kannis Paraveni*," and being paraveni it must of course be private land in every sense of the word—such magic is there in a word.

30. It seems to me that the very fact that the occupants had no grant or title to show for their occupation was the reason of the issue of the Proclamation of 1800, requiring such lands to be registered before a certain date. If such an occupant had no document in support of his title, then he must have registration to show instead. If registered, he could obtain a certificate of registration. If no such document can be produced in respect of a certain land, then the inference is that it was not registered under the Proclamation.

31. In any case, it is for a claimant to prove such registration, it cannot be presumed in his favour in respect of any land covered by the description in section 24 of Ordinance No. 1 of 1897. Merely dubbing a land *Kannis Paraveni* is not sufficient to make it private.

J. P. LEWIS,
Special Officer.

COPY OF THE PERMIT REFERRED TO.

Under the Wellaboda Pattoo Modiliar's report of the 30th January, 1845, I, Wattegeri Aberan, of Bambarenda, is hereby permitted to cultivate two packs Ammunam's extent of Government chena land, called Paregahahena, situated at Bambarenda, which is to be taxed at one-tenth of its produce to Government on account of the Maha harvest of 1845.

If cultivator exceeds the extent allowed, the whole tract will be taxed at one-half produce to Government.

F. D. SWAN,
For Assistant Government Agent.

Assistant Government Agent's Office,
Matara, February 11, 1845.

To J. D. Browne, Esq.,
&c., &c., &c.,
Matara.

No. 2.

The humble PETITION of BORLORWENEGEY MATHE, of Kaduruwana.

Prayeth,

The petitioner prays your honour to grant him a license to clear and sow with paddy the Government forest called Ganimmehena, situated at Caduruwana, in the Belligama Corle, containing in extent of thirty-five bushels, paying one-tenth to Government as usual.

And petitioner as in duty bound shall ever pray, &c.

(Signed) X

Matara, 19th January, 1841.

TRANSLATION OF AN OLA WATTOOR SHOWING THE RECOVERY OF $\frac{1}{2}$ FOR KIMBULTOLLEHENA AT KADURUWANA.

Kaduruwana ...	1	Kimbultollehena	Baluwana Samy	1	—	—	3	—	—	$\frac{1}{2}$	1	1	—
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TRANSLATION OF AN OLA WATTOOR SHOWING THE RECOVERY OF $\frac{1}{6}$ FOR THE SAME LAND IN ANOTHER YEAR.

Kaduruwana ...	1	Kimbultollehena	Wattu	2	—	—	10	—	—	$\frac{1}{6}$	1	—	—
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No. 9.

GOVERNOR SIR J. WEST RIDGEWAY to MR. CHAMBERLAIN.

(Received March 18, 1899.)

[Answered by No. 22.]

Queen's Cottage, Newera Eliya, Ceylon,

February 28, 1899.

SIR,

I HAVE the honour to forward a memorial from Mr. C. J. R. LeMesurier, dated the 30th November, but received at the Colonial Secretary's Office on the 15th December only, in which he takes exception to certain amendments in the draft Waste Lands Ordinance which was forwarded to you with my despatch of the 13th December last.*

2. It was not clear how Mr. LeMesurier arrived at the figures given by him in paragraph 2 of his memorial, and I therefore found it necessary to ascertain from the various Government Agents and Assistant Agents throughout the Island what the actual figures were.

3. From the statistics which they have furnished it appears that out of 149 lots of land which have been dealt with under the Ordinance 107 claims were amicably settled, and 42 referred to Court. Of these 42 no less than 28 were claims on the part of Mr. LeMesurier, thus leaving only 14 contested claims or less than ten per cent. for the whole of the rest of the Island.

4. The investigation of those 42 claims showed that the claimants had no satisfactory title to the lands claimed.

5. The question of the large areas of land dealt with under one notice has already been disposed of by me in connection with Lord Stanmore's memorandum on the subject of the Ordinance.

6. As regards the ruling referred to by Mr. LeMesurier in paragraph 4 of the memorial, he is unaware that the amending Ordinance was drafted under instructions received from you prior to the date of the judgments of the Supreme Court to which he refers, and consequently the inference to be drawn from his statement in paragraph 6 that "instead of accepting the Supreme Court ruling * * * * the Government are now enacting an amending Ordinance which is not only to render legal and valid what the Supreme Court has pronounced to be illegal and invalid, but is to prevent any person who may hereafter be injured * * * * from pleading such neglect" is entirely erroneous.

7. As has been explained in my previous despatch, the informalities in the original notices which have been discovered by the Supreme Court were purely technical, and where persons have come forward in response to those notices, and arrived at an amicable settlement of their claims against Government, it is most desirable that those settlements should be rendered valid and conclusive. Mr. LeMesurier's proposals would, of course, invalidate such settlements and cause delay, trouble and expense both to the individual and to the Government, and are consequently purely vexatious. It was never suggested that any irregularities of notice should be condoned in the case of contested claims. As regards the assertion in paragraph 5 regarding the large sums alleged to have been wasted, if all the work under

Despatch
of 15th Oct.
1897.†

* No. 6.

† No. 3.

the Ordinance had to be done over again, as Mr. LeMesurier desires, there would no doubt be a considerable waste of public money.

8. In paragraph 7 Mr. LeMesurier takes exception to sub-section 5 of clause 1 of the Bill relative to conclusive proof. The Attorney-General reports that it was inserted in view of what fell from the Chief Justice in the course of a case which was being argued in appeal. The object of the clause is to prevent the cost and delay which would be entailed were it necessary to prove every publication and every advertisement.

9. The objections which Mr. LeMesurier raises in paragraph 8 to the clause under which the whole of the lands in a village can be dealt with under one notice are ill-founded. As was pointed out in my despatch of the 13th December last,* it will be much easier for claimants to identify their respective lots in a plan of a whole village than in a plan showing only one lot. Each claim must be dealt with separately, and consequently the embarrassment which Mr. LeMesurier anticipates cannot arise.

10. In paragraph 9 Mr. LeMesurier protests against the clause which he alleges prevents bona fide claimants from exercising rights of ownership over their own property. The amending Ordinance modifies the previous provisions on this point, and a claimant will not be liable to *summary* punishment for disregarding a notice. But the necessity for safeguarding the rights of the Crown—in other words, the general community—has been proved by Mr. LeMesurier's own action in removing quantities of valuable plumbago from land claimed by him without a shadow of title.

11. Mr. LeMesurier's assertion in the concluding paragraph of his memorial, that the new Ordinance gives to the Crown a prerogative which it has not hitherto possessed, and confiscates "for the benefit of the Crown the property of the subject," is totally unfounded. Mr. LeMesurier constantly represents the Crown as spoiling the subject. What the Government are endeavouring to secure are the interests of the taxpayer, who has a valuable asset in the shape of Crown land, as against the unscrupulous individual who endeavours to possess himself of this property without any shadow of title.

12. So far from there being any opposition to the measure, unofficial members of the Legislature are practically unanimous in support of the principles of the Bill, and the poorer classes welcome the introduction of machinery which will enable them to have their claims settled cheaply and expeditiously. Mr. LeMesurier is in short the only person in the Colony who has taken objection to the proposed legislation, and he naturally objects to any legislation which will interfere with his unscrupulous land speculations. Mr. LeMesurier's *modus operandi* is as follows:—He selects a valuable piece of unoccupied land, generally with plumbago on it. He then finds some villager or other person who has no claim to the land, and induces him, possibly for a consideration, to grant the land by deed to him (Mr. LeMesurier) and then enters into possession and abstracts the plumbago. There is no legal redress for Government (the real owner) until the grant to Mr. LeMesurier is proved to be invalid, and meantime he removes the plumbago or other produce. Natives in the Matara district are beginning to follow his example, and I have been obliged to give orders that any Crown lands which are likely to be thus occupied and despoiled should be pre-occupied by the local headmen—supported, when necessary, by the Regular Police—to prevent breach of peace in event of forcible occupation by the claimants. I have been gradually forced to the conclusion by Mr. LeMesurier's unscrupulous proceedings that he is an unprincipled and reckless adventurer, wholly undeserving of the sympathy which, in view of his unfortunate position, I was at first disposed to feel for him.

13. I attach, for your information, a copy of the report† of the Sub-Committee of the Legislative Council, together with the amended draft,† which accompanies it.

I have, &c.,

WEST RIDGEWAY.

Enclosure in No. 9.

THE WASTE LANDS ORDINANCE.

SIR,

In his opening address to the Legislative Council on the 7th instant His Excellency the Governor said,

"The Waste Lands Ordinance has received the assent of Her Majesty. This Ordinance is still in its infancy, and the usual difficulties attendant on the working of a new Ordinance have occurred, but it is satisfactory to note that no difficulty has been

* No. 6. † Not reprinted.

“experienced in coming to a satisfactory and amicable settlement with claimants in the “great majority of cases.” I challenge the correctness of the latter part of this statement, and I deprecate the policy of misleading the public in this manner.

Now the Ordinance fortunately requires all agreements made under it to be gazetted, and an examination of the “Ceylon Government Gazette” reveals the following result. Out of 280 notices dealing with at least 700 lands and 140,000 acres, there have been, so far, agreements in regard to 61 lands and 318 acres, of which 48 lands and 155 acres are in one province, *i.e.*, Suffragam, and the rest, *viz.*, 13 lands dealing with 163 acres in the Matara District.

3. Many of the notices deal with very large areas of land (one deals with 150 square miles, another with 9,909 acres), and they contain scores of lands instead of the one given, so that the number of lands dealt with is in reality far greater than the number shewn in the notices.

4. The Supreme Court has recently ruled in several cases under this Ordinance that all the formalities it requires as to notice, &c., must be rigorously complied with. The reason for this is obvious. It is an Ordinance of an extraordinary nature. It gives the Crown advantages over the subject that it never had before, and it follows that all those persons who may be affected by it should have full notice of the intentions of Government and have every facility given to them for preferring and proving their claims.

5. Under this ruling, the whole of the money already spent, probably from Rs. 20,000 to Rs. 50,000, has been wasted, and the whole of the work already done under the Ordinance is invalid and should be done over again; the fact being that the revenue officers have attempted to misuse the Ordinance and to “rush” the claims of the Crown to the disputed lands.

6. Instead of accepting the Supreme Court ruling and punishing the officers responsible for this waste of public time and money, and then beginning the work again in a deliberate, fair and open manner, the Government are now enacting an amending Ordinance, which is not only to render legal and valid what the Supreme Court of the Colony has pronounced to be illegal and invalid, but is to prevent any person who may hereafter be injured by the non-observance of the provisions of the Ordinance, and who may be thereby deprived of his land, from pleading such neglect.

7. Again, the draft Ordinance, after enacting certain excellent provisions as to notice, advertisement, &c., contains the extraordinary clause that the proof of the very first step required to be taken shall be *conclusive* proof that all the subsequent steps have also been taken; and it reduces the number of times the notice should be advertised in the newspapers from six to one—merely to save the Government the cost of such advertisements.

8. It also contains a clause under which the whole of the lands in a village can be dealt with under one notice. When it is remembered that this would not be permitted in an ordinary land suit, and what great expense and trouble an ordinary land suit, dealing with one land (and sometimes only a small share of one land) involves, it can be imagined how embarrassing it will be for, it may be, fifty to one hundred claimants to have to prove their fifty to one hundred claims in one suit.

9. The clause by which a bona-fide claimant and cultivator can be prevented from exercising rights of ownership over his own property pending inquiry, is on the face of it not only most unjust, but, like the clause which presumes *cultivated* lands to be the property of the Crown, *contrary to the fundamental principles of justice*. It is a clause that would not be tolerated in any other country but this—where the unofficial members of the Legislative Council represent no one but themselves, and where the Governor is permitted not only to pass laws that disregard the rights of the subject and the fundamental principles of justice, but to override them when made.

10. I therefore pray that the clauses of the amending Ordinance that nullify the ruling of the Supreme Court may not be sanctioned and that a fresh clause be enacted to repeal Sections 22 and 24 of the principal Ordinance. If this request be not complied with I shall use every constitutional means in my power to oppose these provisions. They are contrary to the fundamental principles of the laws under which Her Majesty’s subjects live, and have lived for the last 500 years. They are directly opposed to “the absolute right inherent in every Englishman to the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, and they enact a restriction on the right of the subject that the law will not permit the least violation of. No! not even for the general good of the whole community.”—(Vide Blackstone’s Commentaries, Chap. i. § iii.)

They give to the Crown a prerogative it does not possess and they confiscate for the benefit of the Crown the property of the subject.

I am, &c.,
CECIL J. A. H. LE MESURIER.

Colombo, Ceylon, November 30, 1898.

To the Right Honourable
The Secretary of State for the Colonies,
Downing Street, London.

No. 10.

LIEUTENANT-GOVERNOR SIR E. N. WALKER to MR. CHAMBERLAIN.

(Received April 15, 1899.)

[Answered by No. 16.]

Queen's Cottage, Newera Eliya, Ceylon,
March 29, 1899.

SIR,

WITH reference to your telegram of the 18th January last,* I have the honour to submit, for the signification of Her Majesty's pleasure, an Ordinance recently passed by the Legislative Council intituled "An Ordinance to amend Ordinance No. 1 of 1897, intituled an Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands No. 1 of 1899."

2. I enclose a statement,† by the Attorney-General, to the effect that the Royal assent may properly be given to the Ordinance.

3. The alterations made in the Bill whilst passing through the Legislative Council are indicated in the accompanying copy of a report by the Attorney-General.

4. I annex also a copy of the shorthand report of the discussions in the Legislative Council from which it will be seen that the Ordinance was passed without opposition.

I have, &c.,
E. NOEL WALKER.

Enclosure 1 in No. 10.

Ordinance enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof.

No. 1 of 1899.

An Ordinance to amend Ordinance No. 1 of 1897, intituled "An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands."

WEST RIDGEWAY,

Preamble.

WHEREAS it is expedient to amend in the particulars hereinafter mentioned the Ordinance No. 1 of 1897, hereinafter referred to as the principal Ordinance: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Section 1 amended.

1. For section 1 of the principal Ordinance the following section shall be substituted:

Government Agent to publish notice calling for claims.

(1) Whenever it shall appear to the Government Agent of a province or to the Assistant Government Agent of a district that any land or lands situated within his province or district is or are forest, chena, waste, or unoccupied, it shall be lawful for such Government Agent or Assistant Government Agent to declare by a notice that such land or lands or any of such lands in respect of which no claim is made to him within the period of three months from the date specified in such notice shall be deemed the property of the Crown and may be dealt with on account of the Crown. Provided,

* No. 7.

† Not printed.

however, that the date specified in such notice shall not be earlier than the date of the first publication of such notice in the Government "Gazette," and that two or more lands shall not be included in one notice unless such lands are situated in the same village.

(2) Every notice shall be published in the English, Sinhalese, and Tamil languages six times at least in the Government "Gazette," and copies of such notices shall be posted on the land or lands appearing in such notice, and shall also be affixed to the walls of the several kachcheries and the several courts of the province, including gan-sabhawa courts, within which such land or lands is or are situated, and in such other localities as may secure the greatest possible publicity thereto, and the said notice shall likewise be advertised by beat of tom-tom at such places on or near such land or lands and at such times as the Government Agent or Assistant Government Agent may direct and order.

(3) Whenever such land or lands is or are more than ten acres in extent, such notice shall be further published once at least in any two of the newspapers published in the Island in the language in which such newspapers are published.

(4) If the Government Agent or Assistant Government Agent shall have reason to think that any person is interested in such land or lands or in any of such lands, he shall call upon such person not only by general notice as aforesaid, but also by posting a copy of such notice addressed to such person at his last known place of abode.

(5) Every such notice shall be as near as is material in the forms in the schedule hereto, and the production of a copy of the Government "Gazette" purporting to contain such notice shall be received in all courts of law in this Island as conclusive proof that such notice has been duly published, posted, affixed, and advertised as hereinbefore required.

2. For section 2 of the principal Ordinance the following section shall be substituted:

Section 2 amended.

(1) If no claim shall be made within the period of three months from the date specified in such notice, the Government Agent or Assistant Government Agent shall make an order declaring such land or lands or any of such lands to which no claim has been made to be the property of the Crown.

Where no claim is made land to be declared property of the Crown.

(2) Every such order shall be published in the Government "Gazette" and shall be final and conclusive, subject to the provisions contained in sections 20, 21, and 26 hereof, and the Government "Gazette" containing such order shall be, subject as aforesaid, received in all courts of law in this Island as conclusive proof that the land or lands mentioned in the order was or were at the date of such order the property of the Crown.

(3) Provided always that whenever within the said period of three months it shall be brought to the knowledge of the Government Agent or Assistant Government Agent that some person is interested in any land which is the subject of a notice under section 1, and that such person is then absent from the Island, and was so at the date of the first publication of such notice in the Government "Gazette," then, and in every such case, the Government Agent or Assistant Government Agent shall not make his order declaring such land to be the property of the Crown until the expiration of a further period of six months, commencing on the expiry of the said period of three months.

3. For section 3 of the principal Ordinance the following section shall be substituted:

Section 3 amended.

(1) If in pursuance of the notice published under the provisions of section 1 (a) claim shall be made to any land specified in any notice or to any interest in such land within the period of three months, or in any case in which such period has been extended under the provisions of sub-section (3) of the preceding section within such extended period the Government Agent of the province or Assistant Government Agent of the district in which such land is situated shall forthwith proceed to make inquiry into such claim.

Inquiry into claims

(2) For the purpose of such inquiry the Government Agent or Assistant Government Agent may exercise the powers conferred on Commissioners appointed under the provisions of Ordinance No. 9 of 1872 for compelling the attendance of witnesses and the production of documents and for administering oaths to all persons who shall be examined before them, provided that the requirements of the proviso to section 2 of that Ordinance shall not be necessary for the purposes of this Ordinance.

4. For section 4 of the principal Ordinance the following shall be substituted:

Sub-section 1 of section 4 amended.

(1) The Government Agent or Assistant Government Agent shall call upon the claimant by notice in writing served upon him or left at his last known place of abode, to produce before such Government Agent or Assistant Government Agent, the evidence and documents upon which he may rely in proof of his claim; if when so called upon the

Procedure in such cases.

claimant does not appear or does not produce such evidence and documents, the Government Agent or Assistant Government Agent may then make an order declaring such land to be the property of the Crown, and the provisions of sub-section 2 of section 2 shall apply to such order. If the claimant appears and produces such evidence and documents, the Government Agent or Assistant Government Agent, after considering the same and making any further inquiry that may appear proper, may either admit the whole or part of such claim or enter into an agreement in writing, which shall be signed by the Government Agent or Assistant Government Agent and the claimant, for the admission or rejection of any portion of such claim, or for the purchase of any portion of the land which is the subject of such claim, and shall embody such admission or agreement in an order. Provided that in any case in which such land is more than ten acres in extent no such admission shall be made or agreement entered into without the consent of the Governor.

(2) Every such order shall be published in the Government "Gazette" and shall be final and conclusive, and the Government "Gazette" containing such order shall be received in all courts of law in this Island as conclusive proof of the admission or agreement entered into under sub-section (1).

Section 12
amended.

5. For section 12 of the principal Ordinance the following section shall be substituted:

Parties
may ap-
pear by
pleader.

At the hearing of every reference under this Ordinance, the claimant shall appear personally or by pleader as plaintiff, and the Government Agent or Assistant Government Agent shall appear personally or by pleader as defendant on behalf of the Crown.

Sub-sec-
tion 2 of
section 18
amended.

6. For sub-section 2 of section 18 of the principal Ordinance the following shall be substituted:

Such commissioner or judge on receiving such affidavit and petition of appeal shall transmit the same together with all proceedings taken by him to the Registrar of the Supreme Court, and such appeal shall have precedence of all other appeals, and the said Court shall make such order as the justice of the case may require, and such order shall be duly carried into effect.

Sub-sec-
tion 1 of
section 21
amended.

7. At the end of sub-section 1 of section 21 of the principal Ordinance there shall be inserted the following words:

or otherwise.

Section 22
amended.

8. For section 22 of the principal Ordinance there shall be substituted the following:

Prohibi-
tion of
building,
clearing,
&c., pend-
ing investi-
gation.

(1) After the date of the Government "Gazette" containing the first publication of the notice prescribed in section 1 it shall not be lawful for any person, without the written consent of the Government Agent or Assistant Government Agent, to enter on any land specified in such notice with intent to establish a right of possession or occupation of such land or to exercise rights of ownership, or to build any house or hut or to form a plantation thereon, or to make clearings for the purpose of cultivating such land or for any other purpose, or to cut or fell any trees upon such land or to open work or to use any mine thereon, until such land has been declared not to be the property of the Crown.

(2) It shall be lawful for the district court upon the complaint of the Government Agent or Assistant Government Agent, supported by a copy of the Government "Gazette" containing the notice prescribed by section 1 and by affidavit charging any person or persons with having acted in contravention of this section, to issue its summons for the appearance before it of such person or persons and of any other person or persons whom it may be necessary or proper to examine as a witness or witnesses on the hearing of any such complaint, and the said district court shall proceed in a summary way in the presence of such person or persons, or in case of wilful absence of any person against whom any such complaint shall have been laid, then in his absence, to hear and determine such complaint; and in case on the hearing thereof it shall appear by the examination of the complainant or of such person or persons, or other sufficient evidence to the satisfaction of such district court, that such person or persons against whom such complaint shall have been laid hath or have, after the date of first publication in the Government "Gazette" of the notice prescribed in section 1, without the written consent of the Government Agent or Assistant Government Agent, entered upon or taken possession of the land mentioned or referred to in such complaint, with intent to establish a right of possession or occupation of such land or to exercise rights of ownership or to build any house or hut or to form a plantation thereon, or to make clearings for the purpose of cul-

tivating such land or for any other purpose, or to cut or fell any trees upon such land or to open, work, or use any mine thereon, then such district court shall make an order directing such person or persons to deliver up possession of such land, together with everything thereon, including all crops whether growing or severed, all minerals, and all buildings and other immovable property upon and affixed to the said land, to some person to be named by the said court; and in case the person or persons against whom any such order shall have been made shall not within seven days after service thereof deliver up possession of the said land and premises pursuant to the said order, or shall afterwards enter upon the said land or premises personally or by his or their assigns, agents, or servants, contrary to such order or in evasion thereof, then and in such case it shall be lawful for such district court to sentence such person or persons to simple or rigorous imprisonment not exceeding six months or to a fine not exceeding one thousand rupees, and to make a further order for the immediate delivery over of the possession of such land and premises to the person named by the said court, and the said court shall thereupon cause possession of such land and premises to be delivered to such person accordingly.

It shall further be lawful for the said district court at the time of passing sentence on such person or persons to order such person or persons to execute a bond, with or without sureties, to abstain from entering upon such land and premises personally or by his or their assigns, agents, or servants, for such period as the said court thinks fit to fix.

(3) The prohibition imposed by sub-section 1 of this section shall cease in any case in which a reference under section 5 has not been made within six months from the date of a claimant having preferred his claim.

9. After section 29 of the principal Ordinance the following section shall be inserted and numbered 30: Section 30 added.

30. For the purposes of this Ordinance "land" shall mean an allotment of land, the boundaries of which have been defined and delineated by survey. "Land" defined.

10. No notice purporting to have been published and advertised under the provisions of section 1 of the principal Ordinance, or order purporting to have been made under the provisions of sections 2 and 4 of the said Ordinance prior to the passing of this Ordinance, shall be deemed to be invalid or inoperative by reasons of any irregularity in the publishing, advertising, posting, affixing, or making of such notice or order. Irregularities in notices and orders under principal Ordinance cured.

SCHEDULE.

Form of Notice.

(Where more than one Land.)

Take notice, that unless within three months from the _____ day of _____ the persons, if any, who claim any interest in the land herein-after mentioned or in any one or more of such lands, appear before me at _____ and make claim to the said lands or any of them or to some interest therein:

I, _____, Government Agent of the province (*or* Assistant Government Agent of _____), in pursuance of the powers in me vested by Ordinance No. 1 of 1897, shall declare by writing under my hand that the said lands, or such of them to which no claim has been made, are the property of the Crown.

Form of Notice.

(Where only one Land.)

Take notice, that unless within three months from the _____ day of _____ the persons, if any, who claim any interest in the land hereinafter mentioned, appear before me at _____ and make claim to the said land or to some interest therein:

I, _____, Government Agent of the _____ province (*or* Assistant Government Agent of _____), in pursuance of the powers in me vested by Ordinance No. 1 of 1897, shall declare by writing under my hand that the said land, to which no claim has been made, is the property of the Crown.

Passed in Council the Second day of March, One thousand Eight hundred and Ninety-nine.

H. WHITE,
Clerk to the Council.

Assented to by His Excellency the Governor the Sixth day of March, One thousand Eight hundred and Ninety-nine.

E. NOEL WALKER,
Colonial Secretary.

Enclosure 2 in No. 10.

Report of the Attorney-General on Ordinance No. 1 of 1899, intituled "An Ordinance to amend Ordinance No. 1 of 1897, intituled 'An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands.'"

I would refer to my report dated the 7th of December last, a copy of which was forwarded to the Secretary of State with His Excellency the Governor's despatch dated the 13th of December last. The draft Ordinance which accompanied that despatch was approved by a telegram received from the Secretary of State.

2. After receipt of that telegram the Legislative Council resumed consideration of the measure.

3. I annex a copy of the draft Ordinance,* which accompanied the above-mentioned despatch, shewing in red ink in the margin the alterations* made in the Bill whilst passing through the Legislative Council.

4. Clause 1 was amended so as to provide that the notice should specify the date from which the period of three months should run—and that such date should not be earlier than the date of the first publication of such notice in the Government "Gazette." Sub-clause 5 of that clause was also amended with the object of securing that the production of the copy of the Government "Gazette" should not be merely conclusive proof of the publication and advertisement of the notice, but also of the posting and affixing of the same in manner provided by sub-clause 2.

5. Clause 2 was amended for the purpose of making its provisions conform to the first amendment mentioned in paragraph 4 above.

6. Clause 4 was amended in order to provide that notice in writing should be served upon the claimant or left at his last known place of abode, to produce the evidence and documents upon which he may rely in proof of his claim.

7. Clause 8, sub-clause 3, was added for the purpose of enacting that the prohibition imposed should cease in any case in which no reference had been made to the court within six months of the date of the claimant having preferred his claim. This provision was in the original Ordinance, but was omitted by an oversight.

8. Clause 10 has been amended by inserting the words "posting or affixing" after the word "advertising," so that irregularities in posting or affixing will be cured by that clause.

9. The Forms in the Schedule were amended to conform to the first amendment in clause 1.

C. P. LAYARD,
Attorney-General.

Attorney-General's Chambers,
Colombo, March 17, 1899.

Enclosure 3 in No. 10.

CEYLON LEGISLATIVE COUNCIL DEBATES.

Forest, Chena, Waste, and Unoccupied Lands.

November 23, 1898.

THE HON. the Attorney-General:—I beg to move the first reading of a Bill to amend the Ordinance No. 1 of 1897, intituled "An Ordinance Relating to Claims to Forest, Chena, Waste, and Unoccupied Lands." If hon. members will turn to the first

* Not printed.

clause of the Ordinance, they will find that it amends section 1 of the Ordinance No. 1 of 1897, the principal Ordinance, by providing that a notice may issue in respect of more lands than one where those lands are situated in the same village. It also provides that the period of three months is to be calculated from the first publication of the notice in the Government "Gazette." That provision has been put in on the suggestion of the Secretary of State, and it will now bring the law into conformity with the late ruling of the Supreme Court who held that the Ordinance which this amends ought to be so interpreted though the language of that Ordinance seemed already to show that the date of the notice itself should be the date from which the three months should be calculated. If hon. members will turn to the second sub-section of the first clause they will find that notice in future will have to be posted at the gansabawa courts as well as at the Kachcheris and other courts of the province; and if again they will turn to sub-section 3 they will find that it provides that where the notice is published in a newspaper it need only be published in the language in which that newspaper is printed. It has been suggested, sir, by the Secretary of State that special provision should be made that a notice should be issued to a claimant in any case where it is known that there is a claimant likely to come forward in respect of the land, and that is provided for by sub-section 4 of clause I; while sub-section 5 provides that the production of a copy of the Government "Gazette" containing the notice shall be received in all courts of law as conclusive proof of the date and proper publication and advertisement of the notice. Clause 2 has been amended only for the purpose of meeting cases where the notice applies to more than one land, and section 3 has also been amended for that purpose; but there is an amendment to which I think I ought to draw the attention of members of Council. Clause 4 of the Ordinance, sub-section 4, provides that if a claimant does not appear or does not produce evidence or documents, the Government Agent or Assistant Government Agent may make an order declaring such land to be the property of the Crown. Under the old Ordinance if no claimant appeared or if he did not produce a document, there was no power for the Government Agent to make such an order. If hon. members will now turn to section 5, they will find that it has been slightly altered to meet the difficulty which arises with reference to a person who has no interest in the land coming forward as the agent of a third party and intervening in the suit. I think it is probable that the Supreme Court may hold that that person had no right to come forward, but still it is proper that the matter should be put beyond all doubt. Then there is an important amendment in clause 6 which amends sub-section 2 of clause 18 of the principal Ordinance so as to give preference to appeals under this Ordinance over all other appeals. I may state that that meets a difficulty which has arisen. We had a case decided last year in the Matara Court, and in the ordinary course it would not have been decided until possibly the end of next year. We had to apply specially to the Supreme Court to advance it, but by this provision now all such appeals will have preference over other appeals. There is a small amendment of sub-section 1 clause of by adding the words "or otherwise" to that section for the purpose of meeting the case of land sold otherwise than by auction. Then there is a very large amendment in section 22. Hon. members will find that the prohibition under section 22 is by the measure now before Council extended to mining and that on an offence being committed under that section the District Court shall in the first instance make an order directing the offender to deliver up possession of the land "together with everything thereon, including all crops whether growing or severed, all minerals; and all buildings and other immovable property upon and affixed to the said land, to some person to be named by the said Court." There is no punishment prior to that, but if the order made by the Court is not obeyed within seven days of the service of it or if thereafter the offender enters upon such land personally or by his assigns, agents, or servants, then the District Court is given power to pass sentence of simple or rigorous imprisonment and to make a further order for the immediate delivery over of such land and premises to the person named by the Court. Hon. members will find at the end of the new section that power is given to the District Court in passing sentence to bind over the person who has offended "to execute a bond, with or without sureties, to abstain from entering upon such land and premises personally or by his or their assigns, agents or servants, for such period as the said Court thinks fit to fix." Another important clause has been added, and that is that land in respect of which notice issues should be properly defined and enacts "for the purposes of this Ordinance 'land' shall mean an allotment of land the boundaries of which have been defined and delineated by survey." I would also venture to invite the attention of members to clause 10, which has been put in for the purpose of curing irregularities in the notices. I think

hon. members will see that it is rather absurd that where a claimant has had notice and has come forward before the Government Agent and claimed the land he should be allowed to say there was some irregularity in the notice. The object of the notice was to bring him before the Court. That object, I take it, has been served by his being brought before the Court, and I would suggest to hon. members that it is desirable that he should not be allowed to take advantage of these irregularities when he has been brought before the Court by means of the very notice which he says is not sufficient to bring him before the Court. I move, sir, the first reading of the Bill.

His Excellency the Lieut.-Governor seconded.

The Bill was read a first time and the Hon. the Attorney-General gave notice that he would move the second reading at the next meeting of Council.

Forest, Waste Land, and Chena.

December 2, 1898.

The Hon. the Attorney-General said:—I beg to move the second reading of "An Ordinance to amend Ordinance No. 1 of 1897, intituled 'An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands.'" I beg to inform hon. members of my intention to move to refer the Bill to a Sub-Committee of the Council.

The Hon. the Government Agent for the Western Province: I second the motion.

The Hon. the Muhammedan Member:—Before the bill goes to sub-Committee, I wish to make some important remarks on this Ordinance. During the short period in which the Ordinance of 1897 has been enforced it has proved to be a failure. The object of the Ordinance was to bring these cases to a speedy settlement, but this has not been done: and where the burden of proof should be with the Government it seems to rest with those who have the land. It is a question whether the Government Agent or the Assistant Government Agent are the proper persons to decide the case. Why should not the Supreme Court be referred to in these matters. It is quite clear wherever any encroachment or wilful possession of Crown properties takes place that the Crown should take proceedings against those persons who infringe the law. That the Provincial Agents and District Assistant Agents are not the proper persons to decide cases. The proposed amendments in the 8th section, to apply to the District Court early ejectment of the possessors whilst the enquiries going on at the Kachcheri Court. The possessors or the claimants could not breathe unless they give up possessions to the Provincial Agents. Why a District Court to be asked at 11 hour to come and interfere. And to inflict punishments criminally. How the unoccupied land came into existence with mines, buildings, and crops. I cannot understand who would be the receiver of crops. Whether the possessors of the land apply to the District Court as plaintiff or the Provincial Agents that the District Courts are the proper places to deal with the whole of the disputed cases, and free liberty to hear more calmly and not to mix up civil cases with criminal penalties. Our eminent lawyers, who are sitting at the Benches and Bars would not follow the mixture of civil and criminal proceedings—to be constituted in entirely into the civil case actually the land disputes and other connected proceedings are a civil action. I may be allowed to elicit in a recent case claimed by a person who had an interest in the land—situated at Southern Province that the Southern Province is one of the most corruptive, especially that the native headmen were concerned. A European adopted the Islamic faith to suit his own purpose, the convert and two other Europeans were maltreated, and debarred from charging the village headmen, who took up the law into their own hands. The influences worded in the Matara Police Court is rather mysterious. And whenever natives were entangled in such cases, that the case would be quite differently. That the appeal preference to advance waste land cases. As may as well the hearing the waste land cases may be authorized the District Courts to decide more speedily I noticed. So often, whenever in hearing appeal cases, that the Judges of Supreme Court finding faults, on the construction of ordinances connected in the matter of civil or criminal laws. That the blames cast upon the Legislators. That the Legislators not the proper party to blame. That the law officer of the Crown, who reports on the matter of law, and who should be responsible for misconstruction of ordinances. The readjustment of customs duties levied in the imports do not correspond with the advalorem, levied upon certain articles, especially curry stuffs which deserve to be rectified. There are unequally tariffed articles imported by native traders when those increased tariffs, enforced upon that the consumers have to pay high prices on the food of the people. That the tariffs on sugar rather too high, and a certain quality imported from China which is actually unrefined. But it had been included with

those finest cube sugar, sugar candy and crystallized sugar and exacting *cts.* 3 per cwt. That the food of the people should be free of duties. That the question of kerosine oil and rice. Both become so familiar and need not be discussed at present. That the Government unwilling to handle it therefore it would be better to wait to find some streams of petroleum somewhere in the hill district and local production of grains to take place of imported rice.

The Hon. the Attorney-General:—What has fallen from the Hon. the Muhammedan will be taken into consideration by the Sub-Committee. I now move simply the second reading of the Bill.

Agreed to. Council resolved itself into Committee, and the following Sub-Committee was appointed:—The Hon. the Attorney-General, the Hon. the Government Agent for the Western Province, the Hon. the Low Country Sinhalese member, and the Hon. the Burgher member.

February 21, 1899.

The Attorney-General:—I give notice that I will take the second reading of this Bill at the next meeting of this Council.

The Council went into Committee over "An Ordinance to amend Ordinance No. 1 of 1897, intituled 'An Ordinance Relating to Claims to Forest, Chena, Waste, and Unoccupied Lands,' and "An Ordinance to protect Public Servants from Legal proceedings in respect of Certain Liabilities."

The Attorney-General brought up the Sub-Committee's report on these Bills, which were referred to the Law Officers of the Crown.

WASTE LANDS.

March 2, 1899.

The Hon. the Attorney-General brought up the report of the Law Officers of the Crown on "An Ordinance to amend Ordinance No. 1 of 1897, intituled 'An Ordinance Relating to Claims to Forest, Chena, Waste, and Unoccupied Lands,' and asked the indulgence of Council to move under rule 61 to amend certain clauses in the measure. He said:—The first amendment I would suggest, sir, is in clause one to strike out the words "of the first publication of such notice in the Government 'Gazette,'" and to insert in lieu thereof the words "specified in such notice." The object of that amendment is that the notice will show the date from which the three months are to run, as it might be said that a person might fix a date prior to the publication in the Government "Gazette." I further move in the priors and to that clause the insertion of the words after "provided" however "that the date specified in such notice should should not be question than the first publication of such notice in the Government 'Gazette,' and that." I would also move that in sub-section 5 of clause 1 there be added after the word "published" and before the words "and advertised," the words "posted and affixed" because prior the sub-sections provide that the notices should also be posted in certain places and affixed in certain other places, and I would move that the clause read "duly published, posted, affixed, and advertised as hereinbefore required," and to delete the subsequent words, because the date having been fixed in the original notice these words will not be required. If these amendments are acceptable to this Council it will only be necessary in clause 2 to strike out the words "the first publication of such notice in the Government 'Gazette'" and in lieu thereof to insert the words "specified in such notice"; and in clause 10 after the words "published and advertised" the words "posted and affixed" to make it in conformity with the words inserted in sub-section 5. Then in the schedule, sir, I would move the taking out of the words "the date of the first publication of the notice in the Government 'Gazette'" to make it in conformity with the amendments in clause 1. I now move that these amendments generally be approved, and if they are approved I will then move that the Bill be recommitted for the purpose of introducing these amendments.

This was agreed to and the Bill was recommitted and the suggested amendments agreed to. Council then resumed when, on the motion of the Hon. the Attorney-General, the Bill as amended was read a third time and passed.

No. 11.

LIEUTENANT-GOVERNOR SIR E. N. WALKER to MR. CHAMBERLAIN.

(Received April 24, 1899.)

[Answered by No. 22.]

Queen's Cottage, Newera Eliya, Ceylon,

April 3, 1899.

SIR,

Enclosure
i.

I HAVE the honour to forward a letter, dated 31st December, 1898, and received from Mr. C. J. R. Le Mesurier, on 14th January, in which he claims redress for certain alleged grievances which he specifies.

2. It has not been possible to deal with this memorial as speedily as I should have desired, owing to the number of references which were necessitated to the several officers who are charged by Mr. LeMesurier with grave dereliction of duty. They in fact include all those officers of Government whose duties necessitated their coming in contact officially with Mr. LeMesurier, and his complaints range over a period of some 3½ years.

3. I will now deal categorically with the various allegations set out in this memorial.

Enclosure
ii.

Paragraph 2. I recorded at the time what passed when Mr. LeMesurier came to see me at my house on the morning of the 16th September, 1895, on the friendly advice of one of his brother-officers. He stated that he had embraced the Mahommedan faith, partly from conviction and partly to enable him to legally marry a lady to whom he had long been attached, and that he told me this in courtesy as head of the Service, and in confidence. I protested against the condition of confidence, but explained that I should not talk about the matter. I pointed out to him what I stated in the unofficial letter of two days later, of which a copy is annexed. He admitted at that interview the probability of his ostracism, but argued that the prejudice to his official position would apply only if he were moved to Colombo, and that his "conversion" would be of advantage to the administration in his connection with natives. The alternative of "living in concubinage" was never discussed, and, as far as I can remember, was never hinted at, nor was there any reason for such a suggestion, as from my point of view there was little difference between his so-called second marriage and concubinage. Indeed, one of my objects in writing to him was to give him the opportunity of preventing the embarkation of the lady, who had not then left England for Ceylon. I have some recollection that Mr. LeMesurier urged that officers had lived with women without marrying them, and without the Government taking any extreme measures against them, when I probably said that in such cases Government had not taken action unless there was a public scandal. It is possibly the use of some such expression that Mr. LeMesurier has distorted into the assertion that I said he would be dismissed if he married as a Mahommedan, but not if he lived in concubinage. It will be seen from my letter "A," and from Mr. LeMesurier's reply of the 29th September, 1895, that there is nothing in them which in any way supports the assertions in paragraph 2, which he now for the first time brings forward. No further communication, oral or written, private or official, passed between Mr. LeMesurier and me on this subject prior to or since the proceedings which resulted in his dismissal and with which you are acquainted.

Enclosure
ii.Enclosure
iii.—B.

4. As regards the allegation in paragraph 3 that "a new marriage law was rushed through the Legislative Council by the Government (its object being to render my "second marriage a penal offence)," it is sufficient to point out that the so-called second marriage took place fifteen days *before* the introduction of the Ordinance into Council, and could not possibly have been intended to be affected by it. The Ordinance was in no way "rushed," but went through Council in the ordinary course, the first reading being taken on the 30th October, the second reading a week later, on the 6th November, and the third reading on the 13th November, there being no division or serious opposition at any stage. This is the usual period in the case of uncontested Bills such as the one under reference. Where urgency is required, as in the case of the Ordinance introducing Plague Regulations, an Ordinance is sometimes passed through all its stages at one sitting, on the standing rules being duly suspended.

Enclosure
iv.—C.

5. As regards paragraphs 4, 5, and 6 of the memorial, I annex a copy of the judgment of the Chief Justice in the case referred to, from which it will be seen that the Supreme Court by no means supported Mr. LeMesurier's position as is asserted. The Chief Justice in deciding the action against Mr. LeMesurier, merely said that he was prepared, because that question was immaterial, to assume that his profession of

faith was bona fide, "though undoubtedly the circumstances lend some colour to the suggestion that, had he not failed in his suit for divorce, his preference for that faith would have remained a pious opinion, and would never have been translated into overt action."

6. With reference to paragraphs 10, 15, 16, 20 and 25, which reflect on the Attorney-General, I attach a memorandum by that officer, in which he deals effectively with the charges brought against him and also with the allegations that the Government "rushed" the Waste Lands Ordinance No. 1 of 1897 through Council. It is almost incredible that Mr. LeMesurier should have had the effrontery to assert that this Bill was passed "in the face of the unanimous opposition of the unofficial members of the Council," seeing that the second reading was passed without a division, thus showing that members unanimously accepted the principle of the Bill, and only three unofficials out of the six present opposed the third reading.

Enclosure
v.—D.

7. As regards paragraph 3, Mr. LeMesurier admits that shortly after his dismissal he purchased a number of lands which were claimed by the Crown. Mr. Vigors, who was Assistant Government Agent of Matara at that time, reports that Mr. LeMesurier refused to produce evidence of title, but required the Government Agent to attend his estate Kotawila if he wished to inspect his documents. Mr. Vigors also reports that up to the time he left for England in April, 1897, sixteen months after Mr. LeMesurier's dismissal, no acts of violence were committed, or labourers ejected or vendors intimidated in respect of any lands claimed by Mr. LeMesurier.

8. In reference to paragraph 9, Mr. Vigors reports that in two cases police were employed to protect men who were working in Crown Forests, as it was anticipated that they might be molested by Mr. LeMesurier and his men. It should be mentioned that Mr. LeMesurier has not hesitated to go to lands to which he asserts claims, armed with guns and revolvers, and with European employees similarly armed. It was under these circumstances that he was sentenced to imprisonment by a Magistrate, Mr. Moor, as stated in paragraph 14. Mr. Moor was of opinion that the mere imposition of a fine of Rs. 100, the maximum which could be imposed, was not a sufficient punishment for a forcible entry on Crown land by armed men who had overawed the village headmen by a show of force. The plumbago which Mr. LeMesurier had illegally taken from the Crown land in question far exceeded in value the Rs. 75 fine to which his sentence of imprisonment was commuted by the Supreme Court.

9. In previous despatches I have shown how little title to consideration Mr. LeMesurier has in respect of his purchases of land in the Matara Kachcheri. The first three months after his dismissal he spent in purchasing for nominal sums, such as 10, 12½, or 20 cents an acre, lands which, had the title been good, would have been worth Rs. 50 an acre. Mr. Lewis, the Special Commissioner under the Waste Lands Ordinance, reports that in many cases nothing was paid, and Mr. LeMesurier himself admitted in court in one instance that the condition of the transfer was that if he was successful in that particular suit against the Crown, his vendor was to receive half the land which he had nominally transferred. Mr. Lewis further reports that in some cases dead men were personated as vendors, in others people who were absolute strangers. In one case the deed bears the supposed signatures of 53 vendors, most of which were entirely fictitious. It must be obvious that a person who is guilty of such acts of deliberate fraud will not scruple to make misstatements in order to achieve his objects.

10. The statement in paragraph 11 that the Government "are utilizing the Ordinance to eject me from the land, and to place themselves in possession of it before the question of title is decided by the Courts" is a remarkable instance of Mr. LeMesurier's audacity of misstatement. The particular block to which he refers was proclaimed under the Ordinance on the 11th March, 1898, and Mr. LeMesurier never had any possession of it until August, 1898, when, in direct contravention of the Ordinance he took forcible possession of it "before the question of title had been decided by the Courts." The object of the proclamation was that the question of title might be decided, but it is this testing of title in the Courts that Mr. LeMesurier endeavours to evade. He has not in one single instance been successful on the merits of a case, but has succeeded in several instances on purely technical pleas in postponing the ultimate determination of the suit, and has meantime remained in possession.

11. As regards paragraph 12 the alleged trespass by headmen on Mr. LeMesurier's property consisted of their entering on Crown land which had been proclaimed under Ordinance 1 of 1897, in order to prevent a breach of section 22 of the Ordinance. I attach the explanation of the Police Magistrate, Mr. Carbery, in reference to the complaints made against him. Mr. Carbery's conduct in this case was indiscreet, and

Enclosure
vi.

he was censured for his action. He is a capable and diligent officer, though a young and somewhat inexperienced magistrate, and admitted having lost his temper under considerable provocation. It should be mentioned, however, that his action in refusing process in this instance was ultimately upheld by the Supreme Court, who found that he was justified in refusing to entertain the complaint made in the first portion of paragraph 12.

12. Paragraph 14. It might be inferred from this paragraph that the Government had selected a particular officer who would be likely to carry out their wishes. Mr. Moor, who was selected for this post, was chosen because he is admittedly the ablest police magistrate in the service of Government, has done exceptionally good work in the heaviest police court of the island—that of Colombo—and had never been brought into collision, or, I believe, acquaintance, with Mr. LeMesurier. He is, moreover, a particularly independent officer, and one less likely to submit to anything that might appear to be dictation on the part of Government could not be found. In the first case heard by him, which was a charge of shooting brought against Mr. LeMesurier by a native headman, he acquitted Mr. LeMesurier, who was then loud in his praise. Mr. Moor is the magistrate quoted by Mr. LeMesurier in the last part of paragraph 15.

13. Paragraphs 15 and 16 have been already dealt with in the memorandum of the Attorney-General. The statement in paragraph 16 that the Government Agent took a seat on the Bench "in order to overawe the jury and influence the witnesses" (Mr. LeMesurier and his European assistants being the witnesses for the prosecution) is almost ludicrous. The judge passed the maximum sentence which the law allows, and the Governor left them to the full term of their imprisonment. The hard labour was suspended by the Governor pending an extra judicial enquiry, and was subsequently remitted, leaving the accused to simple imprisonment.

Enclosure
vii.

14. I attach Mr. Lewis's reply to the sweeping charges brought in paragraph 17. Mr. Lewis was selected for the post of Special Commissioner on account of his judicial experience, and he is an officer in whom the Government has full confidence. The reckless and unfounded charges which Mr. LeMesurier brings are certainly calculated to rouse a feeling of hostility in those attacked, and explain the warmth with which Mr. Lewis refutes the misstatements appearing in this memorial.

15. The allegations in paragraph 18 have been dealt with in a previous despatch. It is true that when Mr. LeMesurier claimed a right to search all the Dutch records in the Museum it was refused. His employé who was sent to take extracts was shortly afterwards convicted of forgery in a case brought by the National Bank, and sentenced to imprisonment by the Supreme Court. In view of the numerous forgeries of alleged Dutch extracts from registers in the Southern Province, in which convictions have recently been obtained, it would have been most impolitic to give a man of Mr. LeMesurier's antecedents unrestricted access to the whole of these records. Mr. LeMesurier has frequently been informed that he can have certified copies of any specific entries which he can quote, if he desires them in support of any particular claim, but this does not meet his wishes. It had been resolved, quite independently of any application of Mr. LeMesurier, to examine and index the Dutch records to which he refers, and the Government have never had reason to believe that they contain any such registers of letters to lands in Matara. Indeed, there is evidence that such registers were destroyed at the time of the surrender of the Dutch Government.

16. Paragraph 19 has also been dealt with in previous despatches. In one instance, it is true, a large area was dealt with. It was entirely uninhabited country in the east of the Hambantota District, and there were no claimants. So far from "very heavy costs being involved," there are no stamp fees under the Ordinance except in appeal. It is one of the great advantages of the Waste Lands Ordinance that it provides cheap and expeditious machinery for the settlement of claims.

17. The Attorney-General has dealt with the allegation in paragraph 20.

18. It is perhaps scarcely necessary to do more than state that the charge in paragraph 21 against the Government is entirely imaginary. The District Judge to whom he refers was merely sent to Matara temporarily, as he was informed at the time he was sent there, and was replaced by a very senior judicial officer. Nor is it true that he decided a claim in favour of Mr. LeMesurier. He upheld a technical objection on a preliminary point, which postponed the determination of the claim, but so far Mr. LeMesurier has not succeeded in making good any of his claims.

19. There is no parallel whatever between the cases. Mr. Christie bought land, a considerable portion of which was private property. He paid the full value. He bought on the advice and with the assistance of the officer whose main duty it was to

protect Crown rights, and in consequence felt justified in spending considerable sums in planting and improving it. When his title was ultimately challenged he raised no new theories, but simply pleaded that he had expended money on the land, had bought it at a fair price, and had been led into this expenditure by what was practically the guarantee of the agent of the Government, which now claimed the land. These pleas were unanswerable, and an agreement was promptly come to. Mr. LeMesurier's case is totally different. What he has bought is really not land, but claims. He was well aware at the time of his purchase that the titles were disputed; he therefore bought for a nominal figure. He has expended nothing on the lands. It is, therefore, impossible to concede anything to him by way of compensation. If anything is given it must be given on the ground that some of the contentions raised by him are sound. To admit any one of these contentions (they have been fairly and clearly stated by Mr. Lewis) would be to invalidate the Crown title to the whole or almost the whole of the land now believed to be Crown in the Southern Province, and the principle set up would soon be applied to the other provinces. Mr. LeMesurier can plead none of the claims to consideration justly put forward by Mr. Christie, and, indeed, the only reason he can assert in favour of a settlement is that his contentions are correct, but that he is prepared to settle rather than go to the trouble and expense of maintaining them. An admission of the soundness of his contentions cannot for one instant be admitted by the Crown. To do so, as I have pointed out above, would be to divest the Crown of far the larger portion of its lands in this Colony.

It may be mentioned that Mr. Christie gave up half his claim and was allowed the other half. He subsequently sold the half which had been granted to him to Mr. LeMesurier, who now claims the other half which Mr. Christie surrendered, though he derives his title solely from Mr. Christie.

20. Mr. Short, Assistant Government Agent of Matara, in memorandum marked "F" annexed, disposes of the misstatements in paragraph 23, and I attach the reply of the Mudaliyar of Weligam Korale to the charges made against him in paragraph 25.

Enclosure
viii.
Enclosure
ix.

21. I have now dealt in detail with all the charges and allegations made in this memorial. It is, I think, sufficiently established that Mr. LeMesurier has not a shadow of a grievance. It has been abundantly proved that he is a dangerous and unscrupulous agitator, who will hesitate at nothing to achieve his ends. He abused his official position when he was in the service of Government, as testified by his conduct in the Dehigama case, where he used the knowledge which he had obtained from purely official sources for his own private ends. He similarly abused his position as Assistant Government Agent, Matara, by using information gained from records in the Kachcheri of that station to manufacture fraudulent claims to Crown lands. He has not hesitated to resort to armed violence, and whilst posing as a champion of their liberties has earned the detestation of the inhabitants of the Matara District. It has been shown that the native population have no sympathy with the attitude he has assumed, nor has he received any support from any section of the community, or from the press of the country. It is fully understood by all classes that his action is prompted partly out of revenge for his dismissal from the service of Government, and in part by unscrupulous self-interest. There is reason to suppose that his domestic and other misfortunes and ill-success have affected his mental balance.

22. In the foregoing statement I have endeavoured to deal with the charges which Mr. LeMesurier sums up his letter, and, indeed, further than they are supported by any details in that letter, but, should I have failed to afford sufficient explanation, I feel that you can more fully and effectively supplement it from the Governor, who is now on leave, and within whose cognizance these occurrences are to a greater extent than they are known to me.

I have, &c.,
E. NOEL WALKER.

Enclosure 1 in No. 11.

SIR,

Colombo, Ceylon, December 31, 1898.

1. I HAVE the honour to lay the following circumstances before you, and to claim redress for my grievances.

2. In 1895 I became a Mohammedan, and on my signifying to the Government that I intended to avail myself of the privileges of my religion, and to marry a second wife, I was warned by the Colonial Secretary, Sir E. Noel Walker, that I should be

dismissed from the Government service should I marry as a Mohammedan, but not if I lived in concubinage with the English lady who was about to become my second wife.

3. At the same time a new marriage law was *rushed* through the Legislative Council by the Government (its object being to render my second marriage a penal offence), but not before I had scorned the dishonourable suggestion of Sir Noel Walker, and had married my second wife according to the rites of my new faith.

4. I may here remark that such marriages are distinctly recognised by the laws of the Colony, notably by the Proclamation of 1806 and by the Ordinance No. 5 of 1852. They are valid in Ceylon just as marriages with a deceased wife's sister are valid, although they may not be valid in England.

5. The Supreme Court of Ceylon has, moreover, assumed in a judgment of the full court in a judicial separation case between my first wife and myself that my conversion to the faith of Islam was bona fide, and that my second marriage may be one recognized by the laws of the Colony.

6. Notwithstanding this doubt, if doubt there be, for the Ordinance is perfectly clear and distinct, and there is a well-known decision of the Supreme Court of Ceylon (viz., Kershaw's case) in support of the validity of my Mohammedan marriage, I was dismissed without proof that I had so married (after the Government had vainly endeavoured to obtain such proof) and without charge, hearing, or defence; and for this breach of contract I have instituted an action in the Courts of the Colony. This action is now pending, and I unhesitatingly assert that the Government of the Colony have been and are improperly using their position and authority to weaken my case, and, if possible, to drive me out of the Colony.

7. I will now proceed to set out the circumstances on which I rely in proof of my assertion.

8. Shortly after my dismissal I purchased a number of lands from villagers in the Matara district. These lands were claimed by the Crown, but instead of inquiring into the claims in the usual manner, first by investigation in the presence of the claimant, and then, if necessary, by due process in the Law Courts, the Government officers of the district proceeded to acts of violence to eject my labourers from the land, to intimidate my vendors and witnesses, and even to outlaw me.

9. They next proceeded to proclaim my lands as forest reserves "at the disposal of the Crown," and by the express orders of the Governor (Sir J. West Ridgeway) bodies of armed police were sent to the lands to drive off my men, and to protect the servants of the Government, while they cut down the trees on the lands to provide firewood for the Government Railway.

10. Finding even these measures unavailing, they *rushed* another enactment through the Legislative Council, viz., The Waste Lands Ordinance, No. 1 of 1897, in the face of the unanimous opposition of the unofficial members of the Council, with the deliberate purpose of strengthening their own weak title and disregarding the fundamental principles of law in respect of the rights of the subject. By this Ordinance they have enacted certain presumptions in favour of the Crown title, which it had not before, and they have added a clause by which no claimant is permitted to enter on any land in dispute between him and the Crown, or to exercise any rights of ownership over it until the land is decided "not to be property of the Crown," although the Government officers are permitted under the same clause to enter the land and to utilise it at will.

11. Under cover of this clause they have prosecuted me, my European assistants, and my servants in a most vindictive fashion for merely entering and being (in one case for a few hours only) on the land; in fact, they are utilising the Ordinance to *eject* me from the land, and to place themselves in possession of it before the question of title is decided by the courts.

12. On a recent occasion the Government Agent (Mr. H. Wace) and the Mudaliyar sent a body of Headmen and others to eject me by force from one of these lands, when I was severely mauled and robbed of valuable property. When I complained to the Police Magistrate, Mr. Carbery, of the trespass on my property, he not only refused to entertain my complaint, but when I presented an appeal against his order, he behaved in the most insulting manner, and crumpled up my appeal petition into a ball, and threw it out of the court.

13. I complained of this magisterial misconduct to the Governor, but without result, so far as I know. He is still permitted to hear cases in which I am interested, and he has since revenged himself by sentencing my servants to pay heavy fines* for

* The Supreme Court has set all these fines aside.

simply being in charge of the claimed land on my orders, although the Supreme Court in the case against myself acquitted my servants.

14. Another Magistrate, Mr. W. H. Moor, was specially sent to Matara to hear some of the cases by and against myself, and he obediently convicted me of entering on my own land under the new law, and sentenced me to three months' rigorous imprisonment for it—a cruel, vindictive, and degrading sentence, which on appeal was reduced to a fine.

15. In the case in which I complained of the assault and robbery on myself the Attorney-General instructed the Crown Proctor of Matara to appear on behalf of the accused, and the Superintendent of Police of the Southern Province was also instructed by the Government Agent (Mr. H. Wace) to render them every assistance, both in that case and in the counter case against myself on a charge of attempted murder, a charge which was dismissed by the Magistrate as "*a baseless fabrication.*"

16. Nor is this all. When these accused were committed to stand their trial at the Supreme Court Sessions, the Attorney-General himself secured the services of the unofficial leader of the Ceylon Bar, Mr. Frederick W. Dornhorst, to appear for them, and, I believe, actually guaranteed his fee of 100 guineas. The Mudaliyar of the district got up a forced subscription amongst his subordinate headmen to meet the expenses of their defence, to which a large sum was contributed by the Government Agent, Mr. Wace, from the District public funds under his control. The Government Agent, Mr. H. Wace, took a seat on the Bench during the trial by the side of the Judge, in order, no doubt, to overawe the jury and influence the witnesses by his presence there, and when, in spite of all these adverse influences, the men were convicted and sentenced, he personally interceded with the Governor for a remission of their sentence, though with what result is not yet known to me, except that I am informed they are not doing *hard labour* in the jail in which they are confined, and of which Mr. Wace is the Superintendent.

17. Under the new Ordinance to which I have referred, the Governor appointed Mr. J. P. Lewis, of the Ceylon Civil Service, to investigate "claims." Although the Governor, when introducing the Bill, had publicly pledged himself to the declaration that the inquiries should be conducted in the spirit of fairness and liberality to the subject, and although the Supreme Court decided in one of the cases under the Ordinance that the officer conducting the inquiries is a Judicial Officer, Mr. Lewis is acting admittedly as a partisan. He disregards the plain meaning of the Ordinance in the matter of publishing the notices it requires; he refuses to permit me to have access to the Government documents on which his opinions are based; or to cross-examine the officials who prepared them; or to see the plans of the lands in dispute; he makes no attempt to come to an amicable settlement with me; he holds inquiries behind my back; he permits his clerk to insult me; he intimidates my witnesses; in short, all his efforts are being devoted not to doing justice between the Crown and the subject, but to preventing the latter from proving his rights against the Crown.

18. He is aided in all this in every way by the Government. In defiance of the distinct promise of the Governor to the Legislative Council when the bill was in committee that every facility would be given to the claimants to prove their titles from Government records, the Government Officers refuse to give me or my legal advisers access to the old Dutch registers and lists and other documents in their custody showing the private title to the land; they refuse to produce these records before the courts when they are required in support of the private right of the claimant, and they put every obstacle in the way of getting copies of such records. They put up some of my lands for sale by public auction without the authority of any court of law in order that private parties may be induced to purchase them, and thus they bring about disputes and violence between myself and the purchasers; for there is no more certain incentive to crimes of violence in this country than a land dispute.

19. They deal with enormous areas of land under this new Ordinance, making it impossible for poor claimants to effectively resist them, in the Law Courts, owing to the very heavy costs involved thereby.

20. Their attitude has encouraged their subordinate officers to bring false charges in the courts against me and my employees, and when these charges have been proved to be false, their Attorney-General, despite repeated requests, refuses to put the perjurers on their trial.

21. On the sole occasion in which one of the District Court Judges was bold enough to decide three of these claim cases in which I was interested in favour of the

claimant, they promptly removed the Judge to a minor station under cover of some paltry official excuse, although his judgment was upheld in appeal.

22. They have disregarded all offers to compromise my claims, although the Ordinance specially enjoins the necessity of making some honest effort to effect an amicable settlement of them, and although they have compromised claims of exactly the same nature in the same district, and adjoining mine, made by Mr. T. N. Christie, when a member of the Legislative Council, by giving up one half of what he had claimed to him.

23. They have even refused to take any notice of a gross insult to my wife by one of their headmen, an insult which necessitated her having to use fire-arms to protect herself from further outrage. They have disregarded her and my own repeated letters of complaint of the misconduct of their officers towards us, both at Matara and Batticaloa, and finally they have made our position so dangerous and insecure that we have been obliged to give up living in the Matara district.

24. I am quite aware that the charges I have made herein are very serious ones, but I am prepared to substantiate them before any unprejudiced and impartial person outside the Colony who may be appointed to investigate them, and I beg that I may be given an opportunity of so doing.

25. To sum up—firstly, I charge the Governor with misuse of his authority, and with disregard of his oath of office to do justice between all manner of men in the Colony without favour or ill-will, in that—

- a. He has sent armed police to my lands to enforce disputed rights of the Crown when the Law Courts were open to him;
- b. He has not caused steps to be taken to put an end to the persecution to which I have been subjected since my unfair dismissal from the Government service.

Secondly.—I charge the Attorney-General (Mr. C. P. Layard) with neglect of duty, in that—

- a. He has refused to institute proceedings against those who have perjured themselves to injure me and mine;
- b. He has defended and ordered a Crown Proctor to defend persons charged with a serious offence, when it was his duty to prosecute them, or to assist in their prosecution.

Thirdly.—I charge the Government agent of the Southern Province (Mr. H. Wace) with misconduct, in that—

- a. He instigated his subordinates to commit, and defended them after they had committed, illegal acts of violence towards myself, and—
- b. When they were convicted before the Supreme Court, he attempted to save them, by partizan intervention, from the consequences of their misdeeds.

Fourthly.—I charge the Police Magistrate of Matara (Mr. W. H. Carbery) with the violation of his judicial oath, in that he publicly insulted me in his Court, and has made it impossible for me and my subordinates to obtain justice at his hands.

Fifthly.—I charge the Special Officer at Matara (Mr. J. P. Lewis) with gross neglect of duty, in that he has intentionally disregarded the provisions of the new Ordinance (No. 1 of 1897) and the dictates of ordinary justice, in order to deprive me of lands in dispute between myself and the Crown.

Sixthly.—I charge the Mudaliyar of the Weligam Korle (Mr. J. A. Wickremeratne) with injuring me in every possible way, and instigating his subordinate headmen to insult and to commit physical acts of violence upon, and to bring false charges against, me and mine.

Seventhly and finally, I charge the Government of Ceylon collectively with endeavouring to injure me both publicly and privately, with the violation of their solemn declaration in the Legislative Council, with preventing me from having access to evidence of title in their possession to which I am lawfully entitled to prove my rights to lands which they dispute with me, and with neglecting to punish those of their officers who have been guilty of illegal acts towards me and my servants.

26. I therefore pray that a Commission may be appointed to inquire into these charges, and that justice may be done between myself and those whom I accuse, or that redress for the wrongs I have suffered may be given me in such other way as you may deem just and proper in the exercise of your great authority.

I have, &c.,

CECIL J. A. H. LE MESURIER.

The Right Honourable
The Secretary of State for the Colonies,
Downing Street, London.

Enclosure 2 in No. 11.

A.

DEAR MR. LE MESURIER,

Colombo, September 18, 1895.

WHEN you told me two days ago of your having become a Mohammedan, and of your intention, notwithstanding the failure of your divorce suits, to marry a lady now in England, I said that I did not wish to discuss what any man had done from conscientious consideration in a matter of religion, but I warned you of the social ostracism which such a course would assuredly bring on you, and of the possible legal consequences, respecting which latter, however, you seemed assured that you had protected yourself by taking legal advice. I added that what affected a public servant socially to a serious extent would also affect his official position. I have since been thinking over the matter, and I cannot resist the conclusion that such a course on your part would amount in present circumstances to a scandal which would raise the question whether you should be continued in high and responsible public office. This being my sentiment, I think it only right and proper to inform you before you have committed yourself finally to the course.

I hope you will receive this interference in your personal and private affairs in the good spirit in which I offer it in the interests of yourself, of the service, and of the public.

Yours sincerely,

E. NOEL WALKER.

Enclosure 3 in No. 11.

B.

DEAR SIR NOEL WALKER,

Matara, September 29, 1895.

I HAVE now carefully considered your letter of the 18th instant, and, after discussing the question with some of my brother Muslims, I have decided for the present, at any rate, and under protest, that, in deference to what I understood to be your wish, I will not enter into a second marriage.

Believe me, &c.,

CECIL J. R. LE MESURIER.

Enclosure 4 in No. 11.

C.

BONSER, C. J.

This is an action for judicial separation by a wife against her husband. It appears that the husband, who was a member of the Ceylon Civil Service, and whose original domicile was undoubtedly English, on the 15th of October, 1895, went through the form of marriage, according to Muhammedan rites, with an English lady, Miss Rivett-Carnac, while the marriage between himself and the plaintiff was still subsisting. It also appears that a few days before this Muhammedan marriage the appellant, who had up to that time professed to be a Christian, made a public profession of his conversion to Islam, and it is stated that Miss Rivett-Carnac also made profession of the same faith. The respondent, the former wife, thereupon commenced an action in the District Court of Colombo for a judicial separation, alleging this Muhammedan marriage and the subsequent intercourse which followed on it—and which it is admitted has continued to the present time—to be an adulterous connection, and sufficient ground on

which to base a decree for separation *a mensa et thoro*. Certain issues were framed, of which it is only necessary to mention two. The first issue was, "Whether, on the 15th of October, 1895, the defendant was a Muhammedan, and as such entitled to marry more than one wife." The second, "assuming that he was so entitled, is not the plaintiff, a Christian woman, entitled to the relief which she now seeks?" It seems to me that the words "a Christian woman" are surplusage. If the plaintiff was an atheist her position in regard to this matter would be the same as though she were the most devout of Christians. At the trial the controversy raged chiefly round the first issue, and, in fact, that was the only issue really discussed and determined. The District Judge found that the defendant was not a bona fide Muhammedan, and that, even if he was, he was not entitled to marry more than one wife, and he made a decree for judicial separation. The husband has appealed, and it has been argued before us that the District Judge was wrong on both points. For my own part, I am quite prepared to assume that the appellant's conversion to Islam was a bona fide one, though undoubtedly the circumstances lend some colour to the suggestion that had he not failed in his suit for divorce his preference for that faith would have remained a pious opinion, and would never have been translated into overt action. But, as I said before, I am quite prepared to assume that his profession was made bona fide; and it may be that, according to the laws of this Island, this Muhammedan marriage was not unlawful, and was ever of some binding effect as between the parties to it, though it must not be considered that I am of that opinion. However, in the view I take of this case, these questions are immaterial. It seems to me that even if both heads of the first issue were decided in the affirmative, still the plaintiff would be entitled to the relief which she seeks. The contract of marriage which was entered into between her and her husband—both of them being Christians at that time—both of them being Europeans, is a contract that they would live with one another in that state which all civilised nations understand by marriage—that is, that the one man will live with the one woman until the relationship is dissolved by death or by the decree of a competent court. The appellant has sought to change the nature of that relationship, and to introduce a second woman to share the privilege of his bed. In other words, he has sought to make an English wife an inmate of a harem. Now it seems to me that such a proceeding is altogether inconsistent with the marriage relationship as understood by civilised nations, and as understood by the parties themselves when they contracted that relationship.

I care not by what name the connection with the second woman is called, the appellant's conduct has rendered it altogether impossible for his wife, with any self-respect, to continue to be his wife, and to fulfil the duties of a wife. And that being so, I am of opinion that her position has been rendered intolerable, and that such a state of things is sufficient ground, according to the Roman-Dutch Law which we administer, and the matrimonial laws of all civilised nations, to support a decree for separation *mensa et thoro*.

Then it was suggested that the courts of this Island had no jurisdiction to make such a decree, and reliance was placed upon the judgment of the Privy Council in a case between the same parties, (1895) A. C. 517, in which it was held that the Courts of this Island had no jurisdiction to decree a divorce between parties who were not domiciled here. But this is not an action for divorce. This is an action for a remedy short of dissolution of marriage. The decree which has been made does not alter the status of the parties, who are at liberty any time, if they can make up their differences, to resume cohabitation. The judgment of the Privy Council, to which I have referred, lays down that, in the case of persons whose residence is more or less of a permanent character in a place other than that of their domicile, the Courts of that place have jurisdiction to grant remedies for matrimonial misconduct short of the dissolution of the marriage tie. There is no question that the residence of the appellant in this Island is one of a permanent character, and not merely casual or temporary. He himself has sworn, I observe, in this very case that he is now domiciled in this Island. The objection to the jurisdiction of the Courts of this Island does not, therefore, come with a good grace from him. But, in any event, his residence in this Island, even if it does not amount to domicile, is of such a permanent character as to give the Courts of this Island jurisdiction to grant such relief as is prayed for in this action.

I am therefore of opinion that the appeal should be dismissed with costs.

29th July, 1898.

Enclosure 5 in No. 11.

D.

SIR EDWARD WALKER,

Colombo, January 31, 1899.

3. As to paragraph 10 of the letter, the Waste Lands Ordinance No. 1 of 1897 was introduced into Council in view of the recommendation of the Government Agents in conference that further legislation was necessary for a speedy settlement of claims to Crown lands. This Ordinance was not rushed through the Legislative Council. The first reading was on the 23rd November, 1896, the second reading was fixed for the 26th November, 1896, and at the special request of the unofficial members of the Council was postponed for the 9th December, 1896. Again on the 9th December, 1896, when the second reading was moved, an adjournment of the debate was allowed by the Government at the request of the unofficial members of Council. The debate was resumed on the 16th December, 1896, and the Bill was read a second time without any division, and referred to a sub-committee consisting of five official and five unofficial members, who, by their report dated the 11th January, 1897, recommended the adoption of the draft Bill with a few amendments. On the 12th January, 1897, the Bill passed through Committee, and on the 6th February was read for the third time, only three unofficial members voting against it.

4. With reference to paragraph 15 of Mr. Le Mesurier's letter my instructions to Crown Proctor, Matara, were as follows:—"Please at once place yourself in communication with the Assistant Government Agent, Matara, *re* prosecution in Le Mesurier's shooting case, and render all assistance in your power." The shooting case there referred to was a prosecution at the instance of the rural police of Matara against Mr. Le Mesurier. I may state, however, that the Crown Proctor of Matara did appear for the accused in the counter case instituted by Mr. Le Mesurier against the rural police, and that the rural police are entitled to legal assistance when prosecuted for an act done in the discharge of their duties.

5. As to paragraph 16 of the letter, I did not secure the services of Mr. Dornhorst, neither did I guarantee his fee. I am not even now aware what his fee was, but at the request of the Government Agent in charge of the Police, Southern Province, I enquired of Mr. Dornhorst whether he was at liberty to appear for the accused if retained.

6. With reference to paragraph 20 of the letter, an application was made to me by Mr. Le Mesurier for my sanction for a prosecution for perjury. As he placed no material before me on which I could form an opinion, I forwarded the application to Mr. Moor, the Police Magistrate before whom the alleged perjury was committed, and requested that officer to state whether in his opinion a sanction should issue. His reply was as follows:—

"With reference to your letter, No. 2044, of 7th instant, I have the honour to return the annexures, and to state that I cannot recommend a prosecution for perjury, because the evidence available to support the charge—and I have heard all of it—is not, in my opinion, good or clean enough; though true in many particulars, in some it is not free from suspicion, and it altogether fails to account for the holes in the cloths which the Akurugoda Arachchi was wearing at the time of the disturbance, which holes were undoubtedly caused at that time by a gunshot." Therefore I declined to issue my sanction.

7. With reference to the charges against me in paragraph 25 of the letter I have already dealt with them above. I may add that it is not my duty to prosecute cases in the police court, but I directed the committal of the accused referred to in paragraph 16 of the letter, and specially selected Crown Counsel Dumbleton, a senior member of my department, to conduct the prosecution.

C. P. LAYARD.

January 31, 1899.

Enclosure 6 in No. 11.

SIR,

Police Court, Matara, February 11, 1899.

WITH reference to the charges made against me by Mr. C. J. R. Le Mesurier in a memorial dated 31st December, 1898, addressed by him to the Right Honourable the

Secretary of State for the Colonies, I have the honour to append the following explanation:—

Charge 1.—Paragraph 12 of Memorial:

“On a recent occasion the Government Agent, Mr. H. Wace, and the Mudaliyar sent a body of Headmen and others to eject me by force from one of these lands, when I was severely mauled and robbed of valuable property. When I complained to the police magistrate, Mr. Carbery, of the trespass on my property, he not only *refused to entertain my complaint*, but when I presented an appeal against his order, he behaved in the most insulting manner, and crumpled up my appeal petition into a ball, and threw it out of the Court.”

On the morning of August 6th, 1898, Mr. Le Mesurier appeared before me, and lodged, I believe, five different complaints. I spent most of the day till 4 p.m. inquiring into them, and recording evidence. The case of trespass he refers to, P.C. Matara, 31915, was one of these cases. His statement that I *refused* to entertain that complaint is misleading, if not incorrect. I did entertain it, and took his evidence down at length. Mr. Le Mesurier admitted in the course of his examination that he knew that the Crown claimed the land, and that it had been proclaimed under Ordinance 1 of 1897 (Waste Lands). [I may here remark in parenthesis that he told Mr. W. H. Moor, the additional Police Magistrate, a few days later, referring to the very same land, that he was not aware that it had been proclaimed.] At the end of Mr. Le Mesurier's examination, I made my order, refusing process, as I held that the land had been proclaimed under Ordinance 1 of 1897, and therefore could not be entered upon without written permission of the Assistant Government Agent, Matara. Mr. Le Mesurier could not therefore maintain a charge against the officers of Government for entering on the land in the bona fide discharge of their duties, viz., to turn trespassers off the land, he himself being a trespasser. On making my order, or, rather, while I was making it, Mr. Le Mesurier, in a threatening way warned me to be careful and take time before I made any order, as it would be a serious matter if I dismissed his plaint. Of course, I was not to be led by his warnings, but gave my order as I considered just and proper.

On the 8th August, Monday, while I was at breakfast in the Court Chambers between work, *i.e.*, about 11 a.m., Mr. Le Mesurier, who was in the Court, sent in to me through my Chief Clerk a petition of appeal against my order of the 6th August, in his case P.C. 31915. I sent word by my clerk to return the petition of appeal to Mr. Le Mesurier, and to inform him that I declined to accept it, as I held that there could be no appeal against the dismissal of a criminal action, except through the Attorney-General. In making this order I acted bona fide, under the provisions of Section 404 of the Criminal Procedure Code.

Mr. Le Mesurier ordered my clerk to bring his petition of appeal back again to me, and tell me that he insisted on my accepting it, and forwarding it to the Supreme Court. I sent my clerk back to Mr. Le Mesurier with the same reply as I had given at first. I then heard Mr. Le Mesurier ordering my clerk, for the third time, to take his petition of appeal back to me, still insisting upon my receiving it. Hearing this, I left my breakfast half done, and went into Court myself to Mr. Le Mesurier. I spoke to him, not from the Bench, but from the floor of the Court. I returned him his petition, again giving him the same reply as I had at first sent to him through my clerk. Mr. Le Mesurier then thrust the petition for a fourth time in front of me, and as often as I refused to accept it, so often did he, in the most aggravating manner, insist on my receiving it. After this had gone on about half a dozen times, I admit that I did finally, when exasperated beyond measure, crumple up his petition of appeal, and throw it out of the door. Here the incident in my Court ended. I deny that I insulted Mr. Le Mesurier at all. On the contrary, he behaved in a most insulting manner to me and aggravated me beyond degree; the utmost that I was guilty of was that I lost my temper, after having been, as I say, aggravated beyond a point bearable by any human being.

I submit I was quite justified, whether I was right legally or not, in making the order I did refusing to accept Mr. Le Mesurier's petition of appeal. I made the order bona fide, believing in my right to do so under Section 404 of the Criminal Procedure Code. It was Mr. Le Mesurier's duty, if dissatisfied with that order, after the first time I had made it, to have moved the Supreme Court in the matter. He had no right to stand and answer me word for word, as he did, and annoy me beyond measure.

That very afternoon I sat down and wrote semi-officially to the Honourable the

Colonial Secretary regarding all that had happened, and requested him to lay my letter before His Excellency the Governor for the latter's information, which I believe was done.

For nearly a month after this incident Mr. Le Mesurier filled the local papers with exaggerated and false accounts of what had happened, dragging my name about, and abusing me in every way possible. Of course, I was powerless, owing to Government regulations, to answer any of those charges. After Mr. Le Mesurier left the Court on the 8th of August I had his petition of appeal which I crumpled and threw out of the door picked up again. I wrote across it that I refused to forward it to the Honourable the Supreme Court for the reasons I have already given, and made further order that it be filed in the record of P.C. 31915, which was done. Mr. Le Mesurier then moved the Supreme Court in the matter, a step which had he at first taken nothing of what did occur would have occurred, and the Supreme Court sent for the record. After due discussion of the whole case, the Supreme Court made order that it saw no reason for interfering in the matter, and thought it best that the matter finally drop.

Charge 2.—Paragraph 25 :

“ I charge the Police Magistrate of Matara (Mr. W. H. Carbery) with the violation of his judicial oath, in that he publicly insulted me in his Court, and has made it impossible for me and my subordinates to obtain justice at his hands.”

The first part of this charge has already been fully answered. I deny that I ever violated my judicial oath.

“ *It is impossible for me and my subordinates to obtain justice at his hands.*”

This is only a mere unsupported statement of Mr. Le Mesurier's opinion. I have always been and am still ever ready to do justice to both Mr. Le Mesurier and his subordinates, whenever occasion arose or will arise for the exercise of my judicial powers regarding them. And in proof of my assertion I submit the following:—
(1) Shortly before the case alluded to in this memorial, Messrs. Gill and Macaulay, two of Mr. Le Mesurier's assistants, were criminally charged by a native of Kotawila with shooting and killing a cart bull belonging to him. I heard the case, at which Mr. Le Mesurier was present throughout, and I acquitted and discharged both accused, as I held the case against them not proved. I subsequently learnt, on good authority, that this charge was absolutely true.

(2) On the 31st May, 1898, a native of Godapitiya instituted Court of Requests civil case 4838 against the same two gentlemen, Messrs. Gill and Macaulay, claiming Rs. 45 damages for shooting and killing a cart bull belonging to him. This action I dismissed with costs on the 24th August, 1898, a date subsequent to the incident complained of by Mr. Le Mesurier, as the plaintiff happened to be absent for trial.

(3) On the 16th of September, 1898, a date also subsequent to the incident complained of by Mr. Le Mesurier, his two assistants, Messrs. Gill and Macaulay, wrote to me officially, complaining that one of the coolies employed by Mr. Le Mesurier on Kotawila Estate was threatening to create a disturbance, and induce them to commit a breach of the peace, and urging other coolies to assist him. I sent out the Acting Inspector of Police at once to the spot to make inquiries. He reported having done so, and having warned the coolie complained against. There was no further occasion for complaint, and Mr. Macaulay himself wrote to me thanking me for the prompt action I had taken upon his letter.

These three illustrations alone will suffice to show the falsity of Mr. Le Mesurier's statement that it is impossible for himself and his subordinates to obtain justice at my hands. It is true that at the latter end of last year, I convicted two of Mr. Le Mesurier's servants for offences committed against the Ordinance No. 1 of 1897. They were tried in open Court, and convicted after a hearing. The fact that the convictions were set aside by the Supreme Court owing to technical objections does not in any way prove that I did anything but my duty.

In conclusion, I may say that Mr. Le Mesurier became only casually known to me about March or April, 1898. I have no personal ill feeling against him and never had.

With regard to his conduct in connection with his claims to Crown lands and the attitude he has adopted since his dismissal from the Civil Service I need say nothing, as I feel quite sure that the other officers complained against in his memorial have said sufficient on the matter.

Mr. Le Mesurier is a man, as his supposed grievances prove, who has managed to fall out with every official he has so far come across in official matters, and this fact

alone must show what kind of a character we officials of Matara have to deal with in Mr. Le Mesurier.

I am, &c.,
W. H. B. CARBERY,
Police Magistrate, Matara.

The Honourable the Colonial Secretary,
Colombo.

Enclosure 7 in No. 11.

Mr. LeMesurier's Representation against the Government of Ceylon.

SIR, The Special Officer's Office, Matara, March 14, 1899.
In continuation of my letter of 11th instant, I have the honour to forward the reply to paragraphs therein referred to.

2. I have to-day received replies from Messrs. Short and Vigors to paragraphs 8 and 9, and I annex them.

I have, &c.,
J. P. LEWIS,
Special Officer.

The Honourable
The Colonial Secretary,
Colombo.

SIR, Kalutara, March 13, 1899.
As requested by you, I have the honour to report that I took charge of the Matara District on Mr. LeMesurier's removal from office in January, 1896.

II. As regards paragraph 8, I would point out (a) that Mr. LeMesurier admits that he purchased lands which the Crown claimed.

(b) That he refused to produce his evidence of title, but required the Government Agent to attend at his Estate Kotawila, if he wished to inspect the documents.

(c) I am unaware of any acts of violence committed or labourers ejected, or vendors intimidated up to the time I left, in 1897 (April). I do not know what is referred to by the words "outlaw me."

III. Paragraph 9.

Some Crown lands were proclaimed—Mr. LeMesurier is pleased to call them "his." Police were employed to protect men working on Crown lands in two cases, where it was anticipated Mr. LeMesurier might molest them. Mr. LeMesurier never had any possession of these lands up to that time, and the men were not driven off. The police in these cases were brought from Galle by the Government Agent, who sent them out to the lands.

I am, &c.,
C. D. VIGORS.

J. P. Lewis, Esquire,
Special Officer.

Paragraph 8.—"Shortly after my dismissal I purchased a number of lands from the villagers in the Matara District."

How Mr. Le Mesurier behaved with respect to the purchase of lands shortly before his dismissal may be seen from Annexure No. 1.

The following was his procedure after his dismissal. Having provided himself from the Kachcheri with a list of chena and forest lands in the Matara District, which the documents in the Kachcheri showed had paid one-tenth tax, the rate before 1871 for Crown as well as private lands, he spent the months of January, February, and March, 1896, in sending for all villagers who had at any time cleared these lands, in persuading them that the lands really belonged to them and in getting them to sign transfers for them in his favour (43 of these transfers executed during these three months).

The circumstances under which these transfers were executed, the manner in which the extents and boundaries were inserted, and the amounts actually paid by Mr. Le Mesurier as consideration will appear from annexures Nos. 6, 10, 11, 12, 19, 19A, 26, 28.

The nominal consideration was stated to be in all cases at the rate of a rupee an acre (for lands in some cases worth Rs. 50 an acre), but in some cases only 10, 12½, or 20 cents an acre was paid, in others none at all. In some cases dead men were personated as vendors, in others living men or women who knew nothing of the transaction. In one case a vendor signed the wrong deed, and the deed which he had intended to sign was not signed by him. Another deed bears the supposed signatures of 53 vendors, most of whom are not known even to have any existence.

Paragraph 8.—“Inquiring into the claims . . . first by investigation in the presence of the claimant.”

This is exactly the object of the Waste Lands Ordinance, but Mr. Le Mesurier has persistently endeavoured to thwart any inquiry into his claims, first by refusing to give evidence on the absurd ground that the object of the Ordinance was not to enquire into the claims of private parties, but only into the right of the Crown, and then by refusing to call his vendors, though without the evidence of his vendors, his deeds, which were none of them older than 1896, and based his vendor's title in every case solely on “inheritance” were absolutely worthless. “All his efforts have been directed” to preventing the Crown from inquiring into his supposed rights (see paragraph 17). He endeavoured to get me to pledge myself not to inquire into his claims, and at the trial of the Atureliya case he tried to get the District Judge to frame an issue which would have prevented the Court from inquiring into his claim (with good reason, for he had none), or that of the claimant, but would have confined it to the question whether the land was Crown or not—without finding further whether it belonged to the claimants. With the same object he adopted every means to get the proceedings quashed on technical objections, some of them of a far pitched or ridiculous character.

He did his best to turn the inquiries into a farce. Having prevailed on the District Judge to express the opinion in the Atureliya case that he should be allowed to search the Kachcheri Watorus* for any that might relate to the land in dispute, he was allowed to do this for a week in January, 1898. His claim enquiries happened to be fixed for the same week at the Kachcheri, and he spent the whole time which was supposed to be devoted to these enquiries to searching through these watorus, not only for those relating to the Atureliya land but for those that related to any of the lands he claimed. He made use of the privilege allowed him, not for the purpose for which it was intended, but in order to fish for evidence relating to his claims.

Paragraph 10.—In this paragraph Mr. Le Mesurier especially attacks section 22 for a breach of which he has been punished. He was at the same time quite ready to invoke the aid of this section against other persons. (Vide annexure No. 59.)

Paragraph 10.—“With the deliberate purpose of strengthening their own weak title.”

As to Mr. Le Mesurier's title, please see annexures Nos. 3 to 31.

It is based entirely upon the fact that these lands or some of them at one time paid one-tenth tax (as Crown high lands did before 1871), and he pretends to argue that the mere production of a watoru showing payment of one-tenth should be convincing proof that the land in question is private and therefore his property. But when he was Assistant Agent in 1894, he was by no means satisfied with this; he required a claimant to produce tax receipts “showing that he had cultivated the lands at intervals during the last 50 years,” and without this was not satisfied of his title. The same rule should be applied in his case; his vendors should be required to produce documentary proof of cultivation by them. But in many of these claims his vendors do not support him, and in some he is unable to prove due execution of his deeds, so that his title is nil.

I have annexed specimens of 21 out of Mr. Le Mesurier's 40 claims in this district. Those not represented are however not a bit better than those represented here.

Paragraph 11.—“Under cover of this clause they have prosecuted me, my European assistants and my servants in a most vindictive fashion.” (Paragraph 11.) “A cruel and vindictive and degrading sentence.” (Paragraph 14.)

Mr. Le Mesurier being fully aware that the land referred to had been proclaimed under Ordinance 1 of 1897, and that it was an offence under section 22 to enter the

* Watorus.—A Watoruwa is a list of cultivated high lands in his division made by the headmen for the information of the renter in the days when the rents or taxes on high grains were sold by auction, and showing the extent cultivated and the rate of tax to be recovered by the renter. The tax before 1871 was one-tenth for Crown or private lands.

See extract
from Judgment in F.C.
31967. Annexure
No. 37.
Annexures
Nos. 38 and
39.

land for the purpose of exercising acts of ownership while the claim was pending before the Court, went there with the two European assistants, all three being armed, in order to resist any attempt by the headmen to prevent such taking possession. It was a deliberate defiance of the law on the part of Mr. Le Mesurier, for which the fine of Rs. 75, to which the sentence was ultimately reduced by the Supreme Court, was a most inadequate punishment. He had made much more than Rs. 75 in the plumbago that he had illegally taken from the land; that he objected to the law was no justification of his defiance of it.

Although he was convicted in this case, and the conviction was affirmed in appeal, he still continued to retain possession of the plumbago pit, keeping one of his servants on the land. The servant was prosecuted and convicted, but the conviction was set aside for the extraordinary reason that the servant's presence on the land was doing no harm, though as the original entry had been held by the same judge to be illegal, the subsequent retention of possession was also illegal.

That Mr. Le Mesurier was fully aware that the land had been proclaimed was shown at the trial of Police Court Case 31967.

Annexure
No. 41.
P.C. 31915.

He had put in a claim to the land three weeks after it had been proclaimed, had attended the enquiry held by the Special Officer, and produced the deed upon which he claims it, and had put in a charge against the headman of criminal trespass on this same land, and had stated in his examination by the magistrate that the land had been proclaimed under Ordinance 1 of 1897.

Annexure
No. 33.

Yet at the trial of the Police Court case 31967, one of the defences he set up was that he did not know that the land had been proclaimed, and that he could not identify the land from the notice published. On this point please see extract from the Magistrate's judgment.

Another dishonest defence set up by him was that as the District Court had recently held three of the notices issued under Ordinance 1 of 1897 invalid, he thought that this notice was also invalid, and that therefore the provisions of section 22 could be safely disregarded as the foundation upon which the whole proceedings rested was invalid.

These three notices were notices issued in 1897, when the practice was for the officer who issued a notice to date it at the time of signing it. The consequence was that the "Gazette" in which the notice appeared bore a date some days subsequent to the date of the notice, and the period of three months during which claims could be made was subsequently curtailed by the interval between the date of the notice and the date of the "Gazette."

August,
1898.

Every notice issued in 1897 suffered from this defect, and the objection had been taken by Mr. Le Mesurier in regard to all the notices of 1897 affecting lands claimed by him (some 20 in all). It was eventually upheld in the three cases referred to in which Mr. Le Mesurier's proctor also appeared.

None of the notices issued in 1898, however, contained this irregularity. Steps had been expressly taken to avoid it by the officer who issued the notices leaving the date blank, and by the insertion of the date at the last moment by the Government printer. The result was that in all the notices issued in 1898 the date of the notice and the date of the Government "Gazette" in which it appeared coincided.

Mr. Le Mesurier was perfectly well aware of this difference between the notices of 1897 and those of 1898 (as he takes the Government "Gazette" and scrutinizes every notice issued, besides having put in many claims in both years). He also knew that no question as to the regularity of the notices of 1898 had, at the time of the trial of the Police Court case, come before either the District or Supreme Court, yet he misrepresented to the magistrate that the ruling of the District Court with regard to the three notices of 1897 had rendered this notice also invalid. He knew quite well that it did not affect them in any way, but he took care that the magistrate should not be able to verify this by not putting in a copy of the order of the District Court.

I think it very likely that the palpable dishonesty of the defence was a considerable factor in the magistrate's mind in determining the sentence.

Annexure
No. 40.

The sentence was, in my opinion, fully deserved—see annexure. Nor was this the first breach of section 22 that Mr. Le Mesurier was responsible for. (Annexure 40.) Paragraph 11.—"For merely entering and being (in one case for a few hours only) on the land."

The duplicity of this statement is amazing. Mr. Le Mesurier did not "merely enter the land," he entered for the purpose of prospecting for plumbago, and with the

intention, if he found any, of taking possession of the land, which in fact he actually did (see annexure No. 41).

Paragraph 11.—“ In fact they are utilizing the Ordinance to eject me from the land, and to place themselves in possession of it before the question of title is decided by the Courts.”

This is another remarkable instance of the shameless audacity of misstatement and of the duplicity which have become Mr. Le Mesurier's most striking characteristics. This land was proclaimed on March 11, 1898, and Mr. Le Mesurier never had any possession of it until August, 1898, when, in direct contravention of the Ordinance, he placed himself in forcible possession of it. “ before the question of title had been decided by the Courts.” The land was proclaimed in order that the question of title might be decided, but it is this testing of his title in the Courts that he does all he can to evade. This explains the absurd objections taken to the *status* of the special officer, the devices he adopted to avoid appearing before him, and when he did appear, to avoid going to evidence himself, or calling any witnesses. In other cases he has taken possession of and devastated Crown forest, which he had himself described as Crown, knowing that it was claimed as Crown, and without waiting for the question of title to be decided.

Paragraph 12.—“ The trespass on my property.”

The trespass consisted of the headman's entering a land alleged hitherto to be Crown, and proclaimed under Ordinance 1 of 1897 to prevent a breach of section 22 of the Ordinance.

Paragraph 14.—“ Convicted me of entering my own land.”

In this, as in the last paragraph, the *my* is a begging of the question. Mr. Le Mesurier was convicted “ of entering on the land . . . without written consent of the Government Agent of the Southern Province or of the Assistant Government Agent of the Matara District, the said land being a land with regard to which the Special Officer appointed by His Excellency the Governor under section 28 of the Ordinance had issued a notice under section 1 of the Ordinance and building a hut thereon in contravention of section 22 of Ordinance 1 of 1897.” (Judgment in Police Court Case No. 31967.) That judgment was affirmed by the Supreme Court. It is idle for Mr. Le Mesurier to contend that he did not commit this offence or to describe it as a conviction “ of entering my own land.”

What the nature of his claims is may be seen from the annexures.

To take the first, Madidduwahena. His claim is based upon a deed of transfer in his favour dated 31st January, 1896, executed by nine persons. It purported to transfer Madidduwehena of 100 acres extent more or less. Of the vendors, one is dead, and seven were examined by me. The ninth was an old woman, mother of some of the other vendors. They all stated that they did not intend to sell all this jungle and forest land to Mr. Le Mesurier, but only their garden Madidduwawatta, the extent of which they estimated at five acres. Mr. Le Mesurier inserted the boundaries himself without reference to the vendors. I annex copy of the statement made before me by two of them at the claims inquiry. The statements made by the other five agree with these.

Annexure
No. 21.

Paragraph 17.—“ Mr. Lewis is acting admittedly as a partisan.” This charge has been fully answered in my former replies, see paragraph III. “ He disregards the plain meaning of the Ordinance in the matter of publication of the notices.”

In whatever I have done I have acted, as regards publication, upon the instructions of Government.

What “ the plain meaning of the Ordinance ” is, Mr. Le Mesurier does not explain. I am unable to say, therefore, how the plain meaning of the Ordinance has been disregarded by me.

Mr. Le Mesurier by a *suggestio falsi* (a device of which he is very fond) makes it appear that I was responsible for all the notices issued under the Ordinance, whereas I had nothing to do with those issued in 1897. These were the notices with which Mr. Le Mesurier was chiefly concerned, having sent in claims under 20 out of the 34 notices published. Only the notices of 1898 were issued by me, and they had all been issued before there was any judgment of the Supreme Court as to “ the plain meaning of the Ordinance ” which affected them in any way. No such judgment was given until December, 1898. There were 53 of these notices, and Mr. Le Mesurier had claims only in 12.

“ He refuses to permit me to have access to the Government documents on which his opinions are based.”

The meaning of this is that in one inquiry, Mr. Le Mesurier wanted me to let him make use of a Kachcheri file containing all the information the Crown had about the land in question. Naturally I refused to let him see it.

Annexure
No. 35.

The demand was a preposterous one, which no one but Mr. Le Mesurier would ever have thought of making. You claim a land which the Assistant Government Agent says is Crown, and then you demand that he should let you see whatever evidence he has that the land is Crown.

"Or to cross-examine the officials who prepared them."

I have allowed Mr. Le Mesurier to cross-examine the only officials who have been called as witnesses in the inquiries into his claims held by me.

"Or to see the plans of the lands in dispute."

Annexures
Nos. 32, 34,
34A.

This is false, I allowed him to see all the plans up to the last four inquiries in February, 1898, *i.e.*, all the inquiries relating to notices of 1897, when, as I had not the plan with me, I was unable to let him see it.

On this, as he demanded to see the plan as a matter of right, I refused, but as a matter of fact I did allow him to see the plans even after this, whenever he asked to see them, the only part of them I did not allow him to see being the tenement sheet.

Why I did not allow him to see them is explained in annexures Nos. 32, 34.

"He makes no attempt to come to an amicable settlement with me."

Mr. Le Mesurier, before I began to inquire into his claims, told me that he would have me to understand that he would come to no settlement with the Crown involving the payment of any money by him. He wished me clearly to understand that he would not pay a cent.

Annexures
Nos. 3 to 9,
also No. 20

In the second place, Mr. Le Mesurier called none of his vendors at the claim inquiries and no witnesses; all he did was to produce the transfers of 1896, in which his claims were based. Some of these could not possibly refer to the lands proclaimed, as for instance, the deed on which he claimed three forests in Morowa Korle, two of which are situated respectively nine miles and four miles from the land named in the deed, and the third just outside one of the boundaries named in the deed.

Apparently we are to take his claims on trust, and come to a settlement with him without inquiring into them.

"He permits his clerk to insult me."—This incident was fully explained in my first reply, Paragraph 18.

Annexures
Nos. 13, 34,
No. 42.

Due apology was made to Mr. Le Mesurier, though he had himself to thank for exposing himself to insult, and any insult to which he was exposed was fully discounted by the insults to which both I and my clerk were subjected by him. Throughout these inquiries his behaviour was most insulting to me personally, and was adopted apparently in order to intimidate me from performing the duties cast on me by the Ordinance. It was with this object also that he brought false charges against me, threatened me with actions at law and to report me to the Secretary of State.

"He intimidated my witnesses."

This is absolutely false. I deny that I have at any time intimidated or endeavoured to intimidate his witnesses. Possibly he alludes to the false charge he brought against me during the Karuwalabedda claim inquiry (see annexure No. 13).

"In short all his efforts, &c."

I deny this. I always endeavour, when there is a bona fide claim, to come to a settlement if possible. Up to the present I have not met with any claim of Mr. Le Mesurier's that could be considered bona fide.

"All his efforts are being devoted to prevent the (subject) from proving his rights against the Crown."

This I flatly deny. I have fully answered the charge in my previous reply.

Mr. Le Mesurier talks glibly of "the poor claimant"; "Justice between the Crown and the subject"; "The rights of the subject, &c."

What regard he has for the rights of the villager or of the claimant when they conflict with his, may be seen from annexures Nos. 1, 52-4. He is at this moment detaining from their proper owners and against their will two deeds which he has managed to get into his possession, and in another instance he has forcibly taken possession, to the detriment of the other shareholders, of a plot of ground of an acre in extent when he is himself only entitled to an undivided 1/98th share of 38 acres or less than half an acre. In all these cases "the poor claimants cannot effectively resist him owing to the very heavy cost involved thereby" and owing to their fear of him. They are afraid to institute legal proceedings against him for the recovery of their property. While Assis-

tant Government Agent he seems to have treated a villager's land as Crown, because he refused to sell it to him, and to have prosecuted him for clearing his own land.

"He holds inquiries behind my back."

I presume this refers to the inquiries held by me before issuing notices under the Ordinance. The inference is, that I am to issue notices without any inquiry as to the nature of the land, the Crown title, &c., as it is quite impossible that Mr. Le Mesurier should be present, whenever I make such enquiry. There is nothing in the Ordinance requiring me to hold such preliminary inquiries in the presence of a claimant. The utter unscrupulousness, dishonesty, duplicity, and recklessness of Mr. Le Mesurier's conduct towards the Crown is shown from the annexures Nos. 1, 3-9, 10, 12, 13, &c., 47, 52-4. Annexure No. 1.

His shiftiness is especially shown in annexures Nos. 23, 25, 27, 28, 30, 47.

Paragraph 18.—"The Government Officers refuse to give me access to the Dutch registers and lists, showing private title to the land."

Mr. Le Mesurier does not know (1) that any of the lands claimed by him are named in these records.

(2) That there are any Dutch records in the custody of Government referring to lands in the Matara district.

Sir A. Swettenham says there are none in the museum, and the Dutch records in the Matara Kachcheri do not give the names of any lands claimed by Mr. Le Mesurier, nor has he applied for copies of any. What the Supreme Court thought of his attempt to get the Museum Records produced may be seen from Annexure No. 51. Annexures 58, 51.

"They put up some of my lands for sale by public auction."

I do not know of any lands that have been so treated, except an acre or two of the proclaimed lands, which were sold by mistake. Possibly he refers to the incident referred to in the Annexure No. 59. See also Annexure 48, which shows how he tried to stop the sale of all Crown lands in certain villages whether he had any title or not.

"Disputes and violence between myself and the purchasers."—I have heard of none in consequence of any Crown sale.

"There is no more certain incentive to crimes of violence in this country than a land dispute."

Possibly this is the reason why Mr. Le Mesurier adopts every expedient to avoid having the dispute between him and the Crown settled in the Court.

His own conduct and that of his assistants shows that he was quite prepared to use violence in breaking the law (see judgment in P.C. 31967). Annexure No. 37.

Paragraph 19.—"They deal with enormous areas of lands under the New Ordinance, making it impossible for poor claimants to effectively resist them."

It is not "poor claimants" who claim enormous areas of lands, but Mr. Le Mesurier, rich speculators in land, and adventurers.

"The very heavy costs involved thereby."

There are no stamp fees under the Ordinance except in appeal. Were the only other alternative adopted of instituting actions in the Civil Courts against these claimants the costs to them would be "enormously" increased.

It is intended to take this course in some cases both with regard to Mr. Le Mesurier and other claimants who can afford to pay stamp fees. Probably he will then complain that proceedings were not taken under the Ordinance so as to avoid heavy costs.

Mr. Le Mesurier made a dishonest attempt to make Government pay the cost of his journeys from Batticaloa, as though the sole object of these journeys was to attend these inquiries, whereas the inquiries were fixed for times to suit his convenience, when he had to go to Colombo and Matara, to attend the Courts, and to look after his property at Matara. On the occasion of his last journey from Batticaloa, he was in fact leaving the place for good, having disposed of his property there, though I believe he had to make a temporary visit there again on that account, and on account of cases in the Courts there. Vide Annexures Nos. 42-3.

Paragraph 22.—"They have compromised claims of exactly the same nature made by Mr. T. N. Christie, by giving up one-half of what he had claimed to him."

Possibly Mr. Christie's title was as bad as Mr. Le Mesurier's, in fact I believe he obtained the lands through Mr. Le Mesurier, but his action was apparently bona fide, and he did not announce that he would come to no settlement with Government involving the payment of a cent of money. He did in fact pay survey fees, and was allowed half what he claimed.

Mr. Le Mesurier subsequently acquired this half from him, and *now claims the other half which Mr. Christie gave up*, though he derives title solely from Mr. Christie.

Annexures
45-6. See Annexures.

Paragraph 23.—“The gross insult, &c.”

The headman's account of this incident is very different.

He was walking through the Hulandawa Estate by an old path that had been always used by the villagers, and to the use of which no objection had been made while the estate belonged to Mr. Christie.

His object was to visit some Crown lands on which he had to report and to which this was the most direct, if not the only, approach. The estate had a month or two before passed into Mr. Le Mesurier's hands. Mrs. Le Mesurier (No. 2) saw him, and called to him to go back. He took no notice; thereupon she sent into the bungalow for a gun, and when it was brought to her, fired in his direction. Mr. Le Mesurier remained in the bungalow.

The Vidane Arachchi denies that he insulted her in any way, or said anything to her.

He was anxious to prosecute her for firing at him, and reported the matter to the Assistant Agent at once. While the Assistant Government Agent was reading his report, or immediately after, a letter arrived from Mr. Le Mesurier, charging the Vidane Arachchi with insulting his wife, and demanding his punishment. The Assistant Government Agent referred him to his legal remedy. There the matter ended. Mr. Le Mesurier did not prosecute, neither did the Assistant Government Agent on the part of the Arachchi.

Great forbearance was, I think, shown by the Government Officers in refraining from a prosecution.

The statement that Mr. Le Mesurier and his wife (No. 2) have been obliged to give up living in the Matara District is a ridiculous one.

With so much litigation in Colombo including Matara cases civil and criminal in appeal, and in the District Court of Colombo, with the newspaper editors to keep primed with respect to them, and with his avowed intention to join the Ceylon Bar, it suited Mr. Le Mesurier and his wife to go and live there, and be on the spot with his advocate. It also suited Mrs. Le Mesurier (No. 2) to leave for England about the beginning of the year. But whenever it suits Mr. Le Mesurier, as, for instance, whenever he contemplates a new raid on Crown land, or has a case in the local courts, he comes down to Kotawila and remains there absolutely oblivious of the danger and insecurity of his position, until some further litigation, actual or prospective, demands his presence in Colombo again.

With regard to the intimidation of witnesses, I think Mr. Le Mesurier's attempt to prosecute three of the vendors in the Periyawetiyalahena claim inquiry, for perjury because they told what I believe to be the truth with respect to the circumstances under which the deed was executed, was intended to intimidate them. I believed them and not the notary, a man who has attested deeds for the transfer of thousands of acres of Crown land at the rate of 5 cents an acre, and whose chief business seems to be the attestation of deeds such as those upon which Mr. Le Mesurier's claims are based. The only perjury they committed was contradicting the notary, but the notary's attestations are contradicted not only by them, but by the fact that some of these deeds purport to be signed by dead men, by persons who did not sign them and by persons not known to him.

Paragraph 25 (5).—These allegations are summed up in the ridiculous charge “Gross neglect of duty in that he has intentionally disregarded the provisions of the Ordinance, &c.”

I have neither disregarded the provisions of the Ordinance intentionally or unintentionally, but have complied literally with them. That I should disregard them intentionally and thereby prejudice the whole of the proceedings under the Ordinance is absurd on the face of it. As to disregarding them unintentionally, in whatever I have done I have merely acted under instructions, and the difficulty has been to know what the provisions of the Ordinance require. The Ordinance says one thing, the Supreme Court another, as, for instance, with regard to the date from which the three months begin to run. The Ordinance says, “From the date of such notice,” the Supreme Court says this means from the date of its publication in the Government “Gazette.” Mr. Le Mesurier's indictment against the Ceylon Government and every official with whom he has come in contact is of itself sufficient evidence that any official who endeavours to be guided by “the dictates of justice” in anything that concerns Mr. Le Mesurier is certain, sooner or later, to expose himself to vilification at his hands. First he tries to intimidate them by threatening to report them to the

Annexures
Nos. 19
and 19A.

Secretary of State, or by threatening them with actions for damages, or by bringing false charges against them. If this does not succeed he proceeds to vilify them in the newspapers and elsewhere.

J. P. LEWIS,
Special Officer.
1 of 1897.

Matara, March 14, 1899.

Annexure No. 1.

Kamwalabedda or Pantiyaralage Lebima (No. 224 of 22nd July, 1898).

Evidence of

Don Samuel Ediriwira affirmed:—

This land never formed a part of Kamwalabedda. It is separated from the Kamwalabedda by the dry watercourse.

Kamwalabedda is Crown land. I never claimed it. Mr. Le Mesurier wanted to buy the whole of the lebima land from us, but we declined. On that account he prosecuted me. He was Assistant Government Agent at the time I was Vel Vidane, and he had resigned just before the prosecution. It was after I had cleared and while I was planting it with cocoanuts that Mr. Le Mesurier asked me to sell the land to him. He did not ask me personally, but negotiated through the Vidane Arachchi, the Police Officer, and the Mudaliyar. He offered me Rs. 50 an acre. During the pendency of the case the Mohotti Mudaliyar (late Kachcheri Mudaliyar) offered me Rs. 20 an acre for it, saying he would get the prosecution stopped if I would sell. I do not know whether he offered to buy it on account of Mr. Le Mesurier, but all the lands he bought in his name at Kotawila were transferred by him to Mr. Le Mesurier after the dismissal of the latter."

Extract from report to Attorney-General.

Whether this land is a portion of Kamwalabedda, adjoining it on the east, and therefore Crown, or a portion of the "Pantiarachchi lebima" land, and therefore private, depends entirely on the question whether the "water loop" (water course) of the Dutch Lebima (= Sinh. ara) is to be found separating it from Kamwalabedda on the east.

Mr. Le Mesurier, when he was Assistant Government Agent, inspected this land, and decided that it formed a part of Kamwalabedda, that there was no "water loop" or "ara" on the eastern boundary.

I have gone along the eastern boundary of the noticed land, and I was satisfied that though it has been used as a path, it was at one time a "water course leading into the field Migobadeniya" on the south.

(Some explanation is given by the vendor, Don Samuel Ediriwira, of the reason why Mr. Le Mesurier treated this as a Crown land, and prosecuted him in the Police Court. I am inclined to think there is some truth in it (see statement above).)

It is noteworthy that the vendor referred to does not deny that Kamwalabedda is Crown land, and apparently never did deny it, but that Mr. Le Mesurier, who was strongly of opinion in January, 1894, that Kamwalabedda was Crown land, set up a claim to it in February, 1896, as private land.

Mr. Le Mesurier has not deigned to call any evidence before me beyond producing one of his deeds. What he is entitled to on this deed is 1-98th share of a land which is 38 or 39 acres in extent, *i.e.*, less than half an acre in case of partition. (He has himself admitted that the whole extent of the land of which he has 1-98th share is 38 acres.)

12. For this he has finally taken possession of more than an acre on the other side of the high road which forms the western boundary of the proclaimed land.

He now wants in addition a share in this portion of 9 acres which went to claimant's vendors.

(On this report the claim to this land was admitted.)

Annexure No. 2.

Nominal Consideration.

It is interesting to note that the first defendant was able to get per Rs. 1 an acre land which the Vidane Arachchi of Pelane, Don Abraham Samarasinha, holds to have been readily saleable in 1896, and to be still readily saleable for Rs. 50 an acre. (Extract from judgment of Police Magistrate in P.C. Matara 31967.)

Annexure No. 3.

Nature of Mr. Le Mesurier's Claims and of the Lands Claimed by him.

The other forests proclaimed are all blocked by Mr. Le Mesurier for the present, viz.: —

Morowa Kanda	...	...	...	...	1,111 acres
Dikhena	...	...	...	...	162 "
Diyadawa	...	...	...	...	500 "
Badulla Kele	...	...	...	...	550 "
Horaketiyahena	...	...	...	...	346 "
Hettiduwa Kele	...	...	...	...	57 "
Horaketigoda Mukalana	...	...	...	...	212 "

to which may be added Dedyagala Mukalana, nearly 10,000 acres, and Kattadi Kanda, not surveyed. I can only describe his claims to the first three as *frivolous, vexatious, and dishonest*, as he knows quite well that they are outside the boundaries of his deeds (two of them, in fact, miles away from them), and the remainder are little better, though he has a shadow of a paper claim in his irregularly executed transfers. (Diary of 3rd July, 1898.)

Annexure No. 4.

Mr. Le Mesurier's Claims to Forest in Morowak Korl.

On the way from Morowaka to Deniyaya I passed four forests claimed by Mr. Le Mesurier, viz.: (1) Kattadikanda, which is situated at Morowaka; Morowakanda, which is opposite the 41st mile, and is separated from Kattadikanda by the Pallegama Gansabawa Records [? Roads]; (3) Dikhena, which lies behind Hangarankanda at Kotapola, opposite the 44th-45th mile, and (4) Diyadewakanda, which lies along the whole of 49th-50th mile close to Deniyaya.

Mr. Le Mesurier claims these four forests on one deed, for Kattadikanda, which gives the eastern boundary of Kattadikanda as the Gansabawa road referred to. The other three forests cannot possibly be included, as the Gansabawa road is the western boundary of Morowakakanda, and the others lie still more to the east. One, three or four miles from Kattadikanda, and the other eight or nine miles from it.

Not only this, but the land referred to in the deed is described as situated at Morowaka, while Dikhena and Diyadewa forests are situated at Kotapola.

This is a good instance of the astounding recklessness and dishonesty of these claims.

It is to be hoped that production of 16 chain sheets will be sufficient to put Mr. Le Mesurier out of Court as regards (2), (3), and (4), and that he will not be allowed to enter into evidence as to the nature and occupation of lands to which he has no title on his own deed. (Diary of 17th February, 1898.)

Annexure No. 5.

Claim to Kattadikanda (not proclaimed).

Kattadikanda. Inspected Kattadikanda at Morowaka. This is one of the most dishonest of Mr. Le Mesurier's claims. Taking advantage of the fact that it includes the site of an abandoned village, abandoned some 20 or 30 years ago on account of elephants, Mr. Le Mesurier got a transfer executed in his favour by a man who had nothing to do with this village, described as a sort of Veddah, for an extent of country put at 500 acres, but which has for northern boundary a stream said to be four or five miles distant from the high road, which is given as the southern boundary. This would include much more than 500 acres, but Mr. Le Mesurier calmly says that though the

deed is for 500 acres, he claims 1,500, which is also much less than the land wnaed the boundaries would include, and his argument that the land is private is the formquiring tence of a village within the boundaries of this hinterland, with which his vend nothing whatever to do. This is one of the lands that he stipulated should be a. to him if the suggestion of a compromise were entertained. (Diary of 2nd April, 18

Annexure No. 6.

Claim to Kattadikanda (not proclaimed).

The claimant is the old man (described as a sort of Veddah), who sold Kattadikanda at Morowaka to Mr. Le Mesurier, and I took the opportunity to examine him respecting that transaction.

He sold 500 acres of land, of which he admitted that he had never had any possession for 40 years, for Rs. 50. He stated, however, that he did not know what extent had been inserted in the deed, nor what the extent of the lands he sold was. The consideration inserted in the deed was Rs. 500, a rupee an acre, but from this it appears that *the price was 10 cents an acre only.*

He was sent to the Notary's Office by Mr. Le Mesurier to get the deed executed, and was paid the amount on his return to Morowak Korle, where Mr. Le Mesurier was staying. He had never been to the Notary's Office before, *nor did he know him nor the attesting witnesses.* Different boundaries were given in the deed from those given by him. Mr. Le Mesurier wrote the boundaries on a memorandum, which he sent to the notary, and the vendor pointed out that one of them was wrong, but it was not corrected.

It is on this deed, thus executed, that Mr. Le Mesurier claims four Crown forests in different villages in the Morowak Korle, and, with the exception of two which adjoin, situated miles from each other. (Diary of 22nd July, 1898.)

Annexure No. 7.

False and Frivolous Claims.

Morowakanda at Morowaka, Diyadewa Mukalana at Deniyaya.

Mr. Cookson satisfied himself by personal inspection that Morowakanda lay outside the boundaries named in Mr. Le Mesurier's transfer, and wrote to him to that effect, asking him whether he still wished to go on with his claim. He did not receive any reply to this letter. It appeared clearly to-day that the land was outside his claim; yet Mr. Le Mesurier persisted in it, and it will have to be referred to Court.

The claim to Diyadewa forest was still more absurd, as Morowakanda lies between it and the land described in the deed. It is situated, not at Morowaka, but at Deniyaya and Kotapola, nine miles distant. The deed is for Kattudikanda, a forest described in it as situated at Morowaka. (Diary of 27th January, 1898.)

Annexure No. 8.

Claim to Morowakanda.

Notice No. 3 of July 9, 1897.

D.C. Case 9364 (dismissed).

Morowakanda is a forest of 111 acres in Morowak Korle, which it is intended to reserve under the Forest Ordinance. It is primeval forest, containing elephants and other forest products. He claims, not the whole of Morokanda, but some portion of it, he does not know how much. A frivolous claim.

He bases this claim on a deed of transfer for an adjoining forest named Kattadi Kanda, which it is intended to proclaim, but which has not yet been surveyed. This also is an extensive land, said to be at least 300 acres in extent.

Mr. Le Mesurier admits that though this deed gives him 500 acres only of Kattadi Kanda, he claims 1,500 acres on it.

The deed is dated 25th March, 1896, and is perfectly worthless without proof of possession by the vendor, but Mr. Le Mesurier has not called the vendor or given any evidence of possession.

Looking at the boundaries given in this deed, it will be found that the eastern boundary of the land, Kattadi Kanda, is given as "the Morowakanda Gansabawa

Comparing this with the preliminary plan showing Morowakanda, it will be found that the western boundary of Morowakanda is the Gansabawa road.

Mr. Le Mesurier, therefore, is claiming a portion of Morowakanda on a deed which includes that land altogether.

Mr. Cookson, after personal inspection, informed Mr. Le Mesurier that his claim did not include Morowakanda, but he has persisted in it on the ridiculous plea that he cannot understand from the "Gazette" notice and sketch what land is meant. (Extract from report to Attorney-General, dated 5th February, 1898.)

Annexure No. 8A.

Dikhena (No. 4 of 9th July, 1897).

This is a block of forest land of 162 acres, situated at Kotapola, in the Morowa Korle. Mr. Le Mesurier's sole claim to it is based upon a deed of 1896, by which a villager purports to transfer to him a land situated at Morowaka called Kattadi Kanda, of 500 acres extent.

On this same deed Mr. Le Mesurier not only claims the Kattadi Kanda forest, which has not yet been surveyed, but which is about 300 acres extent, but also the Morowak Kanda forest, or a part of it which adjoins it on the east, and the Diyadawa forest, which is situated at Kotapola, and separated from it by private lands, as well as this land also situated at Kotapola. (D.C. case 9348, dismissed on technical objection.)

Annexure No. 9.

Diyadewa Mukalana.—Notice No. 5 of 9th July, 1897.

Diyadewa is a forest of 503 acres, which it is intended to reserve. It is situated in Morowak Korle, and is bounded on the east and in part on the south by the road from Kotapola to Deniyaya.

There cannot, therefore, be much uncertainty about its identity.

Shuffling
and
dishonest
plea.

He has been examined, and states that his claim is based on a deed of March, 1896, for a land named Kattadi Kanda, of 500 acres. He "thinks" that Diyadewa forms a part of that land, but is not sure, because he would have us believe that he is unable to identify the land described in the "Gazette" notice, although the whole of the boundaries are given in this notice, and it must be perfectly easy to anyone who knows anything about the land at all to identify it from the sketch and the accompanying description.

Mr. Le Mesurier "thinks" it is included in the deed which conveys to him Kattadi Kanda at Morowaka. It is easy to arrive at certainty on the point. Kattadi Kanda is situated at Morowaka, Diyadewa Forest at Kotapola, a village six miles east of Morowaka. The eastern boundary of Kattadi Kanda is the Gansabawa road to Palle-gama, and east of this road is the Morowa Kanda forest. Diyadewa is still more to the east, with some private lands between it and Morowa Kanda.

It is difficult to regard the claim as seriously made, as Mr. Le Mesurier has only to look at his own deed for Kattadi Kanda to see that it cannot refer to any land east of the Morowa Kanda-Gansabawa Road.

The claim is made merely to embarrass Government, and should be referred to Court as soon as possible. (Report to Attorney-General.) (D.C. 9349, dismissed on technical objection.)

Annexure No. 10.

Claim to Badullakele.—Notice No. 166 of 11th March, 1898.

D.C. Case pending.

Nature of
land
claimed.

Badullakele is a forest of nearly 550 acres, which it is intended to constitute a village forest. No one ever thought of ever claiming it until Mr. Le Mesurier put it

into the heads of 53 persons (assuming that all the vendors were actually in ^{made the} which is doubtful) to transfer their fancied rights to him by six deeds in March ^{inquiring}

3. It is a very old forest at least 100 years old. The oldest inhabitant recollect when it was last cleared. It contains valuable timber trees. Mr. Le Mesurier has not called any of his vendors, but seven of them had been examined by Mudaliyar.

4. From their statement, it appeared that four emissaries of Mr. Le Mesurier went to their village and said they had been told to bring before him all the people living in the vicinity of Badullakele. They went to his house, and were asked whether they ever cleared and possessed Badullakele, and on admitting that they had cleared ^{atmagas}, were told to sign the deed, which was not read over to them. *They were each paid Rs. 5.* They had no intention of selling Badullakele, which they say is a Crown land. They would not have signed the deed if they had known they were transferring Badullakele. This was done very late in the evening.

Annexure No. 11.

The claim was to Badullakele, a forest of 550 acres, which has not been cleared within the memory of man. He has six deeds of transfer, and these purport to be signed by 53 vendors. Of these vendors, 7 have been examined, and deny having ever intended to transfer Badullakele, and say they were told to sign a deed, which was not read over to them. Most of the other vendors are unknown in the villages to which they are stated to belong, and in some cases their family names even are unknown. (Extract from diary, 19th July, 1898.)

Annexure No. 12.

Claims to Madidduwahena.—Notice No. 34 of 1897.

D.C. Case 9365, dismissed on technical objection.

Evidence of Vendors.

Abeyesundarapidege Baba affirmed:—

We received a message from Mr. Le Mesurier by a man in his employment (Appuhami) to come to his bungalow, and to bring one deed with us. Nine of us went, myself, my mother Diyagovage Mano, Welo, Dingisse, Migele, Andrisse, Janise, Nao, and Lokurodage Sabo.

Mr. Le Mesurier promised to give us Rs. 200 for transfer of the land, and we signed the deed. We were paid Rs. 100.

We transferred Madidduwawatta by this deed. It is five or six acres in extent, and contains planted trees. The boundaries of this land are given in the old deed, which was handed over to Mr. Le Mesurier, but those boundaries were not inserted in the new transfer. The boundaries of the old deed were read over to us. The new deed was not read over to us. It was in English. We were at Mr. Le Mesurier's house from 8 to 12 o'clock. I signed the transfer about 11.30 a.m. I am positive that that transfer was not interpreted to us. I produced the old deed, which was in favour of my father, Mesanderapediya Andris. I asked Mr. Le Mesurier to return it to me, as it referred to Danaholamalledeniya, as well as to Madidduwewatta, and we did not transfer Danahalanuelledeniya, but *he said it was no use to us; and that we need only take the number.* I accordingly took the number from him. I have the number at home. *He has not our consent to keep the old deed.* We want it back.

What we intended to transfer to Mr. Le Mesurier was Madidduwawatta, described in the old deed. We have no intention of transferring the chena land outside it. Why should we transfer what is Crown property? The chena land surrounding our garden on the south, east, and west is Crown land. It was never cultivated by us, but by other people, and they cultivated on Crown permit when I was a boy.

Mesandarapedige Welo affirmed:—

I signed this transfer (1531). By it we transferred to Mr. Le Mesurier Madidduwewatta, which is five or six acres. We did not intend to transfer the Crown jungle adjoining. When Mr. Le Mesurier began to clear we were frightened, and sent in a

the Assistant Government Agent, stating that we had only transferred the

* * * * *

(Give other vendors' evidence to the same effect.)

Annexure No. 13.

January 28th.

Karuwalabedda Claim.—Notice No. 7 of 19th July, 1897.

Inquiry regarding Karuwalabedda at Kamburugamuwa. Mr. Le Mesurier endeavoured to make out that this forms part of a land in the neighbourhood claimed on a Dutch *lebima* or grant.

In 1894 he gave excellent reasons why it could not possibly form a part of such land.

He was also of opinion after personal inspection that Karuwalabedda was "undoubtedly Crown land"; in 1893 he had withdrawn it from sale as being within five miles of the railway.

In January, 1896, he got a transfer in his favour executed for a garden called Kongahawatte, which he now says is Karawalabedda. One of the vendors is dead; the other says he only transferred to Mr. Le Mesurier Kongahawatte, of three acres extent.

Mr. Le Mesurier put in the boundaries and extent as he wished, the latter being, as usual, "100 acres."

He says he changed his opinion as to its being Crown, because he found *wattorus* showing payment of one-tenth (before 1871).

False charge
against
Mudaliyar.
Treachorous
character of
Mr. Le
Mesurier.

During this inquiry Mr. Le Mesurier made a charge against the Mudaliyar of Weligam Korle, that I had sent him to Karuwalabedda, and that the Mudaliyar had used violent language towards his men. I sent the Mudaliyar there *at Mr. Le Mesurier's request, made last Saturday*. I told him he could complain in the proper quarter.

False
charge
against
Special
Officer.

Mr. Le Mesurier also charged me with having gone to Balapatelahena (the land referred to in No. 14), and having threatened to tie up his watchers to trees, if they did not quit the land.

All that happened was that I told the headmen at first that the watchers should be prosecuted for working on a land already noticed under Ordinance 1 of 1897, but I subsequently rescinded this order, as the watchers said they were doing nothing but watch the cocoanut plants put in by Mr. Le Mesurier, and that if they left they would not get their pay, which was in arrears.

Annexure No. 14.

Karawalabedda Claim.

The land noticed is Karawalabedda, forming for the most part a portion of lot 9455 in Preliminary Plan 3835.

In 1893, while Mr. Le Mesurier was Assistant Government Agent, the question arose as to whether the lots in P.P. 3835 should be sold. Mr. Le Mesurier decided, in accordance with instructions received from Government regarding lands near the railway, that lot 9455 should not be sold.

See
Annexure.

In March, 1893, the Mudaliyar reported that a man named Don Samuel Edirawira had cleared about an acre's extent of waste land adjoining Karawalabedda (on the west), and claimed about 30 acres, claiming it on a *lebima*, or grant.

The result was a prosecution ordered by Mr. Le Mesurier, as Assistant Government Agent, who described the case as "one of deliberate encroachment on Crown land without the shadow of title."

The claimant produced a Dutch deed, which Mr. Le Mesurier described "as for a different land altogether on the other side of the high road" (). Mr. Le Mesurier stated that Karuwalabeddakele "is quite a different land on the other side of the high road," and that the claimant himself possessed "a Government grant for a portion of the very land, Karuwalabedda, that is now claimed by him," and "he commented on the fact that" the claimant "did not care to put this in evidence" (*ibid*); also on the

fact that he had not produced any tax receipts to show that he had "cultivated" the land in question at intervals during the last 50 years or so." Further, in a memorandum inquiring dated 31st March, 1894, in Mr. Le Mesurier's handwriting, and headed by him, "Karuwalabedda encroachment," Mr. Le Mesurier states, "I have inspected this land, and have no doubt whatever that the land belongs to the Crown, and that the claimant made a deliberate encroachment on it," under cover of what he is pleased to call "lebima."

In February, 1896, Mr. Le Mesurier began clearing Karuwalabedda, the very land that he had described two years before as "undoubtedly Crown land." The extent claimed by him is over 60 acres.

His claim is based on a deed of transfer dated 29th January, 1896, which conveys to him Atapatturalage Lebima or Karuwalabedda of 100 acres extent.

There are two vendors, Attapattuge Don David and Perumpulle Arachchige Don Aberan Appu, and their title is "inheritance."

The last-named vendor has been examined, and he denied that he sold Mr. Le Mesurier any more than three acres of old garden land to which he was entitled. The circumstances under which the transfer was executed, as described by him, show that the transaction was not a bona fide one. He states that he handed Mr. Le Mesurier an old deed, but that deed has never been produced. This statement is corroborated to some extent by the evidence of his brother, Don Andris, who is one of Mr. Le Mesurier's witnesses, that there were old deeds in the possession of this vendor.

Annexure No. 15.

Karuwalabedda.

This was the only piece of forest in the neighbourhood, and it has been completely devastated by Mr. Le Mesurier. The cocoanut plants he planted in it are now neglected and overgrown with scrub, and there are a good many vacant holes, which were either never planted or in which the plants have died. (Diary of 13th May, 1897.)

This land is within a mile or two of the railway, and its preservation as forest was much to be desired.—J. P. L.

Annexure No. 16.

Malimmada Claim.—Notice No. 203 of 17th June, 1898.

I inspected lands at Malimmada claimed by Mr. Le Mesurier on transfer from some of the villagers. I examined some of the vendors.

Two denied that they signed the deed, others say that they did so because Mr. Le Mesurier told them the lands were their private property. It seems likely that he had some idea while he was Assistant Government Agent of getting possession of these lands, for he inspected them in 1893 with the Mudaliyar, and made inquiries as to whether they were suitable for cocoa-nut cultivation.

His plan of operations appears to have been to get clerks of the Deputy Fiscal's Office and D.R.C. to arrange all the Wattorus of lands paying one-tenth. He then made a list of these lands, and after he was dismissed got transfers for them from the villagers.

Annexure No. 17.

Kirimetiyahena Claim.—Notice No. 120 of 6th August, 1897.

(D.C. 9345 dismissed.)

Mr. Le Mesurier's so-called vendors are two, viz., Hettiachchige Pedris and Hettiachchige Punchi Appu. He does not call them. The reason is obvious. The Mudaliyar states that there is no such man in Malimmada as Hettiachchige Pedris, and Hettiachchige Punchi Appu denied before the Mudaliyar that he had ever signed the deed, 5724, or that he had any claim to the land that it purported to convey. He further stated that there was no other man in the village of the same name as himself. This was only a month or two after the deed was executed.

Mr. Le Mesurier will have some difficulty in proving this deed. It should be im-
d as a forgery.

15th April, 1898.

lar^t
be
f^c

Annexure No. 18.

Balapatelahena Claim.—No. 9 of 9th July, 1897.

The only title in these deeds is inheritance, and no old deeds are annexed to them.
17. The vendors are seven in number, and these persons between them purport
to transfer 1,300 acres of forest land to which they are entitled by inheritance.

18. The claim therefore depends entirely upon evidence of possession by these persons, but none of them have been called before me by Mr. Le Mesurier.

The husband of one of the vendors, examined by the Mudaliyar, stated that *some of the vendors did not sign the deed, viz., his wife, Lokuhamy, and sister, Punchi Baba. The other vendors were coolies employed at the plumbago pit.* (Extract from report to Attorney-General.)

It was stated by one of the headmen that Mr. Le Mesurier, when Assistant Government Agent, had refused a permit to one David Jayasuriya to open a plumbago pit here, and then subsequently, after he had ceased to be Assistant Government Agent, he went and opened one here himself, at the same time claiming the adjoining land. It is satisfactory to learn that he burnt his fingers over it. (Extract from diary.)

Annexure No. 19.

Peraliwetigalahena Claim.—No. 155 of 21st January, 1898.

Examination of Mr. Le Mesurier's vendors.

To-day was fixed for the examination of Mr. Le Mesurier's vendors in one of the three claims of his inquired into on 3rd and 4th instant. Three were examined, and stated that they did not know what lands they had transferred to Mr. Le Mesurier; he had told them they were entitled to some chenas, which he read out from a book, and that he wished them to transfer them to him, to which they had no objection. They were paid Rs. 5 each. They further stated that the notary did not read over the deed to them.

He had been up to the Court to get a plaint prepared against the vendors examined yesterday for perjury, and this he addressed to the Attorney-General in my presence, so that I might see that he was resolved "to bring the matter to a head at once." I said nothing, as I knew the Attorney-General would refer the proposed prosecution to me before sanctioning it. It seemed to me very like intimidation of the witnesses.

Reported to Attorney-General on Mr. Le Mesurier's application to be allowed to prosecute some of his vendors in the Hettiduwekele case for perjury. The perjury consisted in their stating that the deed was not read over to them by the notary, and that they did not know what lands they were supposed to be transferring. They stated that Mr. Le Mesurier read out the names of a number of chenas from a book, told them that they belonged to them, and he wanted them to transfer the chenas to him. Naturally, as they were "to get some money" they had no objection. This account is in accordance with the procedure which we know Mr. Le Mesurier to have followed. He had the wattorus in the Kachcheri searched (before his dismissal, of course), and a list made of those lands for which there were one-tenth wattorus, whether before 1872 or not, having persuaded himself that such lands were private. Then after his dismissal he employed a headman and other go-betweens to bring up persons of the same family as those whom the wattorus showed to have cultivated (if not the actual cultivators themselves), in his house, where he had a notary for days writing out deeds. The people were told the names of the lands that they were entitled to according to his theory, and were directed to transfer them to him, which they did, receiving therefor a few rupees. Imaginary extents and imaginary amounts as consideration were inserted in the deeds, and very elastic boundaries.

The notary and Mr. Le Mesurier would have us believe that all these deeds were executed with all due formalities, and with the greatest care, but I very much doubt it myself, from the circumstances under which they were executed.

In fact, the last inquiry held by me showed plainly that they had not. It was stated by the brother of one of the alleged vendors that the latter had been dead for four

years. Another vendor had signed the wrong deed, transferring chenas on the gama Korle side of the Hulandawa river, where he supposed that he was signing, inquiring transferring some chenas on the Morowak Korle side. This deed, however, did not contain his name. And these are the deeds that were so carefully executed.

Annexure No. 19A.

Paraliwetigalahena Claim.—No. 155 of 21st January, 1898.

Depiyagala Mukalana Claim.—No. 225 of 22nd July, 1898, and others.

Mahawattage Don Dionis affirmed:—

"I am one of the vendors on this deed, 5840. I signed it (points out). I do not know what I sold" (in reply to a question asking what lands he transferred by it). Mr. Le Mesurier objects to this question, and states that the deed should be read over to the witness first, and then he should be asked whether he sold the lands named in it.

I overrule the objection. I am examining the witness as to the bona fides of the transaction, Mr. Le Mesurier himself having neglected to call his vendors to show it., "I did not own any of the lands transferred. Mr. Le Mesurier said there were lands belonging to the Mahawattege family, and told me to sign the transfer for them, and I did so. I do not know what lands appear in the deed. Mr. Le Mesurier told me they were lands belonging to my family, and asked me to sign the deed. I was paid Rs. 5. I was asked to sign in three places, but I don't know what it was for."

Mahawattege Don Bastian affirmed:—

I am one of the vendors on this deed to Mr. Le Mesurier, 5840. I think it was some chenas we transferred. I cannot recollect what chenas. I do not know whether I was entitled to any chenas at that time. Wijesinge Odris and Mahawattege Juanis called me, saying they were going to sell chenas to the Agent, and that I had better come with them. So we went to Kotawila. We signed this deed there. I don't know who gave the names of chenas to the notary; I did not. Those people must have done it, as they called me. I saw Mr. Le Mesurier. He did not speak to me. I can recollect some of the chenas in the transfer, I think. Those people told me what they were going to transfer. I recollect Tumbekumburahena, Kekirihena only. We were paid Rs. 5s. each.

Mahawattege Juanis affirmed:—

I am one of the vendors on this deed (5840). I signed it. We transferred Tumbekumburahena and Kekirihena to Mr. Le Mesurier. Only those two chenas. Mr. Le Mesurier informed us that those chenas had formerly been cultivated by one Mahawattege family, and on that account we transferred them. I gave the names of these chenas to the notary. I did not give any other names.

Wijesinhage Babun affirmed:—

I signed this deed (5840) as a vendor. We transferred by it Karawketiyehena to Mr. Le Mesurier. No other lands. Wijesinhage Odris called me, saying that land was paraveni, as it had paid one-tenth to Government. I have never cultivated that land; I don't know whether my father did or not. The deed was not read over to us. It was said by Mr. Le Mesurier, "There are lands belonging to you; give them to me, and you will be paid money." The notary said nothing, except to ask me to sign. (Mr. Le Mesurier here puts questions in such a way that they suggest the answer, and I point out to him that this is objectionable, but he contends that he has a right to put them in this way. Eventually, instead of putting the question in this form, "The notary then asked you to give particulars of the lands?" he puts it in the ordinary way, "Did the notary, &c.")

"He took a great deal of trouble?" (Reply of "Yes" to a question put in this form by Mr. Le Mesurier.)

"He explained to us what he had written, in order that there might be no mistake about what we were going to sign?" (Put in this form to witness.)

(Names of chenas read out to witness by Mr. Le Mesurier.)

("Samaratunge Lewis" is suggested by Mr. Le Mesurier.) "I don't recollect his cultivating. I recollect a little that he did."

7. Take first 5840. This deed purports to convey 54 chenas of 2,000 acres extent, between somewhat elastic boundaries, to Mr. Le Mesurier.

Entries
from
Report on
this claim.

There were 37 vendors, and the notary states they were all present, and signed presence after it was read over to them.

I have examined 11 of them. It turned out that one of them, *Munasinge* ^{int}, although his name appears as a vendor on this deed, and it purports to bear his name, had never intended to sign this deed at all, but another one.

10. He had intended to sign a deed (5838), transferring a chena on the other side of the Hulandawa river, to Mr. Le Mesurier, but by mistake his signature was taken to be that of 5840, instead of 5838! and his name does not appear as a vendor on the latter.

11. So much for the care with which the deed was executed.

13. Evidence can also be called to prove that *the vendor* whose name appears twelfth in the list (see page 8), viz., *Gamachelige Siyadoris*, died four years before the deed was executed! I have his brother's statement to that effect. So much for the care with which the vendors were identified by the attesting witnesses (who, by the bye, cannot now be found, to examine).

21. One of the vendors admits that his father is living, and it is through his father that he derives his title, such as it is. Yet the father did not join in the transfer.

Annexure No. 20.

Agalehele Claim.—Notice No. 157 of 21st January, 1898.

D.C. Case dismissed on technical objection, 12th December, 1898.

The only claim received was one by Mr. Le Mesurier. It is based on two deeds, 5669 for Nugagahahena, and 5671 for Ilukkanattewatta and Agala Kele, to which he subsequently added a third, 5625, Lawlugahahena and other lands.

These are all deeds executed in February, 1896.

In 5669 the land Nugagahahena was stated to be situated at Warakapitiya, whereas the Nugagahahena included in the notice is situated at another village, Denapitiya.

On examining two of the vendors, it became quite clear that the Nugagahahena to which the deed 5669 referred was not the one in the notice, and eventually Mr. Le Mesurier himself admitted it.

There remains 5671 for Agala Kele and 5625 for Lawlugahahena.

The only male vendor on 5671 was examined. He had no clear idea what it was he had transferred by this deed. First he said it was Ilukkanattedeniya, alias Agala Kele, one land only, and then that the deed transferred Agala Kele and a deniya.

As a matter of fact, it transfers Agala Kele and a garden Ilukkanattewatta.

As to Nugagahahena, alias Laulagahahena, the boundaries given in the deed 5625 show that it cannot be the land proclaimed (lot 13348). (Extract from report to Attorney-General.)

Annexure No. 21.

Tibbotuhena, &c., at Kotawila.—Notice No. 113 of 30th July, 1897

Appuwagehena at Kamburugamuwa.—Notice No. 88 of 9th July, 1897.

Egodamihalugoda at Kamburugamuwa.—Notice No. 127 of 13th August, 1897.

There was nothing noticeable about any of these claims, except the first. They all, except the first, depend upon shadowy wattorus, which it is not proved even referred to them. One produced for Tibbotuhena referred to a land of that name in the adjoining village of Sultanugoda.

In the first case, however, there was another claimant besides Mr. Le Mesurier.

Mr. Le Mesurier stated: "I do not even know where this land is. I claim it on public grounds, and in order to prevent Government from getting possession of it." He further stated that he and the other claimant would fight Government together over it, and asked me for his name, which I refused to give him. He then said he would get it from the Vidane Arachchi.

To show the recklessness of Mr. Le Mesurier's statements (to use a euphemistic expression), I note that he complained to me in his last letter, received on December 22nd, that an agreement with other claimants had been sanctioned and published in the Government "Gazette," regarding Nidangalahena at Warakapitiya, ignoring the claim that he had made to the land. No claim to this land had ever been received from him.

Nature of Mr. Le Mesurier's claims. Dishonest production of a deed in support of a claim that it did not refer to.

A frivolous claim.

His tactics.

Disregard for truth shown by Mr. Le Mesurier.

I pointed this out, and asked him to refer to the letter in which he had made the claim. He has never replied to that inquiry, nor alluded to it since I began inquiring into his claims.

Annexure No. 22.

Tibbotuhena Claim.—Notice 113 of 30th July, 1897.

Application for the purchase of Tibbotuhena (or what remains of it) was made by Mr. Melville White during the time that Mr. Le Mesurier was Assistant Agent of Matara, and by his direction the Mudaliyar took Mr. White over the land. Mr. White, however, did not proceed with the purchase.

At that time, therefore, viz., in 1894 or 1895, Mr. Le Mesurier considered Tibbotuhena to be Crown land, available for sale.

Immediately after his dismissal, however, viz., in February, 1896, he changed his mind on this point, and got two deeds executed in his favour, one for Tibbotuhena, which is described as in extent 100 acres more or less.

One of the vendors of Tibbotuhena, viz., Sarasin Patrirage Babahami, appeared before the Mudaliyar, and stated that it was Crown land, and denied having ever signed the deed. The other two vendors of this land could not be found. (Extract from report of 1st February, 1898, to Attorney-General.)

Annexure No. 23.

Egodamihalugoda Claim.—Notice No. 127 of 13th August, 1897.

It is evident that the deed produced by Mr. Le Mesurier must cover this land.

If Mr. Le Mesurier depends upon this deed, no other deed can be of any use to him, unless it is one upon which this deed depends for title, but that is not the case. The title depended on is "inheritance" merely; Mr. Le Mesurier's statement, therefore, that he "*thinks there are two deeds for this land, but is not certain,*" does him no good, and may be dismissed from consideration.

These vendors are two, Vitanage Andris, or Don Andris, and Hewa Komangodage Jayan Hami.

One of these, Don Andris, was examined.

This vendor also stated the circumstances under which he executed the transfer in favour of Mr. Le Mesurier.

Mr. Le Mesurier sent for him, and asked him whether he had cultivated the land, and paid one-tenth, and on replying in the affirmative, told him the land was his, and asked him to sell it. *It had not occurred to him before to claim it.*

(I should have stated with reference to Mr. Le Mesurier's statement that he thinks there is another deed, that he was noticed under Ordinance 1 of 1844 to produce his deeds for Egodamihalugoda, and produced only No. 5508.)

His reference to another supposed deed is merely intended to complicate matters, and confuse the issues. (Extract from report to Attorney-General of 2nd February, 1898.)

Annexure No. 24.

Nawalahena.—Notice No. 225, July 22nd, 1898.

On the way back I inspected Nawalahena, another clearing made by Mr. Le Mesurier from Dedyagala Mukulana. The vendors admit that they never had any possession, and that they sold it to Mr. Le Mesurier at his request, as they were in want of money.

Two of the vendors of Peralawetigala also admit that the lands were cleared by them, and their ancestors on Crown Permit.

(d th
Annexure No. 25.

Claims to Batalahena (Notice No. 138 of 17th September, 1897) and Kudaluelahena (Notice No. 137 of 17th September, 1897).

Went up to the Kachcheri at 9 o'clock, and stayed there until 3.30 p.m. Inquiry into Batalahena (Warakapitiya) and Kudaluelahena (Warakapitiya) claims.

They are as unsubstantial as the others, depending entirely upon wattoru, and not on prescriptive possession.

Sharp
practice of
Mr. Le
Mesurier.

I have observed Mr. Le Mesurier during his wattoru search, and I notice that it is his practice, when he comes across a wattoru showing payment of one-third, no matter what the name, to say that it is a wattoru for the land in question, which he then says is called also by the name appearing in that wattoru.

Annexure No. 26.

Kudaluela-Hena.—No. 137 of 17th September, 1897, D.C.

Mr. Le Mesurier bases his claim on two deeds of the same date in February, 1896, one containing the name Weweldarana, and the other Nugagahahena.

He had not called any of the four vendors, viz., W. Loku Hami, W. Punchi Hami, V. Baba Appu, and R. Juwanis Hami, but they have all been examined by the Mudaliyar.

Loku Hamy stated that she did not know the land, and denied having signed the deed.

Punchi Hami also stated that Loku Hamy did not sign the deed. She, however, claimed a share of Kudaluelahena by inheritance, but admitted that there were no houses or fruit trees on the land.

She is alleged to be the wife of Baba Appu, one of the vendors on the other deed, 5669.

This man admitted that he had not cleared Nugagahahena for 10 or 12 years, and that there were no houses or fruit trees on it.

The other vendor, Juwanis, made the same admissions.

These two vendors stated that they sold the land for Rs. 25, but that they only got Rs. 10, the balance going to a go-between.

Punchi Hami stated that she received Rs. 20 only. The consideration in each deed is put at Rs. 100.

4th February, 1898.

Welagamage Loku Hami affirmed:—

I did not sign any deed at Mr. Le Mesurier's house on 22nd February, 1896. I did not go to his house. I have never seen a deed in my life. Somebody must have personated me. I do not know Weweldarana nor Nugahena, nor the other alleged vendor, Welage Punchi Hami. There is no one of that name. I live at Warakapitiya. There are no Vitanage people at Warakapitiya. I do not know Vitanage Baba Appu.

The other alleged vendor on 5672 is said to have died six years ago at Kandy.

The vendors on the other deed, 5669, are not to be found.

7th April, 1898.

Annexure No. 27.

Kanattewatta or Talalgahahena at Warakapitiya.—Notice No. 112 of 30th July, 1897. (D.C. 9352 dismissed.)

A portion of this same land, comprising among other lots 10939 (in the south-western corner) and 10937 on the west was taken possession of by Hewabatgamage Jayan who claimed it as his paternal property, and planted by him with citronella, &c. As the citronella was ten years old when the matter was inquired into in October, 1895, the Mudaliyar recommended that a settlement be come to with Jayan either by giving him a Certificate of Quiet Possession or by selling the land to him at Rs. 10 an acre, the upset price.

4. Mr. Le Mesurier was Assistant Agent at the time, and he adopted the latter alternative, and sold the lots 10936 to 10940 to H. Jayan at Rs. 10 an acre, he himself noting in the file "sold to claimant at Rs. 10 per acre."

5. This, it should be noted, was not recognizing that Jayan had any claim to the land by paternal inheritance, but merely took into account the fact that the cultivation on the land was 10 years old.

7. The other lots, viz., those now included in the notice had been advertised for sale (Nos. 10941, 10942, and 10943) in the same year, 1895, but Mr. Le Mesurier refused to sell them, marking in the Mudaliyar's appraisal report—"Within five miles of railway, not to be sold."

8. That was in August, 1895. In February, 1896, Mr. Le Mesurier, having been meanwhile dismissed, got a transfer executed in his favour for 50 acres of the land, the boundaries including the land which had previously been sold to him by Jayan.

10. The vendor Kaluhalamullage Andris made no claim to this portion of Nagatiamullawatta or Kanattewatta when it was sold by Mr. Le Mesurier to Jayan in 1895, this he admits himself. He also admits that he made no claim to the lots noticed when Mr. Le Mesurier put them up for sale in that year (when he subsequently made the order "not to be sold").

11. He further admitted that although he claimed the land as paternal inheritance, and he has five brothers and sisters with claims equal to his own, he had sold their shares as well as his own.

12. He admitted further that he had never had possession nor had cleared the land since his father's death 20 years before.—(Extract from Report on claim to Kanattewatta.)

Annexure No. 28.

Palatuwo Claim.—No. 204 of 17th June, 1898.

The land consisted of 77 acres of "bamboo jungle," which has not been cleared for 30 or 40 years with the exception of small portions as described below. There are no planted trees on it.

It is based on a deed of 1896 which transfers to him 150 acres for a nominal consideration of a rupee an acre.

His boundaries apparently include the proclaimed land and something more—(to). There are two vendors. The following is an epitome of their evidence.

Mr. Le Mesurier sent for them and told them this land was their paraveni property, and told them to sign a deed which he had ready. They named some chenas, whereupon Mr. Le Mesurier selected the deed from a pile of other deeds, referring to these chenas. They did not give the boundaries or the extent. The deed was not read over to them.

Before they signed the deed Mr. Le Mesurier promised to give them some money, but after they had signed he said he would give the money if he was successful in getting the land from Government. They did not know before Mr. Le Mesurier told them that all the jungle was their paraveni property.

The second vendor did not know of any cultivation of this land by his father.

The first vendor had never cultivated this at all neither had his father. He knew nothing of any cultivation by his ancestors, though Mr. Le Mesurier said they had cultivated it.

Neither vendor received a cent of the consideration.—(Extract from Report to Attorney-General.)

Annexure No. 29.

Aturediya Claim.—Notice No. 32, of 11th June, 1897.

(D.C. 9266, dismissed on technical ground.)

From Mr. Le Mesurier's examination it appeared that he had no interest in the land whatever, and that he merely appeared as the "Agent" of the other claimant. He was allowed by Mr. Pagden to appear in this capacity who held that section 15 of the Ordinance allowed claimants to appear by their agents even though they themselves were present in person.

Mr. Le Mesurier appears as "Agent" of the claimant.

In view of the wording of the following section (16) "shall proceed to examine the claimant or his Agent (when his personal attendance is not required)," I do not think this ruling correct nor can I suppose it was ever intended by the Ordinance that a person not a proctor or advocate should be allowed to appear as such on behalf of a claimant.

"Agent" also, I think, means agent as defined by section 25 of the Civil Code.

Mr. Le
Mesurier
as a Cham-
pertor.

The claimant stated that Mr. Le Mesurier had wanted Rs. 500 to take up the case, and that he had finally agreed to give him one-third share of the land (he said half at first) if he won the case! Mr. Le Mesurier admitted this. This is an act of *champerty* which is defined by Wharton as a bargain between plaintiff or defendant in a suit regarding property with another person for a share of such property, if the suit is successful. I do not think a person who is guilty of champerty is a fit person to appear in Court as an "Agent."—(Diary of 21st January, 1898.)

Annexure No. 30.

Unscrupu-
lousness of
Mr. Le
Mesurier.

Mr. Pagden having informed me that Mr. Le Mesurier had handed to him yesterday, during the inspection of the land a memorandum on the subject of payment of one-tenth tax in the Matara District, on the plea that it was a written statement of the arguments used by him at the trial, I told Mr. Pagden that I had written a reply to this memo. which had been submitted to Government and approved, and that I thought it ought to be put in too. Mr. Pagden agreed that this was but fair, and accordingly this morning I went and got the Crown Proctor to sign it, and then took it to Mr. Pagden, who is to-day writing his judgment.

This is another instance of Mr. Le Mesurier's unscrupulousness. On the 15th at the close of Mr. Le Mesurier's speech, I asked the Crown Proctor to draw the Judge's attention to the proclamation of 1803, which fixed one-tenth as the rate for all high lands in the Matara District whether Crown or private. (This was because Mr. Le Mesurier had only quoted the proclamation of 1800, which fixed the rate at half.) Mr. Le Mesurier immediately objected on the ground that the case for the Crown had been closed. Yet the next day when the case had finally closed, he himself hands a written statement of his arguments to the Judge, which statement I knew contained new matter, not introduced at the trial. Mr. Pagden would have been justified in refusing to accept this memo. which gives a totally misleading account of the chena question in the Matara District, as it ignores the Proclamation of 1803 altogether. It was fortunate that I heard in time what had been done. A verbal notice of the filing of the memo. had been sent to the Crown Proctor through the Secretary, but I found that the Crown Proctor had no idea what the message meant. — (Diary of 17th February, 1898.)

Annexure No. 31.

Polpelahena Claim.—Notice No 138 of 17th September, 1897.

(D.C. case 9367, dismissed.)

Mr. Le Mesurier claims the whole block on his deeds, which he has produced. They are dated February, 1896, and are for the same lands, viz., four of the chenas comprised in the noticed lands. The extent in both is given as 100 acres, and the consideration also at Rs. 100. The vendors, however, are different.

Now a curious circumstance about these deeds is that not only are the lands the same, and the extent the same, but the boundaries also are to a great extent the same.

Annexure No. 32.

Identification of Land Proclaimed.

Extract from Report of Special Officer on Gurawalayagowella Claim.

Notices No. 81 of 9th July, 1897, 9346; 95 of 16th July, 1897, 9347. (Dismissed.)

Vide ex-
tract from
Judgment
in P.C.
31967.

3. Mr. Le Mesurier would have us believe that he is unable to identify the lands from the full descriptions of them, accompanied by sketches, published in the Government Gazette.

4. He insisted on his right to see the Preliminary Plan, which I had allowed him to see solely as a matter of courtesy in other inquiries. I found that the use he made of

the Preliminary Plan was to obtain from it the names of adjoining lands marked as private, and then to endeavour to find *wattoorous* relating to such lands (he had been allowed to search Kachcheri *wattoorous* while the inquiries were going on in connection with a pending Court case), and if he found them, to assert that the names of these lands were also the names of the land in question, or to argue that because these lands were private, therefore, the noticed land which adjoins them, must also be private. He also quoted the surveyors remarks in the tenement sheet as to the age of the jungle on the noticed land or on the adjoining lots as evidence in his favour. I was unable to let him see the Preliminary Plan yesterday as it was with the Government Agent, but even if it had been with me he had no right to see it or to count on it as helping him to produce his evidence, which was all he had to do.

8. It was with difficulty and only when I had threatened to deal with Mr. Le Mesurier for contempt of Court, that he was induced to produce Nos. (2) and (3). He first stated that he was unable to say whether he had any deeds for Guruwalaya-godella, and then after he had produced No. (2) denied that he had any other deed for this land. Subsequently he produced No. (3).

Shuffling
and
perjury.

(23) To shew the absurdity of Mr. Le Mesurier's pretence that he cannot identify the land from the description and sketches in the "Gazette," I may point out that the sketches are on the same scale as the Preliminary Plan and differ from the latter only in the colour of the paper and the fact that the boundaries are not written in, which Mr. Le Mesurier might have done for himself, when identification would become perfectly easy.

Annexure No. 33.

Identification of Land Proclaimed. Extract from Judgment in P.C. 31967.

The particulars given in the notice regarding the position and names of the land and its boundaries are so full and clear as to enable any person who really wanted to identify the land to do so beyond all reasonable doubt. The land is high land, rising abruptly in many places from the paddy fields below it to a height of 200 or 300 feet; it stares you in the face. Given one stretch on the boundary line, *e.g.*, the land on the north sold by the Crown, the position of which land is readily ascertainable, the boundary line could be followed right round without difficulty.

Appears* to have had no difficulty in identifying the land, for only three weeks after the date of the first publication of the notice he notified to Mr. Lewis by letter that he had a claim to make to the land, and at the enquiry into his claim held by Mr. Lewis on the 18th ultimo, he produced in support of his claim the deed on which he claims the land where the plumbago pit is situate—the scene of the offence charged.

* * * * *

He does not appear to have made any attempt to locate the boundaries given in the notice.—(Extract from judgment of P.M. in P.C. 3.)

Annexure No. 34.

Maddaduwahena and claim inquiry. Behaviour of Mr. Le Mesurier.

Mr. Le Mesurier demanded the Preliminary Plan which, as it happened, had been sent to the Government Agent, and had not been returned, though telegraphed for. I so informed him, and he immediately began to use violent language, complaining that he could not go on with the inquiry unless he had the Preliminary Plan, &c. I pointed out that I did not admit his right to see the Preliminary Plan at all, the sketch published in the "Gazette," which is a reduced facsimile of it, being quite sufficient for the purpose of identifying the land, and that I had only allowed him to see the Preliminary Plan during the other inquiries as a matter of courtesy and not as a matter of right. I told him also that I intended to proceed with the inquiry, Preliminary Plan or no Preliminary Plan. I required him to give evidence and to produce his deeds. He then said he did not know whether he had any deeds as he could not identify the land without the Preliminary Plan. I called upon him to produce a certain deed (of which we have particulars) which relates to the land. He produced it, but said that he did not produce it with reference to the land. I asked him whether he had any other deed for the land he had claimed. He said, "No," but shortly afterwards produced a second deed relating to it.

* Sic.

A third deed he did not produce, but stated that he did not rely on it. The reason of this was that the alleged vendor denies that he ever signed the deed, and asserts that he was personated by another man, whose name he gave.

On my proceeding to examine this vendor, who was present, Mr. Le Mesurier abruptly left the Kachcheri, having stated that he would not call any oral evidence.

In order to compel Mr. Le Mesurier to produce these deeds I had again to threaten to deal with him for contempt of Court. He thereupon charged me with holding the inquiries "by brute force," and began a tirade against the Ordinance and against me, whom he further charged with only recording evidence that went in favour of the Crown, and with omitting to record any that went in his favour. This was because I refused to file a copy of a letter written to him by Mr. Jardine, a planter, in which he expressed the opinion that Jak trees only grew where planted by man. In this refusal I only acted in accordance with Mr. Le Mesurier's contention on which he insisted before Messrs Jackson and Cookson, that the Officer holding inquiry under the Ordinance was bound by the rules of evidence. As it is, I have admitted evidence that I considered irrelevant merely to give Mr. Le Mesurier plenty of rope.

The charge he made against me in itself amounted to contempt of Court, if I had chosen so to treat it, and the only return I got for my complaisance in allowing him to see Preliminary Plans was abuse and a claim to see them as of right. In future, unless I receive instructions to the contrary, I shall not allow Mr. Le Mesurier to see them at all.

I found that his anxiety to see the Preliminary Plan was due to the fact that he wanted to see the Surveyor's remarks in the tenement sheet attached in order to get information from them, and to argue that because adjoining planted lands of the same name were admitted to be private, therefore the land proclaimed must also be private, that is to say, that if a villager makes an encroachment and plants it, and the Crown does not in consequence care to dispute his title, acquired entirely by possession, all the adjoining waste land must be also private.—(Diary of 4th February, 1898.)

Kundaluhena and Nugahena.

In this case there are two deeds and four vendors. One vendor denies that she ever signed the deed and her denial is corroborated by the other vendor.

Annexure No. 34A.

May 3, 1898.

I allowed him to see the Preliminary Plan, but not the tenement sheet. The former is all that can be necessary for the identification of the lands, and he can only want to see the latter in order to get information from it.

One* is that the sketch plan published with the notice is unintelligible, and not in accordance with the provisions of Section 41 of the Civil Code.

This is nonsense. The sketch plan is not intended to be studied alone, but with reference to the description of the land given in the notice. It is quite easy for Mr. Le Mesurier, if he does not understand it, to write in the boundaries and adjoining lands from the description, when it will become quite intelligible.

6th December, 1897.

Annexure No. 35.

I had to-day to compel him to give up a Kachcheri file which I had handed to him merely as a matter of courtesy, with reference to a question on which he wished refresh his memory while cross-examining the Mudaliyar, and which he persisted retaining in his possession in order that he might search through it for chance information regarding the land. He then contended that he had as much right to see the Kachcheri file as I, &c.

* Sic.

Annexure No. 36.

A False Charge.

Mr. Le Mesurier affects to insinuate that some of (the watorus) have been made away with designedly in order to prevent him from proving his claims. The best answer to this is that they were in Mr. Le Mesurier's house for some time, and that he would not give them up. Since then they have been kept in the vault.—(Diary of January 27, 1898.)

Annexure No. 37.

Mr. Le Mesurier's Sentence.

The force of the evidence recorded (and it includes the evidence of the 1st defendant) is irresistible. The 1st defendant knew when he started to prospect for plumbago, and had the pit dug, that the land on which the pit was sunk was included in the land mentioned in the notice; he knows the effect of laws and the consequences of breaking them, for he has had to administer laws.

He must have been well acquainted with the provisions of the Ordinance under which he is charged. He now seeks to escape from the consequences of his disobedience of those provisions, by suggesting that the District Judge having declared certain other notices in which he was interested to be invalid, he felt justified in holding that the notice now in question was also invalid, and in acting as if it had never been issued: this is absurd.

(I have no evidence before me as to what the District Judge did decide, the records of the cases referred to being in the Appeal Court, and no certified copies being available.)

The 2nd accused admits that he was immediately supervising the sinking of the pit, &c., and that he was aware that difficulties would probably arise with the headmen in consequence of his operations, and he was armed to meet them. There is no doubt in my mind that the 3rd accused accompanied 1st accused to the land to assist him in meeting those probable difficulties, and he was armed for the purpose.—(Extract from judgment in P.C. 31967.)

Annexure No. 38.

The sentence was fully deserved for the following reasons:—

(1) Mr. Le Mesurier went to the land armed, and sent his assistants there armed, in order deliberately to commit a breach of the law.

(2) As a consequence solely of this action there was a riot.

(3) Although quite ready to commit a breach of the Ordinance himself, yet he wanted the Assistant Government Agent to prosecute a villager who had occupied a portion of one of the lands claimed by him.

(4) He has continued digging plumbago on the land up to the present, and is liable to prosecution for every day that this offence was committed.

(5) It is said that he has already got 10 tons of plumbago from the land, with plumbago of Rs. 700 a ton.

The value of the plumbago removed, Rs. 700. (I should doubt, however, whether he has got so much.)

(6) He set up a perjured defence.

(7) The conviction will have a salutary effect.

(Extract from diary of September.)

Annexure No. 39.

Mr. Le Mesurier's Sentence.

With regard to the Le Mesurier conviction, it would be interesting to learn how the Supreme Court were able to assess Mr. Le Mesurier's guilt as deserving to be punished by a fine of Rs. 25 less than the full penalty of Rs. 100. If ever a case deserved the full penalty of the fine at least, this one did. (Diary of 15th October, 1898.)

Annexure No. 40.

Another breach of Section 22 of Ordinance 1 of 1897.—June 6th.

I find that in one or more of Mr. Le Mesurier's cases referred to Court, although he came forward as a claimant at the claim inquiry, he has not done so in the District Court, but, instead, Mrs. Le Mesurier (No. 2) has appeared in response to the notice posted up under section 8, and filed a statement of claim, in which she states that she has acquired the land from Mr. Le Mesurier while the claim was pending. In fact, at the time I was holding the inquiry with Mr. Le Mesurier as claimant, he had at that moment no legal interest in the land. Yet he concealed this fact from me.

This acquiring of an interest in land which is the subject of a notice under Ordinance 1 of 1897, while that notice was pending, is an offence under Section 22, punishable with three months' imprisonment, rigorous or simple, or with a fine of Rs. 100, or both.

Annexure No. 41.

Statement made by Mr. Le Mesurier when examined by the Magistrate in P.C. 31915.

"I was on the land with my assistants, Macaulay and Gill, and four or five coolies. We had been there about an hour. The land belongs to me, but the Crown claims it. It has been proclaimed by Mr. Lewis, the Special Officer, under Ordinance 1 of 1897.

" We were examining the land to see if there was plumbago there, and it was worth digging for."

Annexure No. 42.

SIR,

Kotavila Estate, Matara, Ceylon, January 26, 1898.

Compare
with letter
dated 31st
October
1897
annexed
(para. 3).

I have the honour to request payment of the sum of Rs. 300 (three hundred rupees), being my expenses for *travelling from Batticaloa to Matara and back again*, in order to attend inquiries on summons under the Ordinance No. 1 of 1897, in the months of August and September last year, and *January this year*.

I also request payment of my batta at the rate of Rs. 10 per diem, for every day that I have been detained or may be detained in the Matara District for these inquiries, and of compensation for the loss of my salary as manager of the Carnac Mills at Batticaloa during my absence therefrom.

I draw a salary of Rs. 500 per month while I am at work at Batticaloa.

Please see annexed memo.

Yours faithfully,

C. J. R. A. H. LE MESURIER.

J. P. Lewis, Esq.

Memorandum referred to.

August, 1897, cost of journey from Batticaloa to Matara	... ..	Rs. 100.00
September, ditto, Matara to Batticaloa	... ..	100.00
January, 1898, ditto, Batticaloa to Matara	... ..	100.00
Batta for six weeks in August and September, 1897, at Rs. 10 per diem		420.00
Loss of salary at Rs. 500 per month:—		
For six weeks in August and September, 1897	... ..	750.00
Loss of salary at Rs.500 per month for 10 days (to date) during January, 1898	... ..	166.66
		<u>Rs. 1736.66</u>

C. J. R. A. H. LE MESURIER.

Annexure No. 43.

DEAR SIR,

The Carnac Mills, Batticaloa, Ceylon, October 31, 1897.

I understand that you have been appointed Special Commissioner to deal with land claims in the Matara District.

If that is so, I beg that you will fix dates for my claims that will enable me to make arrangements to attend them, &c.

I have to be in Colombo about the middle of January next, and propose visiting my Matara properties at the end of the month.

* * * * *

Yours faithfully,

C. J. R. LE MESURIER.

J. P. Lewis, Esq., C.S.

Annexure No. 44.

SIR,

Matara, March 4, 1898.

I do hereby give you notice that after the expiration of one month from the receipt by you of this notice, I shall bring an action against you in the District Court of Matara, to recover the sum of Rs. 3,000, more or less, being the expenses I have been put to by attending inquiries at Matara under the 1st, 2nd, 3rd, and 4th Clauses of the Ordinance No. 1 of 1897.

Yours faithfully,

C. J. R. LE MESURIER.

To J. P. Lewis, Esq.,

Commissioner under Clause 28 of the Ordinance No. 1 of 1897,
Matara.

Annexure No. 45.

The Christie Settlement unsettled by Mr. Le Mesurier.

September 6th. I much fear that the settlement with Mr. Christie will turn out to be no settlement at all, as I hear that he has transferred all his deeds to Mr. Le Mesurier. It is a pity that when the settlement was made he was not required to execute a deed formally renouncing his claim to the lots which he gave up, or to hand over all the transfers which he held from private parties before the certificate of quiet possession was issued to him. It is needless to say that Mr. Le Mesurier does not recognise this agreement, and that he now claims all the lots that Mr. Christie gave up.

Annexure No. 46.

The Christie Settlement.

September 16th. Mr. Le Mesurier's assertion of a claim to the lots given up by Mr. Christie was also discussed. The deed of transfer executed by Mr. Christie in his favour is drawn up in a very loose way. It recites that Mr. Christie is entitled to the Hueandewa Estate in virtue of certain deeds, "which are" not with me at present, but will be "given hereafter to be annexed to this deed," and does not state what these deeds are. Mr. Le Mesurier a few weeks afterwards transferred the same land to Mrs. Le Mesurier (No. 2), describing it in the same terms as those used by Mr. Christie, but no deeds had been attached, and there is nothing whatever to show what they are. The C.Q.P. is not alluded to in either. In my opinion, it was not proper for Mr. Christie to execute a deed of such an indefinite character in favour of Mr. Le Mesurier, as he knew perfectly well what use Mr. Le Mesurier would make of it, but Mr. Ellis was of opinion that, as the extent was stated to be "200 acres more or less," and the extent actually alluded to by Mr. Christie was, according to my calculation, 239 acres, this would be sufficient to put a limit on Mr. Le Mesurier's claim. Mr. Le Mesurier on the same day mortgaged the Hueandewa Estate to Mr. Christie for 10,000 Rs.

As I expected, Mr. Le Mesurier had been trying to get the District Engineer to pay compensation for metal taken from one of the lots not allowed to Mr. Christie.

Annexure No. 47.

February 14th.—Appearance of Mr. Le Mesurier as "agent" of a claimant.

The objection to Mr. Le Mesurier's being allowed to appear as "agent" of the claimant was again passed by Mr. Chitty, but the District Judge now stated that he

allowed Mr. Le Mesurier to appear both as a claimant himself and also as "agent" for the other claimants. As a claimant he might have been put out of Court at once on his own statement, in which he admitted that his only interest in the land was a promise by the claimant to give him one-third share of the land if he is successful. This is not a legal interest under the Ordinance of

Neither could Mr. Le Mesurier appear in Court as agent of a suitor, because such appearance "in any Court" is governed by Section 24 and 25 of the Civil Code, which defines what is meant by "agent."

This ruling had the unfortunate result of unduly prolonging a perfectly simple case that might have been disposed of in three hours, owing to the irrelevant evidence, speeches, and cross-examination introduced by Mr. Le Mesurier into the trial.

The claimant produced a Dutch deed referring solely to the land Karawila, which is now a paddy field adjoining the land in question. It is described in this deed as "rush land." Mr. Le Mesurier endeavoured to make use of an incorrect translation of this deed filed in the Kachcheri file, in which this is erroneously translated "waste land." No proper translation had been filed by the claimants, and the District Judge having expressed the opinion that one should be filed, I told him that I would telegraph for Mr. de Vos of Galle to attend as a witness, and make a translation of the deed. Mr. Le Mesurier then suggested Mr. Anthonisz, of Ratnapura. I said we were quite ready to accept a translation by Mr. Anthonisz, as I had only suggested Mr. de Vos because he was accessible, but when I added that his fee was Rs. 10.50, Mr. Le Mesurier backed out of it. But though he would not provide a translation himself, he refused to admit one made by Mr. de Vos, though the District Judge suggested that he should admit it in order to avoid the necessity of calling him as a witness.

Unscrupulous
conduct of
Mr. Le
Mesurier,

I have described this incident at length, because it is a good example of Mr. Le Mesurier's unscrupulousness in his dealings with the Crown. He expects every concession to be made by the Crown to his demands, but will himself take advantage of any technicality or subterfuge that he can get hold of against it.

Shuffling.

Here he produced a deed that the claimant relied on, but put in no translation, as he was bound to do by law. When the Crown offered to provide one at its own expense, he would not admit it. Finally, when he saw that the deed was likely to go against his client, he said that he was not certain whether he would put it in evidence or not. Mr. Pagden then told him that the Crown might put it in evidence now that it had been produced by the claimant, and asked him whether he relied on it or not. He said he could not say; he might or he might not, and Mr. Pagden told him that it was not a matter of choice, and that he must decide at once.

I have never seen a case more dishonourably conducted.

February 15.—Suppression of translation by the claimant and his agent.

Mr. De Vos told me that he had already (some time ago) made a translation of the deed for the claimant.

This translation the claimant, or rather Mr. Le Mesurier, was silent about, and never put in, because he knew that it went against his case. This is another instance of the duplicity with which the case was presented by Mr. Le Mesurier.

Annexure No. 48.

November 1st and 3rd.—Malimmada Lands.

Mr. Le Mesurier has written to the Assistant Government Agent objecting to any of the lands in Malimmada, Sulutanagoda and Akurugoda, advertised for sale, being sold, as he claims all unoccupied lands in these three villages, and when asked on what his claim was based, he replied that it was based on the Dutch records in the Museum and on the wattorus in the Assistant Government Agent's custody. The former he has never seen, and he does not know whether the latter refer to the lands in question, as the wattorus have not yet been arranged. It is certain that he has not got transfers for all the lands in these three villages, and I think a claim like this should be simply ignored, even though it gives Mr. Le Mesurier an opportunity of denouncing the injustice of Government.

Annexure No. 49.

January 22nd, 1898.

Mr. Le Mesurier stated at the outset that he would decline to call evidence unless I would state that I would confine myself to the issue, "Does the land belong to the Crown or not?" contending that I had no power to inquire into the claims of private parties, and therefore could not inquire into his claim. I pointed out that the object of the Ordinance was to inquire into claims, and I declined to confine myself to the issue suggested. Thereupon he refused to give evidence or to produce his deeds.

I informed him that if he persisted in this course I should deal with him for contempt of Court, as empowered by Section 3 of the Ordinance.

Annexure No. 50.

Claim inquiries rendered a farce by Mr. Le Mesurier.

Balapatelahena claim. The inquiry consists of Mr. Le Mesurier producing his deeds, nine in number, and all of 1896, only three of which relate to the land in question, and then searching through files of wattorus for any that may possibly refer to the chenas named in the nine deeds. As these are over 100 in number, I am kept practically doing nothing while Mr. Le Mesurier searches, and the inquiry lasts the whole day.—January 26th, 1898.

Refusal to produce witnesses.
Fishing for evidence.

Inquiry respecting Diyadewehena at Kolapola. The same performance as yesterday. A deed of 1896 and a search for wattorus that possibly do not exist.

The vendors are not called. The whole day is taken up in this way. Search was also made again for wattorus relating to Balapatelahena and Kirimaduhena inquired into yesterday.—January 27th.

Annexure No. 51.

No. 9365.

In the District Court of Matara.

C. J. R. Le Mesurier, Plaintiff, vs. Assistant Government Agent, Matara, Defendant.
Judgment of Supreme Court, dated 27th September, 1898.

BONSER, C. J.

* * * * *

Then as to the next appeal, that is an appeal from a refusal by the District Judge to issue a commission to an advocate named by the Appellant to go and search for certain documents which are said to be in the library of the Public Museum in Colombo, in order that he might ascertain whether there are any documents there which might assist the Appellant's case. It is sought to bring that application under Section 428 of the Civil Procedure Code, which allows a Court to issue a commission to make a local investigation. In my opinion, Section 428 does not justify such an application as the present. The District Judge was quite right in refusing to make such an order. Provision is made in the Civil Procedure Code for obtaining evidence, but the appellant has mistaken the course which he ought to have pursued. The appeal must be dismissed with costs.

WITHERS, J.

* * * * *

In the second case, the plaintiff set about the discovery of the documents in a quite unprecedented manner.

Annexure No. 52.

Detention of Deed by Mr. Le Mesurier.

September 24th. I took the statement of the Vidana Arachchi of Ihala Walakada regarding a deed which he produced to Mr. Le Mesurier in 1895, while he was Assistant Government Agent, and which Mr. Le Mesurier has ever since retained in his possession. Not only this, but he produced this same deed before me in support of one of his claims, though he did not explain how it had got into his possession. The Vidana

Arachchi states that when he asked Mr. Le Mesurier to return it he refused to do so, unless he gave him a share of the land. I think this amounts to a criminal breach of trust on the part of a public servant, but, at any rate, the Vidana Arachchi should sue Mr. Le Mesurier for the return of the deed. It will no doubt be produced by him again in support of his claim for a portion of Dediya-gala Mukalana, to which the Vidane Arachchi also has a claim. (Diary of 24th September, 1898.)

Annexure No. 53.

Forwarded to Government Agent a statement made before me by the Vidana Arachchie of Ihalawalakada, in which he says that he produced a deed before Mr. Le Mesurier, as Assistant Government Agent, in support of his claim at Marambe in 1895, and that Mr. Le Mesurier did not return it to him, but has ever since retained it in his own possession, and refuses to return it unless he is given a share of the land.

Mr. Le Mesurier produced this same deed before at a claim inquiry this year, in support of his own claim to lands in this neighbourhood, but did not explain how it had come into his possession, and I was not then aware how it had.

If true, this amounted to criminal breach of trust on the part of Mr. Le Mesurier, and in my opinion the Vidane Arachchi should be required to sue Mr. Le Mesurier civilly for the recovery of the deed, so that the truth may come out. (Diary of 8th October, 1898.)

Annexure No. 54.

November 1st and 3rd.—Dediya-gala Mukalana.

I inquired into the claim of the Vidane Arachchi of Ihalawalakada to ten chenas included in the Dediya-gala Mukalana proposed forest reserve. The claim is based on a deed of 1841, of which deed Mr. Le Mesurier obtained possession when he was Assistant Government Agent.

There has been no possession for the last 30 or 40 years, but there is certainly a nucleus of title, and at any rate the Vidane Arachchi's claim is a better one than Mr. Le Mesurier's.

Annexure No. 55.

July 18th. Mr. Le Mesurier has now adopted new tactics, with the object of postponing or avoiding a reference to Court. The Supreme Court having in the case in which a mandamus was issued on Mr. Noyes expressed the opinion that a Government Agent or Assistant Government Agent holding an inquiry under Ordinance 1 of 1897 was acting in a judicial capacity, this has inspired him with the idea that there is an appeal against any order made by me during the course of a claim inquiry, though the Ordinance is silent on this point. He accordingly made a number of objections to my proceeding with the inquiry, and then requested me to make an order so that he might appeal against it. The order I made was simply to call on him to produce "the evidence, documentary or other, upon which he relied in support of his claim."

Annexure No. 56.

Mr. Le Mesurier asks me to file copy of a letter from Mr. W. Jardine, stating his opinion as to the growth of jak trees in the jungle, but I point out to Mr. Le Mesurier that a statement by a person who is not called as a witness, and subjected to cross-examination, is not evidence, and if I file this copy of a letter, I might file other statements of the same kind by persons holding opposite opinions.—4th February, 1898.

Annexure No. 57.

Postponements.

Claim
inquiries.

There were twelve claim inquiries fixed for the month of November, in ten of which Mr. Le Mesurier was a claimant. Nearly all of these had already been postponed once owing to the absence of Mr. Le Mesurier, and he had not appeared on the

dates fixed for November, but instead Mr. Keuneman, Proctor, holding his power of Attorney, appeared and applied for postponements till the end of January, as it was not convenient for Mr. Le Mesurier to appear before then, he being now at Batticaloa. In nearly all of these claims the period of six months from the date of receipt of claim, during which the land was protected under section 22, expires in the month of January, so that, prima facie, it is extremely desirable that they should be brought to a conclusion before then.

I postponed the claim fixed for 1st November to January, pending instructions on this general application of Mr. Le Mesurier's for postponements. Mr. Keuneman stated that he had no instruction from Mr. Le Mesurier beyond instructions to apply for a postponement, so that in most cases as the claimant's evidence, oral and documentary, has to be first inquired into, and the Attorney-General's instructions then obtained as to whether Crown witnesses should be called, it is practically impossible, in the absence of a claimant, to make any inquiry at all.

In certain of these claims, however, viz., those fixed for 4th, 16th, and 24th instant, there were other claimants besides Mr. Le Mesurier and their claims were adverse to his. Bogus claims.

From what was stated by the claimants in two of these cases it was quite clear that Mr. Le Mesurier had simply made a claim in order to insure that there should be some claimant to the lands proclaimed, and that there was no bona fides whatever about his claim. When he found that there were other claimants besides himself, he gave those claimants to understand that this was all he wanted, and that he did not intend to proceed with his claim.

In one of these cases he had appeared before Mr. Cookson and stated that he had no documentary evidence, and that if he decided to call any oral evidence he would file a list of witnesses. The case came on again on November 4th, but Mr. Le Mesurier had not filed a list of witnesses nor had he furnished his Attorney with the names of any witnesses.

On 5th November I received a letter from Mr. Le Mesurier asking for postponements in all his cases until the end of January, on the ground that it would be inconvenient for him to attend before then. He adds that he presumes that it will be necessary for me to issue notices de novo under the Ordinance. In another letter received by me on the 29th November, he takes this objection in still stronger terms. "I maintain that you have no legal status under the Ordinance No. 1 of 1897, and that your present proceedings are invalid in law." Legal objections.

The contention that I have no legal status under Ordinance 1 of 1897 is rather calm in view of the fact that it was Mr. Le Mesurier himself, I believe, who applied for the appointment of a Special Officer under the Ordinance, and that in his first letter to me he "understands that you have been appointed Special Commissioner to deal with land claims in the Matara District." What he means by my having no status under the Ordinance I do not know in view of section 28.

Annexure No. 58.

Alleged Dutch Registers.

Still another objection is that I will give him "no assistance in his attempt to cause the production before you of the old Dutch registers." He applied to Mr. Jackson to cause the production of these registers and was referred by him to Ordinance 12 of 1864. He made the same application to me, and I referred him to the reply sent him by Mr. Jackson. My "assistance" is not required nor is there any reason why it should be given him. His proper course is to apply to the Government Record Keeper, or to the Librarian of the Museum for copies of what he wants. It is a little too much to expect Government to cause all the Dutch records to be searched on the chance of finding something (Mr. Le Mesurier does not himself know what) that may be seized on by him as evidence in support of some claims that he has made or may hereafter make, and that meanwhile all inquiries be postponed until such search has been made.

Annexure No. 59.

The Carnac Mills, Batticaloa, Ceylon,

October 24, 1897.

SIR,

I have the honour to bring to your notice that certain persons are planting up with fine grain a portion of the land called Meddiduwahena, which you have noticed under the new Waste Lands Ordinance, and which is claimed by me. Mr. Jackson, your predecessor, stopped this some time ago pending the settlement of the claim, and promised me that it would not go on.

The Mudaliyar of the Korale therefore stopped it, but it has, I understand, commenced again.

I would suggest your dealing with the matter under the 22nd Clause of the Ordinance.

Yours faithfully,

C. J. R. LE MESURIER.

The Assistant Agent, Matara.

Enclosure 8 in No. 11.

F.

Paragraph 23.—The best reply to this misrepresentation is the correspondence itself.

On 2nd February, 1898, Mr. Le Mesurier wrote:—

“I have the honour to inform you that the Marambe Arachchi behaved in a very impertinent manner here this afternoon to my wife. He persisted in passing backwards and forwards along the private road in front of this bungalow with a number of other men, and when Mrs. Le Mesurier requested them to go away—as the road was a private road—he only laughed at her. She was alone in the bungalow at the time, and the conduct of the Arachchi and his companions both alarmed and annoyed her. He had no business whatever to come on to the estate without my permission, and he seems to have waited until I had left the bungalow (for this happened within a few minutes of my leaving it) to behave in this improper manner.”

2. Receipt of this letter was acknowledged and enquiry promised.

3. On the 16th March, 1898, the following reply was sent by the Assistant Agent, Matara:—

“With reference, etc., I have the honour to inform you that the Vidane Arachchi of Marambe in reply to the charge of impertinence brought against him states that all he did was to refuse to comply with Mrs. Le Mesurier’s order that he should turn back on the road by which he was crossing Hulandawa Estate. He further states that in consequence of such refusal the lady fired three shots from a gun in his direction.

“I am advised that the path or road along which the Vidane Arachchi was going existed long before the Estate was purchased and that a public right of way exists.

“Under these circumstances it would be impossible for me to dispose of the matter satisfactorily upon a mere charge of impertinence against the Vidane Arachchi. A full judicial enquiry seems to be the only satisfactory means of deciding the points at issue. I need hardly say that if the Vidane Arachchi is found after such enquiry to have been at fault, he will be severely dealt with departmentally.”

On the 27th March, 1898, Mr. Le Mesurier wrote in reply:—

“I really have not the time to go to law over the matter nor the inclination.”

And a brief further correspondence followed on the matter of the right of way.

It is only necessary to add Mr. Le Mesurier’s present comments on the above:—

“They (the Government) have even refused to take any notice of a gross insult to my wife by one of these headmen, an insult which necessitated her having to use fire-arms to protect herself from further outrage.”

The facts, to use an expression frequently employed by him, speak for themselves.

It is not known to what particular acts of misconduct on the part of Government Officers the paragraph lower down refers, but the above instance suffices to show the peculiar views held by this gentleman as to what constitutes disregard of a complaint.

Nothing is known locally of the alleged insecurity of Mr. Le Mesurier’s position in the Matara District, but it will, I think, be generally accepted by men of long experience that only in cases of extreme misbehaviour would the Sinhalese villagers venture to threaten the personal safety of a European living in their midst.

Enclosure 9 in No. 11.

SIR,

Telijjawila, February 16, 1899.

With reference to Mr. Le Mesurier's complaints against me in his memorial to the Secretary of State, I beg to submit the following explanation.

I deny that I got up a forced subscription to meet the expenses of the Vidana Aracci's defence. The idea of the headmen bearing the expenses of their fellow officer in the case emanated from one of them—the Vidana Aracci of Kanankawalakada. They were very keen about the matter; and I only stipulated that no one should be asked who did not voluntarily come forward, and that the amount of subscription should not be fixed. The subscriptions I latterly observed had come from the rich Vidana Araccies only, some of them giving as much as Rs. 75 each. Of course this action of the headmen was prompted by their sympathy with me, as there was a wide-spread rumour promulgated by Mr. Le Mesurier and Mr. Le Mesurier's emissaries, that the sequel to the Aracci's conviction would be my official annihilation.

I deny that I "instructed my subordinate headmen to insult him, and to commit physical acts of violence upon him, and to bring false charges against him and his." I deny also that I injure him in every possible way, except in the sense that I thwart him in his purposes against the Crown in the matter of Crown lands.

None of my headmen ever insulted him or did anything even approaching such conduct. It is true that since his hostility to me was known, they do not salute him in their usual fashion; not only the headmen, but even ordinary villagers ignore him since.

The very fact that in spite of the bad feeling he created in the matter of Akurugoda Vidana Aracci, he and his European assistants go about unmolested without even so much as a frown from anyone, would show that, instead of instigating physical acts of violence, I am specially protecting him.

I am, &c.,
JAMES WICKRAMARATNE.
Mudalivar, W.A.

 No. 12.

MR. C. J. R. LE MESURIER to COLONIAL OFFICE.

(Received May 18, 1899.)

[Answered by No. 21.]

The Ceylon Waste Lands Ordinance.

120, Victoria Street, London, S.W.,

SIR,

May 14, 1899.

I HAVE the honour to ask you to be good enough to permit the claimants against the Crown, of lands in the Matara district of Ceylon to have reference (1) to the registers made by the Dutch Government; (2) to the Land-raad and other registers made under the following proclamations of the British Government:—

3rd May	...	...	1800.
10th October	...	...	1800.
1st March	...	...	1801.
5th June	...	...	1801.
3rd September	...	...	1801.
22nd April	...	...	1803.
9th May	...	...	1803.

and (3) to the tax lists and chena registers in the possession of Government.

The Government of Ceylon suggest that the Dutch registers have all been destroyed, but I can prove this to be incorrect by independent and absolutely reliable evidence. They also suggest that the Land-raad registers cannot now be found, but I submit that this must be incorrect. They were made in accordance with the laws of the land, they were well-known and carefully kept records, and they are now either in the Galle Kachcheri, the Colombo Museum, the Record Office, or the Land Registry.

As regards the tax lists of Chena lands, I was informed in 1896 that extracts would not be given. After much correspondence, I was asked to pay an exorbitant sum, *i.e.*, Rs. 2846, for extracts (afterwards reduced to Rs. 50), and now I am told by the Assistant Agent of Matara that extracts can only be given on furnishing him with particulars of the names of the cultivators and the dates of the cultivation of the lands.

When it is remembered that it is absolutely impossible for a claimant to furnish such information regarding lands only cultivated at intervals of years, as he has only his memory or the statements made to him in the past by his relations, friends, or vendors to rely upon it, it becomes apparent that such a condition is but another way of closing these lists altogether to the claimants.

It is the same thing with other records; the claimants know that they exist, but it is impossible for them to say where they are now or what their exact date and tenor may be.

The Government has stated that they desire to do justice, and treat claimants with fairness and even with liberality, and you, sir, can have but one desire, namely, that the truth should be known. That being so, I respectfully ask that these registers and records may be found and examined for the benefit of the claimants, and that, for a small fee, the claimants may be permitted to examine them for themselves, and have extracts made from them in the ordinary course.

I am, &c.,
CECIL J. A. H. LE MESURIER.

To the Right Honourable
The Secretary of State for the Colonies,
Downing Street.

No. 13.

LIEUTENANT-GOVERNOR SIR E. N. WALKER to MR. CHAMBERLAIN.

(Received May 15, 1899.)

[Answered by No. 22.]

SIR, Queen's House, Colombo, Ceylon, April 22, 1899.
I HAVE the honour to acknowledge the receipt of your despatch of the 10th ultimo,* transmitting a further memorial† from Mr. C. J. R. Le Mesurier, on the subject of the Waste Lands Ordinance, and desiring to be furnished with observations thereon, if they have not already been dealt with in previous reports.

2. In reply, I have the honour to inform you that the allegations contained in the first two paragraphs of this further memorial have been dealt with in Sir West Ridgeway's despatch of 28th February last, and my despatch of 3rd instant.‡

3. As regards the allegation made in paragraph 6 of the memorial, that an armed body of police was sent to intercept Mr. Le Mesurier when he visited the land which he claims in the Matara District, Sir West Ridgeway inquired fully into the matter on the receipt of a representation from Mr. Le Mesurier, and found that his complaints were without justification, and that no police were sent to intercept him, as alleged by the memorialist.

I have, &c.,
E. NOEL WALKER.

ANNEXURE to No. 13.

SIR, Colombo, Ceylon, February 4, 1899.
REFERRING to my letter of the 30th November last, I have the honour to bring to your notice that by a decision of the Supreme Court of Ceylon pronounced yesterday, the whole of the work done this year under the Waste Lands Ordinance has become invalid.

A previous decision has invalidated all that done last year; so that the Ordinance, so far, has effected nothing and has cost the Colony and many private individuals a very large sum of money.

* Not printed.

† See Annexure.

‡ Nos. 9 and 11.

This lamentable waste, besides the heartburning and injustice which have accompanied it, is entirely due to the unjust and arbitrary manner in which the Ordinance has been administered. In their eagerness to show good results and to please His Excellency the Governor, the Agents and Special Officer have lost sight of the rights of the subject, and of the judicial duties imposed upon them by the law.

I would further bring to your notice the fact that the officers of Government have been again and are still proceeding to acts of violence to assert their disputed rights.

Since my letter of the 31st ultimo, they have sent armed police to drive off my employees and lessors, and to occupy my lands by force, and since the withdrawal of the police they have used and are now using their headmen for the same purpose. My appeals to the Governor are unavailing, and sooner or later there will be bloodshed, and possibly loss of life.

I cannot even proceed on a peaceful mission in company with my lawyer to my Matara properties without an armed body of police being sent out to intercept us.

I have asked my second wife, who is now in England, to present this letter to you, and to give you details of these latest acts of violence, and to show you copies of letters that I have written to the Government here on the subject.

I have already described so much that is illegal and arbitrary and unjust in my letter to you of the 31st December last, that it would only overburden the record for me to describe in detail what has since occurred.

I am, &c.,
C. J. A. H. LE MESURIER.

The Right Honourable
The Secretary of State for the Colonies.

No. 14.

MR. C. J. R. LE MESURIER to COLONIAL OFFICE.

(Received May 18, 1899.)

[Answered by No. 21.]

The Ceylon Waste Lands Ordinance.

120, Victoria Street, London, S.W.,

May 17, 1899.

SIR,

THE replies given to Mr. Schwann in the House of Commons on the 11th inst. afford a notable instance of the manner in which you have been misled by His Excellency the Governor of Ceylon.

On the 24th of March last, Lord Selborne stated in the House of Lords, *on the authority of the Governor*, that the ordinary law afforded no redress against what he called my "modus operandi," and when it was pointed out by me in the public press that this could not be true, since the ordinary law had been put in force in one instance, you stated in the House of Commons on the 11th inst., also *on the authority of the Governor*, that this had been done because I had, by technical objections, thwarted the proceedings taken in this case under the Waste Lands Ordinance—the truth being that no such proceedings had ever been taken in regard to that land under that Ordinance.

This could be ascertained by a telegram to the Colony, and a reply obtained before the discussion comes on again. The land is called "Idandukita" and the Assistant Agent at Matara would state whether or not any proceedings have been taken, in regard to it, under the Waste Lands Ordinance. If not, the Governor's information to you stands discredited.

Again, in the House of Lords, on the 24th March last, Lord Selborne quoted certain figures, also *on the authority of the Governor*, of the work done under the Waste Lands Ordinance. I annex an abstract of that work taken from the Government "Gazettes" up to the 20th April last (the Ordinance requiring all agreements and notices—see appendix—to be gazetted).

If this abstract is found to be substantially correct, I can again claim to have discredited the Governor's information.

There are many other similar mis-statements in the information the Governor has furnished to you, but as I do not wish to lengthen out this letter, I content myself at present with pointing out the above two.

As your only desire can be to ascertain the truth, and as Sir J. West Ridgeway's credit is bound up with this matter, just as mine is, I would again most earnestly and respectfully ask you to order an *independent* inquiry to be held into it, and that I may be given an opportunity of *proving* my allegations.

I am, &c.,
CECIL J. A. H. LE MESURIER.

Enclosure in No. 14.

From the Ceylon Government Gazettes, to 20th April, 1899.

ABSTRACT OF WORK DONE UNDER THE WASTE LANDS ORDINANCE.

Province.	Number of Notices.	Number of Lots in Notices.	Extent noticed.			Lots under agreement.	Lots unclaimed and declared Crown.	Lots unaccounted for, i.e., claimed and not disposed of.	
			a.	r	p.				
Southern	115	350	130,898	0	0	27	38	285	
North Western	66	129	8,657	1	12	2	6	121	
Sabaragamuwa	58	263	13,142	2	6	18	18	227	
Uva	5	35	892	3	17	9		26	
Central	8	21	475	2	35	} Nil.	} Nil.	21	
North Central	22	22	605	2	0				22
Eastern	1	5	3,518	0	0				5
Western	3	28	659	2	9		28	Nil.	
Total	278	853	158,849	1	39	56	90	707	

No. 15.

MR. C. J. R. LE MESURIER to COLONIAL OFFICE.

(Received May 27, 1899.)

[Answered by No. 21.]

SIR,
St. George's Club, Hanover Square, London, W., May 24, 1899.
The Ceylon Waste Lands Ordinances.

I HAVE the honour to ask you to be so good as to read the speech recently made to the Chilaw Association of Ceylon by its Chairman—Mr. Corea—on the above subject.

It is reported in the Ceylon "Standard" and other newspapers of about the 26th April last, and it puts the case, from the Kandyan point of view, in more convincing form and far more eloquent language than it has ever been presented in before.

Mr. Corea is a man of whom the Colony may well be proud—a fearless, outspoken, and independent native gentleman, and in justice to the native peasantry of Ceylon I would respectfully ask you to consider his appeal.

May I also beg of you to refer to the administration reports for the Matara District and the Southern Province for the years 1868 to 1870 (inclusive) in order to form an idea of the harm done to the people by the stoppage of their ancestral right to cultivate their village chenas.

I am, &c.,
CECIL J. A. H. LE MESURIER.

No. 16.

MR. CHAMBERLAIN to LIEUTENANT-GOVERNOR SIR E. N. WALKER.

SIR,
Downing Street, May 25, 1899.

I HAVE the honour to inform you that Her Majesty will not be advised to exercise her powers of disallowance in respect of Ordinance No. 1 of 1899 of the Legislature of Ceylon, entitled "An Ordinance to amend Ordinance No. 1 of 1897, intituled 'An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied lands,' " a transcript of which accompanied your despatch of the 29th March last.*

2. I am, however, of opinion that Section 1, Sub-section (5), of the Ordinance should be amended by substituting the words "*primâ facie* evidence" for "conclusive proof"; and that section 10 should be so amended as to operate only in cases in which claimants have appeared and settlements have been made under Section 4 of the Principal Ordinance, and not in cases where, as may possibly have happened, claimants may have been prevented from appearing owing to some informality in the notices.

3. The new clause, which will take the place of Section 10, should run as follows: "No order purporting to have been made under the provisions of Section 4 of the principal Ordinance prior to the passing of this Ordinance shall be deemed to be invalid or inoperative by reason of any irregularity in the publishing, advertising, posting, or affixing of any notice purporting to have been published under the provisions of Section 1 of the principal Ordinance." This will be in consonance with the main object with which the original Ordinance was introduced, viz., the friendly settlement of outstanding claims.

I have, &c.,
J. CHAMBERLAIN.

No. 17.

LIEUTENANT-GOVERNOR SIR E. NOEL WALKER to MR. CHAMBERLAIN.

(Received May 29, 1899.)

[Answered by No. 22.]

SIR,

The Pavilion, Kandy, Ceylon, May 10, 1899.

WITH reference to previous correspondence regarding Mr. Le Mesurier's Land Claims, I have the honour to transmit to you a copy of a Memorandum by Mr. J. P. Lewis, replying to the letter of 29th March last, published by Mr. Le Mesurier in the London "Times," and other leading newspapers in England, purporting to "contradict the most important of the many mis-statements made by Lord Selborne in the House of Lords."

I have, &c.,
E. NOEL WALKER.

Enclosure in No. 17.

Paragraph 1.—"The statement that I am a land speculator."

During the months of January, February and March, 1896, about 40 deeds of transfer were executed in his favour for forest and chena lands, some of which he had within a year before himself declared to be Crown. The nominal consideration was in every case except one stated to be a rupee an acre. The actual consideration when it was not nil or an illegal contract varied from 10 cents to a rupee. (In the exception referred to it was stated to be Rs. 2.)

"I have more than once offered to re-sell my lands to the Government, &c."

I have only heard of this philanthropic offer having been made in one instance, viz., that of Badullakele, a forest of 550 acres, which it is intended to reserve. There was a proposal to sell this forest to a European 40 or 50 years ago, and the people of the neighbouring villages petitioned Government not to sell it but to reserve it as a village forest.

This fact probably came to the knowledge of Mr. Le Mesurier when he was Assistant Government Agent, and he made the offer apparently with the double object of getting Government, if possible, to give itself away on the question of title, and also to give him an opportunity of posing in his favourite role of village benefactor.

"In vain is the net spread in the sight of any bird," and considering the utter absence of any vestige of title or possession on the part of himself or of his vendors (existent or having only a paper existence), it was not likely to be regarded seriously, which it is very doubtful if it was intended to be.

"My advocacy of the natives' interest must be tainted."

What right Mr. Le Mesurier has to the character of philanthropist may be seen from the annexed copy of a portion of the evidence given by the claimant Allis in the Atureliya case (the only reference case up to the present tried on the merits). Mr. Le Mesurier was allowed to appear in this case as the "agent" of the claimant, and

conducted the case throughout on his behalf. There is no reason, therefore, to doubt Allis' statement as to the contract between him and Mr. Le Mesurier. Mr. Le Mesurier had no interest whatever in the land and appeared solely in the character of a "champertor" helping Allis, for an illegal consideration, to maintain his claim. The philanthropist wanted Rs. 500, but was content with the promise of half of Allis' alleged one-third share. The extent claimed was about 115 acres, for which, in accordance with the scale adopted in Mr. Le Mesurier's transfers of January-March, 1896, the nominal consideration would be Rs. 115; half of one-third of this would be land worth, according to Mr. Le Mesurier's scale, about Rs. 20.

I annex copy of the Chief Justice's remarks on Mr. Le Mesurier's appearance in this case. It is to be regretted that the Judges, whose remarks on the defects in the working of the Ordinance were very strong, did not add equally strong denunciations of the malpractice of champerty, of which this was a flagrant instance.

2. "It is untrue that I have cleared off all that is valuable, &c."

No one made the assertion. He has been prevented by fine and by injunction from carrying off all the plumbago he managed to get out of the lands.

"I have recently fought and won some 25 cases under the new Ordinance."

This statement is not correct even as to numbers. Eighteen cases in which Mr. Le Mesurier is a claimant have, up to date, been dismissed. Of these 17 were on notices of 1897, and these were dismissed on account of the ruling in three other cases in which Mr. Le Mesurier did not appear before the Court as a claimant. An appeal was taken in those cases, not by Mr. Le Mesurier, who was not a party to them, but by the claimants, and they were dismissed entirely on a technical point. Mr. Le Mesurier reaped the benefit of the other claimants' labours by getting his cases dismissed in the lower Court on account of this ruling.

The remaining case was one on a notice of 1898, and that was dismissed by the Supreme Court on a technical objection taken by Mr. Le Mesurier. The other eight cases of 1898 are still pending, the District Judge having held the notice cured by section 10 of the new Ordinance. In three of these cases Mr. Le Mesurier is not a claimant.

In the only case out of the 18 which was tried on the merits the Crown obtained judgment. This is the champerty case already alluded to.

So much for "fighting and winning 25 cases against the Government."

"The only damage done to the lands was by the Government themselves."

Karuwalabedda claimed by Mr. Le Mesurier, in spite of the repudiation by the vendors of the transaction, was the only forest in the neighbourhood, and it was of especial value on this account, and owing to its proximity to the railway. It was entirely cleared by Mr. Le Mesurier very soon after the pretended purchase.

The same is true to a great extent of Madidduwahena, the sale of which is also repudiated by the vendors, and of other lands claimed by him in the same neighbourhood close to the railway.

Timber for the Railway had always been cut on some of the forest lands claimed by Mr. Le Mesurier until their proclamation under the Ordinance when it stopped.

3. "In attempting to frustrate me, cultivation was stopped."

There was no attempt at cultivation except by Mr. Le Mesurier, but if it had been made it would have been stopped whether the lands were proclaimed or not.

"It has not cheapened or improved the procedure."

The first part of the statement is simple nonsense, as Mr. Le Mesurier is likely to find to his cost. There are no stamp fees under the Ordinance except in appeal. Where the Crown is not prepared, as in these claims of Mr. Le Mesurier's, to admit the claims, the only course left is litigation, and if there were no Ordinance the ordinary procedure would be resorted to. The Ordinance relieves claimants of the stamp fees which without it they would incur.

Mr. Le Mesurier having put every obstacle in the way of the working of the Ordinance, and having also absurdly objected to it as oppressive, it has been decided to let him have the benefit of the ordinary law, and the privilege of paying stamp fees as regards some of the lands upon which he has done most damage, and steps have already been taken to that end.

If the Ordinance had been given a fair trial, as it would have been by any one anxious to have the issues between himself and the Government speedily determined, it would have been found, not only to have improved the procedure, but to have rendered it more effective. Instead, every possible legal objection and "dilatatory plea" was raised to defeat it by Mr. Le Mesurier. The time of both the Supreme and Lower

Courts was wasted with some of these, which were really too ridiculous to pester them with, and this was emphatically conveyed to Mr. Le Mesurier's advocate by the Honourable the Chief Justice himself, who told him that he was wasting the time of the Court and doing his client no good by enlarging on them. Such were the objections that the Special Officer had no act of appointment from the Governor, that he had not been gazetted, that he could not do what a Government Agent could do, that he had not taken a judicial oath, &c.; that proceedings could not be taken under the Ordinance because there had previously been proceedings under the Forest Ordinance (which as a matter of fact had been abandoned because Mr. Le Mesurier had himself contended that the proper course was to proceed under the Ordinance, &c.).

Eventually the notices were held bad on account of irregularities by which it was not pretended that any one had been prejudiced.

"In attempting to frustrate me intolerable hardship has been done to the weakest and poorest of the people."

This is absolutely untrue. No one has been interfered with by the proceedings to frustrate Mr. Le Mesurier except Mr. Le Mesurier himself and a speculative claimant, whose cause he took up for an illegal consideration (champerty) and who lost his case on the merits. Even in this case it is very doubtful whether the claimant would have contested the case had he not been urged to it by Mr. Le Mesurier, and he never made any attempt to clear the land.

4. "The claims for which I am contending are not of such lands as he describes."

This is false. Many of them are forest lands pure and simple, the remainder chenas that have not been cultivated for 30 or 40 years.

There is no trustworthy evidence that they were paraveni in Dutch times. In one or two cases the lands, if they were once private, have long ago been abandoned by their original owners, who were not the ancestors or predecessors in title of Mr. Le Mesurier's vendors, and the lands have lapsed to the Crown. If there was any private title it is certainly not now vested in Mr. Le Mesurier.

"I can prove this from the Dutch and other records and registers in the hands of Government, &c."

Mr. Le Mesurier is fully aware, as I have already shown (vide my letter of 21st ultimo forwarding extract from letter of Wijesinha Mudaliyar filed by Mr. Le Mesurier in D.C. 9266), that the Dutch records and registers of the Matara District were destroyed by a Dutch official.

He is not aware,—

1. That the lands he claims are entered in any Dutch records or register.
2. That any particular Dutch records and registers are in existence.

As to "the other records and register" they contain evidence, not that the lands he claims are private, but that they are Crown.

"In 1895 one of their Agents ordered the destruction of some of these records."

This is so worded as to make it appear that the Agent in question ordered the destruction of some of the Dutch records, which, of course, is false. I have not heard of any order by an Agent for the destruction of any records, though I have heard it stated that one of Mr. Le Mesurier's predecessors, considering the wattorus in the Kachcheri useless, as they had, until Mr. Le Mesurier began to set up his claims, been generally considered to be, suggested that they should be destroyed. There was no ulterior object in this, and Mr. Le Mesurier's claims were not then in existence.

6. I do not think that Lord Selborne represented that 149 lots have been dealt with, but that 149 settlements had been made, which is a very different thing. I have not the Government "Gazette" here, but I much doubt whether 700 lots have been proclaimed under the Ordinance or even more than half that number. About 160 were proclaimed in 1897, and I do not think there were more than double that number proclaimed in 1898.

This can easily be ascertained by referring to the number on the last notice published (which was in the first "Gazette" of October last I think). This number is the number of notices published including those of 1897. To make up the 700, Mr. Le Mesurier has adopted one of two methods, neither of which would be likely to commend itself to the British public whose sympathies he is now attempting to evoke. He has either (1) added together the number of notices under section 1, of orders under section 2, and of agreements under section 4 in order to swell the total, though he must be well aware that the orders and agreements refer to the same lands as those referred to in the notices; or, which is more likely, he has (2) hit on the plan of counting each lot as a separate land, though he must know from his experience as a revenue officer,

that the same land often consists of many lots with no natural boundaries between them. While, therefore, Lord Selborne spoke of "lots" in the general sense, meaning lands, Mr. Le Mesurier speaks of "lots" in the Surveyor-General's sense. This, to say the least is disingenuous, but it is characteristic of Mr. Le Mesurier's methods of controversy. One of his dishonest as well as ridiculous arguments before the Supreme Court was that each lot in the plan was a separate land, and required to be dealt with separately.

7. "The Governor's report of what he is pleased to call my *modus operandi* is simply untrue. Nor did I search for it (plumbago) on any of them until August, 1898."

This statement of Mr. Le Mesurier's would not be adequately described as "simply untrue," it is positively false. He began to sink mines for plumbago on Balapatelahena in March 1896, having got a pretended transfer of that land on 29th February in that year. Some plumbago was obtained by him, and he was only prevented from obtaining more by the water from the river filling the pits. I myself saw the remains of the pits, and the soil that had been excavated from them early in 1898. He recommenced operations again about March 1898, I think, and had again to relinquish them owing to the water.

"The Governor's report of his *modus operandi*" is a perfectly accurate description of it.

He got a transfer for the land at Idandukita on 1st November, 1898.

He gave notice the same day to the Government Agent of his intention to commence plumbago mining.

The notice was unstamped, and it was returned to him to be stamped as required by the Ordinance on 4th November.

That same day he began the plumbago mining.

He wrote a letter giving similar notice to the Assistant Government Agent in whose district the pit was to be opened dated 1st November, *but this notice was not posted till 9th November*, five days after he had begun work. In my opinion this was done purposely in order that the Assistant Government Agent might be precluded from taking steps to stop the mining. The notice to the Government Agent did not matter as he knew that any steps he took would be taken through the Assistant Government Agent, and therefore that notice was posted in time.

Before the injunction was obtained he had removed 56 tons of plumbago, and he sold this plumbago (or some of it) as from Hulandawa, where no plumbago mining had been carried on since March or April, 1898.

8. "It is also untrue that the Government have no legal redress against me, and are therefore obliged to send police to eject me."

The police were sent, not to eject Mr. Le Mesurier, but to see that no disturbance took place through his endeavouring to eject the headmen who had taken possession of the land on behalf of the Crown. The fact that Mr. Le Mesurier sent his assistants armed with firearms to carry out these raids made the probability of some disturbance, and the possibility of loss of life a contingency that had to be taken into account.

No legal measure, except the Crown itself taking possession of the threatened land, was quick enough to counteract the procedure described in the last paragraph.

The Crown has legal redress also in such cases, and in other cases where Mr. Le Mesurier has taken possession of lands claimed by it, but there are many cases where all that he has done is to get a deed of transfer for lands always deemed by himself and by his predecessors to be Crown, and to get such deed registered, and there has never been any possession on his part or on that of his vendors or any attempt to take possession. In such cases it is doubtful whether any cause of actions has accrued to the Crown, the Supreme Court having, I believe, held that the mere execution of a deed of transfer for a land without the exercise of any act of possession is not sufficient to give a cause of action.

At the same time, the wholesale execution of these deeds of transfer in favour of Mr. Le Mesurier with the intention on his part to make use of them whenever it suits him, and an opportunity offer (as for instance the discovery of plumbago on the lands), constituted an evil that required to be specially dealt with, and it was for this object among others that the Ordinance was passed.

In my opinion, it is neither "unprincipled, dishonest, or unjust." It merely puts into practical form the presumption which had always existed and which had found expression in Ordinance 12 of 1840, that forest, chena, waste, and unoccupied lands were the property of the Crown unless the contrary were proved by the private claimant.

i.e., Balapatelahena at Hulandawa the only pit he had there. See *ante*.

It has been objected that it is unjust, because it forces the subject to be plaintiff instead of leaving him to be defendant in a suit, but regarded as a change in the law, this is a mere matter of form and not of reality, for under the ordinary law the Crown as plaintiff has merely to prove that the land in dispute is forest, chena, waste, or unoccupied, for the burden of proof to be shifted, by the operation of Ordinance 12 of 1840, on to the defendant. Claimant then becomes the plaintiff in reality, though not in name. The outcry against the Ordinance fomented by Mr. Le Mesurier is an unreal one, intended to divert the attention of the public from the absence of any bona fide rights on his part, and to prevent or at least postpone inquiry into them in the Courts.

J. P. LEWIS,
Special Officer,
Ordinance 1 of 1897.

Deniyaya, May 4, 1899.

District Court, Matara, January 21, 1898.
9266.

The Claimants:—

1. Patagamage Don Alles }
2. C. R. J. Le Mesurier } are before the Court.

* * * * *
Mr. Le Mesurier now informs the Court that he appears not only as claimant but as agent of the claimant.
* * * * *

Extract from evidence given in D.C. 9266.

C. J. R. Le Mesurier affirmed:

I have no right over the land claimed except this: that I have an agreement with Allis that I should bear all expenses of these claim proceedings, and if he is successful I should receive half his share in the land, his share being one-third share.

Extract from Judgment of Chief Justice Bonser, dated 22nd November, 1898.

In my opinion, Mr. Le Mesurier was not a party to these proceedings, and should not have been allowed to intervene.

Extract from Evidence of the Claimant Patagamage Don Allis, given in D. C., Matara, Reference Case No. 9266, on 14th February 1898.

Patagamage Don Allis affirmed.

I was examined by the Assistant Agent, Mr. Jackson. I produced my witnesses and my claim was rejected. I went to Mirissa and informed a friend, Dayaka Mahatmaya, who asked me to go to Mr. Le Mesurier and give half of the land to him. No, I asked him to go to Mr. Le Mesurier so as to know what claims to file. He went with me to Mr. Le Mesurier. I took him for my protection, as Mr. Le Mesurier keeps fierce dogs. *Mr. Le Mesurier told me to pay Rs. 500 to him for his assistance in the case. I said I had no money, and offered him a half share of the land.* He wrote out a piece of paper and read it to me, and I signed it and went home. I left the paper with him. Subsequently I came to court on an order, and the case was fixed for to-day. *I left the whole thing to Mr. Le Mesurier, and I do not know what statement he put in; I signed it without knowing its contents. He explained it to me, I did not understand it.*

ANNEXURE to No. 17.

"The Times."—April 1, 1899.

The Ceylon Land Question.

To the Editor of "The Times."

SIR,

WILL you permit me, in justice to those who have been good enough to support my cause, to publicly contradict the most important of the many mis-statements made by Lord Selborne in the House of Lords on Friday last?

1. The statement that I am a land speculator and that my advocacy of the natives' interests must therefore be tainted is answered by the fact that I have more than once offered to re-sell my lands to the Government for just what they cost me, provided the Government hand them back to the villagers.

2. It is untrue that I have cleared off all that is valuable from the lands and left the natives to fight the claims. I have recently fought out and won some 25 cases under the new Ordinance against the Government, and the only damage done to the lands has been by the Government themselves, who, while the claims were pending, sent armed police to turn off my servants and then cut down the timber on the lands to provide firewood for the Government railway.

3. The Ordinance was not passed, as stated by Lord Selborne, "to improve and cheapen the procedure and make it more effective." It was passed, as stated by Mr. Chamberlain in the House of Commons, to try and defeat me. It has not cheapened nor improved the procedure, nor has it rendered it more effective. In attempting to frustrate me, cultivation has been stopped and intolerable hardship has been done to the weakest and poorest of the people.

4. Lord Selborne's account of "chena" cultivation is exaggerated and erroneous, and does not touch the point in issue. The claims for which I am contending are not of such lands as he describes, but of lands considered "praveni" or private in Dutch times and for 40 years of the British occupation. I can prove this from the Dutch and other records and registers in the hands of Government, but one of our great grievances is they will not permit access to these, although the Governor promised it when the ordinance was introduced. In 1895 one of their agents ordered the destruction of some of these records.

5. It is mere quibbling to quote the voting on the first, second, and third reading of the Ordinance in the Ceylon Council. A reference to the Ceylon Hansard will show that every one of the unofficials bitterly opposed it as "unprincipled," "dishonest," and "unjust."

6. Lord Selborne's statement of the amount of work done under the Ordinance is distorted and incorrect. He, for instance, states that 149 lots have been dealt with. I have the Government notices in my possession dealing with at least 700. I adhere to my statement, the correctness of which he denied, and I am waiting for an opportunity to prove it.

7. The Governor's report of what he is pleased to call my *modus operandi* is simply untrue. I bought nearly all my disputed lands in the early part of 1896, and did not know there was plumbago nor did I search for it on any of them until August, 1898.

8. It is also untrue that the Government have "no legal redress" against me and are therefore obliged to send police to eject me. On February 14 last they commenced a suit against me under the common law in respect of one of my disputed lands. This is what they should have done, and what, indeed, I have endeavoured to induce them to do from the very beginning. By doing so now, they have themselves falsified the Governor's statement, and they have at last confessed that the common law of the island is quite sufficient to deal with these claims.

Yours faithfully,

C. I. J. A. H. LE MESURIER.

Paris, March 29.

P.S.—I need hardly point out that my domestic affairs have no bearing on the land policy of the Ceylon Government.

No. 18.

LIEUTENANT-GOVERNOR SIR E. NOEL WALKER to MR. CHAMBERLAIN.

(Received June 5, 1899.)

[Answered by No. 22.]

Sir,

The Pavilion, Kandy, Ceylon, May 16, 1899.

I HAVE the honour to submit for your information, copy of a judgment recently delivered by the District Judge, Matara, in the case instituted by the Crown against Mr. C. J. R. Le Mesurier for the recovery of a block of Crown land, in extent about 100 acres and of the value of about Rs. 20,000, which had been taken possession of by him for the purpose of opening a plumbago mine thereon.

2. I also enclose a copy of a Report on the case by the Attorney-General and an extract from Mr. Lewis's Diary for April last, explaining how Mr. Le Mesurier's claim arose.

I have, &c.,

E. NOEL WALKER.

Enclosure 1 in No. 18.

No. 2262, D.C. Matara.

JUDGMENT.

When this case was called the defendant's proctor applied for an adjournment. The application having been refused, he withdrew from the case on the ground that he had no instructions.

He then stated, apparently as additional reasons for withdrawing, that the record which had been sent up in appeal had only been received the previous day, and that he had received no notice of the list of plaintiff's witnesses.

The first reason seems to me unintelligible, and the second seems an excellent reason for not withdrawing from the case. Owing apparently to the negligence of the plaintiff's proctor, no notice was given to defendant's proctor of the filing of the plaintiff's list of witnesses, and if defendant's proctor had not withdrawn he might reasonably have objected to the plaintiff's witnesses being called. In that case I think plaintiff would have had to agree to an adjournment.

The defendant's proctor having withdrawn the trial proceeded without him on the issues framed.

Issue 1.—The land described in the 2nd paragraph of the plaint is called Mahaarambe Mukalana and Henyaya, and it is shewn in the plan marked A, filed in this case. The plumbago pit is shewn on lot X (573). The evidence that defendant entered on this land is very clear. The 13th witness, the V. A., has described how defendant took possession in November last, put up some houses, and commenced to excavate plumbago. The 15th witness, Mr. Short, visited the land shewn in the survey, and found Mr. Macaulay excavating plumbago on defendant's behalf. The 17th witness, the Mudaliyar, went to the land on receipt of the V. A.'s report, and found Mr. Gill and his coolies excavating plumbago, and the mining notice, Q, furnished by defendant to the Assistant Government Agent, shews that Mr. Gill was defendant's superintendent.

I have no hesitation in finding on the first issue that defendant entered on and took possession of the land described in the 2nd paragraph of the plaint.

Issue 2.—The plaintiff has called a large number of witnesses to prove the identity of the land described in the 2nd paragraph of the plaint with the land described in the 3rd paragraph of the answer.

The mining notice Q shews that the boundaries of the land claimed by defendant are,—

East.—Digelledolahena.
West.—Tunpele Kumbura or dola.
North.—Mahaarambahena Idivitiya.
South.—Kandambege deniya.

The first witness, the surveyor, describes the boundaries pointed out by the Mudaliyar and the V. A. as follows:—

North.—A ridge, Mahaarambe Mudunpita.
South.—Kandambige Kumbura.
East.—Digellehenadola.
West.—Tunpele Kumbura and dola.

These boundaries are practically the same as those given in the mining notice.

The defendant's manager, Mr. Gill, has furnished a rough plan marked Z filed in Vol. 1 of this case. On comparing that plan with the survey A, and making due allowance for inaccuracies of contour in Z, there can be practically no doubt that the two plans refer to the same land. The positions of the two dolas in the middle of the claim, and of the plumbago pit are similar in both plans. The field Udanaike kumbura on the south-eastern boundary in Z is identical (vide evidence of first witness) with X (574) in A, and there can be no question as to the identity of Tunpelekumburadola and rock on the western boundary of both lands.

The description given by the first witness of the boundaries as pointed out by the defendant's vendors at the survey further shews the identity of the lands claimed.

The lots V, U, W, X, 573 and A, B, 574, were claimed as Landegederawatta. Their position roughly corresponds to the position marked Landegederawatta in Z.

The lots S, Z, 573 and J 574 were pointed out as Udagederawatta. They correspond almost exactly to Udagedera in Z.

The other lots, south of Katukitulwerawadola were pointed out as Acharigewatte. That is the position of Acharigewatte in Z.

The fourth witness, Sidan, is one of defendant's vendors. He admitted that the south-eastern boundary of the land sold by him to defendant is Digallehenadola. That dola is the south-eastern boundary of the land described in the plan A.

This witness also admits that he was fined for illicitly clearing a portion of land called Mahaarambehena, with the third witness and Babanappu, fifth witness. Those two witnesses state that the portion of land in question is near the plumbago pit, and on the north of it, *i.e.*, on lots V or W 573 in the plan A.

I find on the second issue that the land described in the second paragraph of the plaint is identical with the land described in the third paragraph of the answer.

3. The first question on this issue is, does the land in dispute come within the category of lands which, under the provisions of section 6 of Ordinance 12 of 1840, are "presumed to be the property of the Crown until the contrary thereof be proved"?

The evidence of the surveyor is that the uncoloured lots in the plan A are old forest, described by several witnesses as virgin forest; that the lots coloured brown are chena, that is, unplanted land cultivated at intervals; and the other lots within the claim waste, patana, and deniya, *i.e.*, uncultivated land.

The Assistant Government Agent states that the centre portion of the land is very old, virgin forest, surrounded by chena, the plumbago pit itself being in the forest. He found some jak and areca-nut trees in the virgin forest, and he found no signs of old houses. It is clear that isolated jak and areca-nut trees in the midst of virgin forest are no evidence of intentional plantation or cultivation, or private possession. The level spaces mentioned are apparently the sites of watch-huts on the chenas.

The 16th witness, Mr. Erskin, who is forester of the district, gives similar evidence. He found virgin forest in the centre of the land surrounded by chena of various ages. He considers that the jak, kitul and areca-nut trees as of spontaneous growth, and he gives evidence that he finds such trees in most forests in the district, even in reserved forests about which there can be no question in regard to the Crown title.

The Special Officer, Mr. Lewis, (20th witness) deposes that the plumbago pit is in the middle of heavy forest. The age of the forest is shewn by the fact that two hora trees felled near the pit had a diameter of about $2\frac{1}{2}$ feet. They must clearly have been very old trees.

The 7th witness, a former V.A., describes the land as very old forest, with portions chena and waste land. He also deposes that he had seen isolated jak and areca-nut trees of spontaneous growth in forests in this district. He further testifies (p. 13 $\frac{1}{2}$) that when application was made to chena a portion of this land he opposed the application on the ground that it contained big forest trees.

The 6th and 9th witnesses explain the circumstances under which jak and areca-nut trees are found in isolated positions in uncultivated land. The seeds are carried by birds and bats, and where chenas have been cleared it is a common occurrence to find that seeds have been thrown into the surrounding jungle, and have grown without cultivation.

I have had no personal experience of the forest in this district. I am well acquainted with the forest in the neighbouring Pasdun Korale of the Kalutara district, the conditions of which I believe are much the same as those of the forest in this district. As regards kitul, it would be difficult to find a block of forest in the Pasdun Korale in which kitul trees do not abound. The presence of kitul trees is as strong an argument in favour of waste land as of private land.

I am also personally aware that isolated jak and areca-nut trees are found in forests which are unquestionably the property of the Crown, and the evidence of such trees in favour of private possession and intentional cultivation depends entirely on the number and manner of planting of the trees and other signs of human habitation. In the present case it is abundantly clear that there is no sign on the land of human habitation, prior to defendant's entry, except the sites of watch-huts for chena cultivation; the jak and areca-nut trees are evidently trees of accidental growth which have not been cultivated; and the land is waste land which is presumably the property of the Crown.

In support of the presumption in favour of the Crown, the plaintiff produces a mass of permits for chena cultivation, shewing that the Crown has within for the last 40 or 50 years exercised rights of possession and ownership in respect of the land now in dispute. It is not necessary to specially refer to each of those permits, but some of them are of more importance than others.

The document B shews that Andris and Sidan, two of defendant's vendors, with several others, cultivated nine acres of Mahaarambehena without permit in 1889; that they were fined Rs. 36, and that they paid the fines.

The application C for Digaelledolehena was made by Sidan, one of defendant's vendors. The 12th witness who attested the permit states that the hena lies to the west of Digaelladola; that is within the claim. That application is dated 1863.

The application M is of importance as showing that a portion of land called Udagederawattehena was applied for as Crown land in 1848. In 1849 a portion of the same land was applied for on M (1).

In 1857 a portion of the same land was applied for on O, and O (1).

In 1892 an application was made to clear the Crown land Landegederawatte on document V. In 1890 an application was made on document V to clear the Crown land Degalledolahena.

In 1890 on document V application was made by Jayawardana Gamachchige Andris of Idandukele, who appears to be one of defendant's vendors, to clear an acre of Mahaarambedolahena. The application was refused on the ground that the land was high jungle.

The remaining applications refer almost exclusively to Mahaarambehena. Several of the applicants appeared before the special officer, Mr. Lewis, on the land, and pointed out their clearing within the boundaries of the land claimed by the Crown.

I find on the 3rd issue that the land in dispute is the property of the Crown and that defendant has acquired no title to it by purchase under conveyance No. 11997 or by prescriptive possession.

Issue 4. Damages.—The plaintiff claims a sum of Rs. 28,056, as value of plumbago taken from this land by defendant. The V.A. who was directed to keep an account of the amount removed, and the Vel Vidane who took the V.A.'s place for a few days, have filed an account H and H (1), which shews that the actual amount removed was 56 tons 12 cwts. 56 lbs. The amount claimed as damages is approximately at the rate of Rs. 500 per ton.

The defendant in his answer has admitted removing "about 40 tons."

In his order, dated 2nd March, 1899, after hearing defendant's evidence, my predecessor remarked "petitioner has not denied that up to date of action he had removed from the land plumbago to the value of Rs. 28,056."

So far as I can judge from the evidence before me, the plumbago removed from this land is of good quality, consisting of large lumps, and the price of good plumbago is stated to have risen as high as Rs. 700 to Rs. 800 per ton. It must be assumed that the whole of the plumbago excavated was not of the same good quality; but the estimate of Rs. 500 per ton, which has not been specially denied by defendant in his answer, is in my opinion not an unreasonable estimate by the average of the plumbago.

The plaintiff's counsel claims a final judgment on the ground that defendant was represented by a duly authorised proctor, and the case was therefore not an ex parte one. He drew my attention to a judgment quoted in the S.C. reports.

In this case the defendant was represented by his proctor at all stages of the proceedings up to the commencement of the trial, and he and some of his witnesses had given evidence when the matter of the injunction was enquired into. At the trial, however, defendant's proctor, having received no instructions, withdrew from the case, and defendant was therefore not represented at the trial. I am of opinion that the trial was an ex parte trial and that a decree nisi should be entered.

Let decree nisi be entered declaring the land Mahaarambe Mukalan and Henyaye to be the property of the Crown, and adjudging defendant to pay damages Rs. 28,056 and costs.

H. W. BRODHURST, D.J.

May 1, 1899.

Enclosure 2 in No. 18.

District Court, Matara, Case No. 2262.

On the 14th February, 1899, I caused a plaint to be filed in the District Court of Matara, in which Mr. C. J. R. Le Mesurier was named as the defendant for the recovery of a block of Crown land containing about 100 acres and of the value of about Rs. 20,000, which had been taken possession of by the defendant early in November last year, for the purpose of opening a plumbago mine thereon.

2. The plaint prayed that the land should be declared the property of the Crown, and that the defendant should be ejected therefrom, and that the defendant should be enjoined from digging plumbago. The plaint further claimed a sum of Rs. 28,056, amount of damages due in respect of plumbago removed from the land by the defendant prior to the date of the action, with further damages at the rate of Rs. 10,000 a month.

3. On the plaint being filed the Court granted, ex parte, an injunction restraining Mr. Le Mesurier from digging or removing any plumbago from the land.

4. After the injunction was served on Mr. Le Mesurier, he filed a petition praying that the Court would dissolve the injunction, and on the 2nd March he filed answer. On the same date the petition was considered by the Court, and the District Judge refused the application of Mr. Le Mesurier to dissolve the injunction, but varied the order made granting the injunction to the extent of with-

drawing it against the continuance of mining operations in the pit already opened, and directing that no plumbago should be removed from the land, but that it should be delivered into the custody of the Secretary of the Court as receiver.

The prohibition against sinking any new pits or making any further clearings on the land was continued.

5. Against this latter order Mr. Le Mesurier has appealed, and the appeal is still pending.

6. In the meanwhile the case came on for hearing on the 24th ultimo, when the defendant's proctor applied for an adjournment of the case as stated by the District Judge in his order of the 1st May. His application having been refused, the case proceeded, and on the 1st May, the District Judge found that the land in dispute was the property of the Crown, and that the Crown had suffered damages to the extent of Rs. 28,056, being value of plumbago removed from the land by Mr. Le Mesurier, and ordered that a decree nisi should be entered declaring the land to be the property of the Crown, and adjudging defendant to pay damages Rs. 28,056 to the Crown, and costs of suit.

7. I forward a copy of the order of the District Judge of 1st May together with this report.

C. P. LAYARD,
Attorney-General.

May 9, 1899.

Enclosure 3 in No. 18.

Extract Referred to.—April 20th.

38.—Idon-
duhita
inspection.

The Assistant Government Agent, the Forester, and I, started for Idonduhita, a drive of three miles over a Gansabawa road, remarkable for "stoniness" to Alapaladeniya, and thence a walk of another three miles to Idonduhita. At Alapaladeniya we met an old man who said he was 103 "by horoscope," and who was the Mayoral or Vel Vidane, who had signed some of the ola applications for permit referred to in entry.

We had him brought along in a chair to Idonduhita, so that he might point out the chenas referred to. At Idonduhita, the Assistant Government Agent each examined witnesses (each taking a separate set) and at 2.30 p.m. started to inspect the land, taking with us as many cultivators and former headmen as we could muster. I got them to point out the several chenas named in the applications as cultivated by them, and then went on to the pit whither the Assistant Government Agent had preceded me. It was a very stiff climb, as we did not go up by the ordinary path, but first along a *dola*, up which we had to pull ourselves from rock to rock, and then along a rough jungle fence consisting of a thick line of fallen timber running up the hill at an oblique angle to near the site of the pit. On this fence we had to walk.

39.—
Nature of
the land.

This is in primeval forest. I noticed two *hora* trees about 2½ feet in diameter felled close to the pit. The chenas of which we found evidence of cultivation on Crown permit completely surround this piece of forest, and we could find no evidence that this forest had ever been cleared within the memory of man—in fact it was plain from its appearance that it had not. One old man, a former Mayoral, who gave his age as 75, or 85 stated that this forest was in the same condition when he first knew it as it is now, and it looked like it.

40.—Aban-
doned
garden—a
pretext for
the claim.

One part of the land, a long distance from the pit, and situated much lower down the hill (or mountain, I think it may be called) had the remains of what looked like a stone wall or "fence" in it, and some of the people called this "Achcharigewatte" and said the fence was a former boundary of the garden so called. It is also described by this name in some deeds in which it is given as a boundary of the adjoining paddy field, by this name. It is quite possible, therefore, that it may have originally been a garden though long since abandoned, but this proves nothing in favour of Mr. Le Mesurier, as it never belonged to his vendors, and if it was once private, it has long ago reverted to the Crown, and has been cultivated under a Crown permit.

41.—
Longevity
of the
villagers.

Considering the date of these applications for permits (1856-1863), it was remarkable that we were able to find so many of the cultivators and headmen who had signed them still living. There were two retired Vidane Arachchies of Alapaladeniya, two retired Mayorals and four or five cultivators—all, of course, very old men. It speaks well for the healthiness of this part of the country.

We were able to complete the chain of evidence showing cultivation of all the chenas included in the claim and surrounding the forest in the middle of it. One at least of the cultivators on permit was one of Mr. Le Mesurier's vendors.

The case for the Crown was made much stronger by the finding of these eleven applications for permit, and these would not have been available but for the recent sorting of the wattorus, and if it had not been for Mr. Le Mesurier's resistance, this probably would not have been done; truly he is "hoist with his own petard."

The whole history of this raid on crown property is scandalous. It would be doing Mr. Le Mesurier an injustice to imagine that with his experience as Assistant Government Agent and D. J. he can ever have supposed this forest to have been anything but Crown land, and the whole village could have told him that his vendors, who do not belong to the village, never had any title to it.

He gets a transfer on November 1st and makes a show of conformity to the law by writing letters to the Government Agent and Assistant Government Agent, giving them notice of his intention to open a plumbago pit on the land. The letter to the Assistant Government Agent was not posted till the 9th, but he began digging for plumbago on the 4th, before any steps could be taken to ascertain whether the land was Crown or private. Before he could be stopped he had removed 56 tons of plumbago from the land.

I see no difference between this conduct and that of a thief except that the former is so managed that it just escapes the clutches of the criminal law, while the latter makes no pretence of the kind. The former is in fact the conduct of an accomplished, unconvicted criminal, but morally there is no difference between it and that of a thief pure and simple.

The origin of the raid was this. The ex-Vidane Arachchi who lives closer to the land than anyone else discovered the existence of plumbago on the spot. He set about beginning operations to work it, intending as a cloud to his proceedings to set up a claim (as is now commonly done in such cases). The present Vidane Arachchi, however, caught him at it, and stopped him. As he told me himself, this was noised all over the village, and Mr. Le Mesurier's vendors (who had had dealings with him of old in the matter of elephant tracking) immediately went and told him of the finding of the plumbago, and then the farce of executing a transfer in his favour was enacted.

The discovery of the plumbago by the ex-Vidane Arachchi was less than a month before the execution of the transfer.

42.—A strong case for the Crown.

Made stronger by the documentary evidence found.

43.—A typical Le Mesurier claim.

44.—On the windy side of the law and otherwise

45.—Origin of the raid.

No. 19.

LIEUTENANT-GOVERNOR SIR E. NOEL WALKER to MR. CHAMBERLAIN.

(Received June 5, 1899.)

[Answered by No. 22.]

SIR,

The Pavilion, Kandy, Ceylon, May 17, 1899.

I HAVE the honour to submit to you copy of a letter received from Mr. C. J. R. Le Mesurier, complaining of the refusal to furnish him with certified extracts from the Tax Wattorus for the land "Indikadahena," situated at Akurugoda, and protesting against the Wattorus having been entrusted to Mr. Lewis for the purpose of being sorted and arranged.

2. I caused this letter to be referred to the Government Agent, Galle, for the remarks of the Assistant Government Agent, Matara, and of Mr. Lewis, the Special Officer under Ordinance No. 1 of 1897, and I herewith enclose copies of the Reports of these officers, and of the reply which I caused to be sent to Mr. Le Mesurier.

I have, &c.,

E. NOEL WALKER.

Enclosure 1 in No. 19.

Address: St. George's Club, Hanover Square, London, W.,

March 18, 1899.

SIR,

I HAVE the honour to inform you that on the 20th January last I applied to the Assistant Agent of Matara for certified extracts from the tax wattorus for the land.

"Indikadahena," situated at Akurugoda, in the Welligam Korale of the Matara District. Not having received these, I called at the Matara Kachcheri on the 14th February last, and was there informed by the Assistant Agent, Mr. Short, that the tax wattorus had all been sent to Mr. J. P. Lewis to be tabulated and registered, and that I would shortly receive what I required. I had not received them up to the date I left Ceylon (*i.e.*, the 10th instant), and I write to request that His Excellency will order these to be delivered to me.

At the same time I beg to protest most respectfully, but firmly, against the removal of these records from their proper custody, *i.e.*, the Matara Kachcheri, into the custody of an admitted partisan. Mr. Lewis's duty is, as he has himself admitted to me, to resist these claims against the Crown, and to prove that the lands are Crown lands. His clerk, Mr. Goonetilleke, is notoriously bitterly hostile to me, and yet it is into the hands of these officers that these records, mostly loose sheets and ola palm leaves, are entrusted for custody and registration. Mr. Goonetilleke has been seen driving about Matara with bundles of these documents, and if hereafter any of these are missing, it will be charged against the officers of Government that they acted in such a manner as to facilitate the disappearance of these valuable records of private title.

It must not be forgotten that a little more than 3½ years ago one of the Agents of Government—the then Government Agent of the Southern Province—deliberately ordered the destruction of these documents, and that it was only my refusal, when I was Assistant Agent of Matara, to carry out this order that saved them. The same officer had previously destroyed a number of these thombus of the Matara Kachcheri, because they similarly contained an inconvenient record of the private right to lands that he erroneously believed the 6th Clause of the Ordinance No. 12 of 1840 had vested in the Crown.

I shall make a point of bringing these circumstances to the notice of the Secretary of State when I reach England, and I shall draw attention to the policy of His Excellency under which every effort is being made by His Excellency's Government to avoid the production of the old land-raad and other registers of lands in the Matara District, so as to deprive the successors in title of the original owners of these lands of the benefit of these valuable records of their rights, in order to support the Government in their policy of the confiscation of the lands, and to render it practically impossible for the present claimants to prove their title thereto.

His Excellency is directly responsible for this policy, and my efforts will be directed towards bringing the responsibility home to him.

I am, &c.,
C. J. R. A. H. LE MESURIER.

The Private Secretary
To His Excellency the Governor,
Ceylon.

Enclosure 2 in No. 19.

(No. 426.)

COPY OF REMARKS REFERRED TO.

The application of the 20th January last from Mr. Le Mesurier was duly received. He applied for certain extracts from the paper wattorus, but as they have not yet been sorted, I have not been in a position to comply with the request. Mr. Le Mesurier was duly informed of this fact when he called at the Kachcheri on the 14th February last. As a matter of fact, I believe that no such entries as those applied for exist. The paper wattorus were carefully searched in February, 1897, and none were found for the land referred to.

I now learn from the Special Officer that the vote allowed for the sorting of the wattorus is insufficient to cover the arrangement and registration of the paper wattorus, and I would suggest that an additional sum of Rs. 50 be allowed for the purpose. These paper wattorus still lie in the Kachcheri vault.

The transfer of the old wattorus to the office of the Special Officer was conducted with due care, the olas being issued by myself, so many bundles at a time, as required by the Special Officer.

In this connection it should, I think, be brought to the notice of Government that Mr. Le Mesurier appears to have committed a grave breach of trust in the matter of these records. Shortly before his dismissal he employed a number of the Kachcheri officers for several months in making registers of these wattorus, which he has since appropriated to his own use. In proof of this, I quote from a letter dated 14th March, 1899, addressed to me by Mr. Le Mesurier, as follows:—

“Fortunately, I have private registers of my own of many of these wattorus, so that it will be possible for me to check the present work of registration which you informed me was being done in Mr. Lewis’s office.”

It is a matter for the consideration of Government whether the preparation of these so-called private registers, compiled from Government records by Government officers, and therefore, of course, at Government expense, and subsequently appropriated to private use, does not amount to a criminal breach of trust on the part of this quondam officer of Government.

I annex a memorandum by the Special Officer, to whom the papers were as requested referred.

E. M. DE C. SHORT,
Assistant Government Agent.

Matara Kachcheri, April 16, 1899.

Enclosure 3 in No. 19.

MEMORANDUM ON WATTORUS.

It was not intended to include the arrangement of the paper wattorus (*i.e.*, those ranging from 1872 to 1884) in the scheme that I proposed to Government, which applied only to the ola wattorus. It was supposed that the paper wattorus were comparatively easy of reference, and that any arrangement that was necessary could be made in the Kachcheri.

2. The only wattorus that can be of any value to a claimant are these paper wattorus, because they alone distinguish between Crown and private lands. The former pay one-fifth tax, the latter one-tenth. The ola wattorus, on the other hand, show payment of one-tenth for all lands.

3. In addition to this, most of the ola wattorus bear no dates, and their dates cannot now be ascertained, as the olas were taken by Mr. Le Mesurier himself out of the Kachcheri files to which they belonged at the time when he was making the private register of wattorus to which he refers. This want of dates adds to their worthlessness as evidence, and for this Mr. Le Mesurier is himself responsible. It is impossible now to replace them in the files to which they belonged, so as to ascertain their dates. They are all, however, of date anterior to 1872, in which year paper wattorus took their place.

4. As it was not convenient, owing to the Kachcheri being in the hands of the Public Works Department and for other reasons, to carry out the work of sorting the ola wattorus there, they were removed by the authority of the Government Agent, and with due care, to my office in lots as they were required. I took special care of them, and had them removed every evening in a trunk of mine for safe custody to my house. I repudiate the suggestion that some of them were made away with by me or my clerk.

5. It would not be worth my while to make away with any of them, as they are absolutely worthless to a claimant, as I have pointed out to Mr. Le Mesurier himself. The Crown can have no objection to Mr. Le Mesurier or any other claimant having copies of as many of them as they wish, if they will give the necessary particulars and pay the usual fees.

6. The insinuation that some of them were made away with during the course of transit from the Kachcheri to my office is absurd.

7. They were removed by instalments in their unsorted condition, tied up in bundles, which were put into a trunk of mine, and this was taken by Mr. Goonetilleke straight to my office in a carriage or hackery. To show what this condition was, I may mention that Mr. Le Mesurier himself told me that it would take six clerks six months to sort them. To suppose that, on the way, Mr. Goonetilleke was able to sort them and select for destruction such as were favourable to Mr. Le Mesurier is not worth consideration. On the occasion of the removal of the last instalment, there were one or two bundles too many to put in the box, and these were taken by Mr. Goonetilleke with him in the carriage.

N.B.—One of these registers was left behind in the office apparently by mistake. It is now in my possession.
E.M. de C.S.

8. No "loose sheets" of any description were handed over to me, and the paper wattorus have never been in my hands, but remain in the Kachcheri vault, as they have done since they were recovered from Mr. Le Mesurier.

9. No work of registration is being done in my office, so that it will be impossible for Mr. Le Mesurier, even with his private register of public documents, to check it. All that was done was to arrange the wattorus according to villages for easy reference.

10. It was mainly on account of Mr. Le Mesurier that I recommended the sorting and arrangement of the wattorus. I informed him that I would endeavour to get them sorted, in order that copies might be furnished readily whenever they were required, and I told him that I saw no objection to the issue of such copies.

11. As it has turned out, this will prove of more value to the Crown than it is likely to be to Mr. Le Mesurier. It has enabled us to find among the wattorus applications for Crown permits for cultivation of several of the lands claimed by him.

12. As a matter of fact, he was supplied with copies of all the paper wattorus he wanted for about 250 lands last year, viz., the lands in the list he had made before he left the Kachcheri.

13. He was also allowed to search through all the wattorus in January-February, 1898, and he and two clerks of his carried on the operation for the greater part of a fortnight, when, not having found what he wanted, he voluntarily stopped it. I, to my cost, had to preside over it. The pretext was that he was to be allowed, in accordance with an opinion expressed by the Acting District Judge, Mr. Pagden, to search for wattorus relating to the lands in dispute in the Atureliya case, then pending. He made use of the privilege, however, to search for the wattorus, not of those lands only, but of the 250 lands in the list that he had furnished to the Kachcheri in 1897 when he applied for copies of wattorus; and possibly for others also. His clerks were supplied by him with this list to show them what they were to search for.

14. Although this was going beyond the scope of the permission given to him, I thought it better to submit to it, and not to make any objection, though it prolonged the search considerably. There could be no objection to issue to him copies of any wattorus he wanted if he could only find them, and I allowed him a free run of the wattorus, both ola and paper, of course under my observation.

15. He began with the paper wattorus. The whole of these paper wattorus were taken from the vault and issued by me to him, in order that he and his clerks might go through them, and this was done in my presence. One of the lands for which he wanted wattorus was Indikadahena, which is one of the chenas included in the Horakeligoda Mukalana notice. He went, in fact, through his list of Akurugoda lands, which includes Indikadahena, but was unable to find any wattorus relating to it.

16. I note that he is now again applying for wattorus relating to this land. Mr. Goonetilleke searched for them among the paper wattorus on two occasions; the first occasion was in February, 1897, when he knew nothing of Mr. Le Mesurier or Mr. Le Mesurier of him. He found none among the paper wattorus, and appended a certificate to that effect to the list of those relating to Akurugoda lands which he made in that month. Among the ola wattorus he found five, but Mr. Le Mesurier would not pay for copies of these. He went through the paper wattorus on the second occasion on the application of Mr. Le Mesurier about a year later, and with the same result.

17. There is no doubt, therefore, that there were no paper wattorus for Indikadahena existing in February, 1897, and that should settle the matter. There was no "bitter hostility" on the part of Mr. Goonetilleke to Mr. Le Mesurier at that date, and his certificate, combined with the ineffectual search made by Mr. Le Mesurier himself a year later, should be sufficient proof to satisfy any reasonable person that no such wattorus exist.

18. As regards the ola wattorus, as Mr. Goonetilleke only went through those then available, viz., those that had been sorted at that time, it is possible that there may be more among them relating to Indikadahena. If there are, and this can easily be ascertained, copies of them will be issued to him on the usual terms, and if he complies with the requirements named by the Attorney-General.

19. To resume: Having gone through all the paper wattorus, which was comparatively an easy matter, he began on the ola wattorus, unsorted as they were. These were issued by me from the vault to him in batches, as they were required.

20. His clerks continued searching through these for days, but the sole result of the labour of these mountains of unsorted wattorus, as manipulated by them, was a wattoru respecting an Owita land of the same name as one of the chenas he claimed.

21. It happened that Mr. Goonetilleke had found a wattoru relating to a chena of the same name as the Owita, and he informed Mr. Le Mesurier of this, so that he might take a copy of it if he wanted it. He did not, however, want it. If he had taken it and had put it in evidence, an application for a Crown permit which had been found relating to the same land and of the same year and harvest and by the same cultivator, would have been put in on behalf of the Crown. In fact, this application was put in in the Atureliya case, but Mr. Le Mesurier did not put in the wattoru; he knew better than to do so.

22. He found some wattorus relating to lands that he claimed among the paper wattorus, and these he quoted in the course of his evidence during the claim inquiries, which were going on during this fortnight simultaneously with his search among the wattorus.

23. It was because Mr. Le Mesurier was endeavouring to breed a wattoru grievance that I suggested that the ola wattorus should be sorted and arranged. That has now been done, and we can supply copies at the usual rates to any claimants who give the necessary particulars.

25. As to the paper wattorus, they have been often gone through, and Mr. Le Mesurier himself was handling them during the inquiries held by me in January-February, 1898. He insinuated even then that some had been made away with, and he is repeating the insinuation now under false impression that I have had them at my office. It is a fact that some of them are apparently missing. It is also, I believe, a fact that Mr. Le Mesurier had them at his house both before and after his dismissal. (It was said that cart loads of Kachcheri records and other documents were removed to his house, and that a number of them were destroyed, and were seen floating down the river, vide newspapers of the time.) Further, I believe that for some time he refused to give up these documents to their proper custodian.

26. The explanation I should be inclined to adopt of the disappearance of these wattorus is not the one suggested by Mr. Le Mesurier, but, as he is fertile in these suggestions, he might be able to explain the disappearance from the Matara Kachcheri of the permit registers from 1863 to 1873 and from 1876 to 1887. If any evidence has been made away with, it was not by the Crown.

27. I recommend that, in view of the valuable evidence afforded to the Crown by these paper wattorus, steps be taken to arrange and make a register of them. This might be done from the balance of the vote allowed for the sorting of the ola wattorus.

28. As regards the Dutch records, the only officer that I know of who destroyed thombos of the Matara District was an official of the Dutch Company (see Mr. Farrell's diary of 1821, and also the copy of Mudaliyar Wijesinha's letter put in evidence by Mr. Le Mesurier in the Atureliya case, where this act is also referred to).

J. P. LEWIS,

Special Officer, Ordinance 1 of 1897.

Deniyaya, April 15, 1899.

I may add, with respect to the Dutch records, that they did not constitute the sole evidence of title which the people had. There are hundreds of "extracts" from them still in the possession of people of the district, and also in the Registrar of Lands' Office. In fact, I think these extracts were invariably issued to the persons whose titles were registered in the Thombus, to serve as evidence of title when required. The intention of Ordinance No. 6 of 1866 was, I think, that all such extracts should be registered, and certainly many were, though the Supreme Court seems to have subsequently held that registration of an extract from a public record was not necessary.

Enclosure 4 in No. 19.

SIR,

Colonial Secretary's Office, Colombo, May 17, 1899.

WITH reference to your letter of the 18th March, addressed to the Private Secretary to His Excellency the Governor, I am directed to inform you that the wattorus were removed from the kachcheri for the sole purpose of being sorted and arranged in order to facilitate reference to them, and that at the time of your application (20th January) for certified extracts for the tax wattorus for the land "Indikadahena," the work of sorting and arranging not having been completed, it was impossible to ascertain definitely whether or not there were any paper wattorus, *i.e.*, wattorus subsequent to 1872, relating to the land in question.

2. You are, I believe, aware that upon search made in February, 1897, five *wattorus* were discovered relating to "Indikadahena," of which *olas* you or anyone else could have obtained copies upon payment of the usual fees.

3. It does not at present appear that there are any paper *wattorus* for Indikadahena.

4. As regards the removal of the *wattorus* to Mr. Lewis's office for the purpose of tabulation, I have to inform you that Mr. Lewis is an officer in whose probity and skill the Government reposes full confidence, while, as regards Mr. Goonatilleke, he merely conveyed the documents as required from the Kachcheri to the office, and I can see no reason to suppose that he could or would have tampered with them in transit.

5. If you will be so good as to furnish the necessary information as to the *wattorus* that you require, certified copies of the same, if in existence, will be forwarded to you upon payment of the usual fees.

I am, &c.,
H. WHITE,
For Colonial Secretary.

C. J. R. Le Mesurier, Esq.

No. 20.

MR C. J. R. LE MESURIER to COLONIAL OFFICE.

(Received June 24, 1899.)

[Answered by No. 21.]

SIR, St. George's Club, Hanover Square, London, W., June 20, 1899.

I HAVE the honour to bring the following to your notice. Towards the end of 1898 there were five cases pending against me under the Waste Lands Ordinance in the District Court of Matara, Ceylon, in which I took exception to the notices, on the ground that they had been dated by the Government Printer and not by Mr. J. P. Lewis, who had issued them. It was agreed in the lower Court that one case only should be taken up, and that the decision of the Supreme Court in it should bind the others.

The Supreme Court decided in my favour, but, in the meantime, the amending Ordinance had been under consideration, and was finally passed 13 days *after* a motion had been made by my proctor to dismiss the other cases, in accordance with the decision of the Supreme Court.

The Law Officers of the Crown actually opposed this motion, notwithstanding the previous arrangement, and pleaded that the new Ordinance cured the defect. Mr. Brodhurst, the lately appointed District Judge of Matara, who is well known as a *revenue* and not as a *judicial* officer, decided against me, and, as usual, the Supreme Court reversed the finding. You will find the case reported in the "Times of Ceylon" of the 31st May last. You will also find that the same paper, though notoriously hostile to me, comments as follows on the proceedings of the Government officers:—"How the Crown helps Mr. Le Mesurier.—It is not only disgustingly trivial, it is pestiferous, that the legal advisers of the local Government should advance such an absurd proposition as that exposed by Mr. Justice Lawrie in the judgment recorded to-day, viz., that the amending Waste Lands Ordinance is retrospective in overcoming objections raised in matters which turn on the law as it existed previously."

I may add that the Attorney-General of Ceylon, Mr. C. P. Layard, appeared in the Appeal Court to support this proposition.

Further, instead of fairly and promptly paying my costs in the cases in which I have been successful under the Waste Lands Ordinance (I have won all of them, some 28 in all), the Law Officers of the Crown are raising all sorts of trivial objections in order to defeat me, and to put me to further expense in appeals, &c. Their latest is that costs should be taxed on the basis of the value I paid for the lands, and not on their market value. On this basis, supposing a land had been gifted to me, and I had to sue for it, costs would be taxed on nothing, although the land might be worth £10,000.

In many of the cases, in which I was unable to employ a proctor, and appeared in person, the Governor refused me compensation altogether. I now hear from Ceylon that the Government have begun proceedings *de novo* in regard to many of these lands. *i.e.*, before I have been recouped for the expenses I incurred in contesting them before.

I can hardly believe that, with the high-minded views that you have so often publicly expressed as to the treatment the Colonies should receive at the hands of Government, you would countenance such pettifogging tactics as these, and I therefore confidently leave the matter in your hands.

I am, &c.,
CECIL J. A. H. LE MESURIER.

No. 21.

COLONIAL OFFICE to MR. C. J. R. LE MESURIER.

SIR,

Downing Street, June 29, 1899.

I AM directed by Mr. Secretary Chamberlain to inform you that he has carefully considered your memorials and letters relative to recent land legislation in Ceylon, and to your personal grievances against the Colonial Government.

2. Mr. Chamberlain is unable to admit the accuracy of your account of the objects of the Waste Lands Ordinances and of the manner in which they have been administered. He is satisfied that these Ordinances make ample provision for safeguarding the rights of private individuals, as well as those of the whole community, as represented by the Crown.

3. In order, however, to prevent the possibility of any hardship arising from the operation of Section 10 of Ordinance No. 1 of 1899, Mr. Chamberlain has requested the Governor to take steps for amending this section so as to limit the validating effect to cases where claimants have appeared and agreements have been arrived at. Section 1, sub-section (5) will also be amended by substituting the words "*prima facie* evidence" for "conclusive proof."

4. Mr. Chamberlain has given attention to your complaints of the treatment which you have received from the Colonial Government, but he is again unable to accept the accuracy of your statements in many particulars. He is fully satisfied that you have been treated with fairness and consideration by the Colonial authorities, and that in any isolated cases where you may have had ground for complaint, remedy has been afforded you in the Courts of Justice or by the action of the Governor.

5. With reference to paragraph 2 of your letter of the 17th May,* Mr. Chamberlain wishes to correct a slight verbal inaccuracy which he made in his answer to Mr. Schwann's question in the House of Commons on the 11th ultimo. He had intended to indicate that you had thwarted the proceedings in certain cases under the Waste Lands Ordinance, and that therefore it had been decided to proceed under the ordinary law in respect to certain other lands. By inadvertence he referred to the cases as if they had been the same.

6. With reference to the figures as to the work done under the Waste Lands Ordinance, which you quote in your letter of the 17th May,* Mr. Chamberlain observes that you appear to use the word "lot" in a different sense from that in which it is used by the Governor in the despatch† quoted by Lord Selborne.

7. That letter, however, together with your letters of the 14th and 24th May, and of the 20th June,‡ will be forwarded to the Lieutenant-Governor of Ceylon for any observations that he may desire to make upon them.

I am, &c.,
EDWARD WINGFIELD.

No. 22.

MR. CHAMBERLAIN to LIEUTENANT-GOVERNOR SIR E. N. WALKER.

SIR,

Downing Street, June 30, 1899.

I HAVE the honour to acknowledge the receipt of the despatches§ from Sir West Ridgeway and yourself noted in the margin, and to thank you and the officers concerned for the full information which has been furnished in regard to the working of the Waste Lands Ordinances. 28 Feb. '99.
28 Feb. '99.
3 Apr. '99.
22 Apr. '99.
10 May '99.
16 May '99.
17 May '99.

2. I enclose a copy of a letter|| which I have caused to be addressed to Mr. Le Mesurier, from which you will perceive that I am of opinion that there is no foundation for his criticisms of the action of the Colonial Government, in regard either to the administration of these Ordinances generally or to his personal affairs.

* No. 14. † See p. 89. ‡ Nos. 12, 15 and 20. § Nos. 8, 9, 11, 13, 17, 18 and 19. || No. 21.

3. I also enclose for any observations which you may desire to offer copies of further letters* which I have received from Mr. Le Mesurier. I presume that the Mr. Corea to whom Mr. Le Mesurier refers in his letter of 24th May† is the gentleman whose antecedents are described in paragraph 30 of Sir West Ridgeway's despatch of 15th October, 1897.‡

4. As reference has frequently been made by the opponents of the Waste Lands Ordinance to the fact that the Chief Justice is said to have expressed disapproval of its principles, I desire to inform you that I have received the following statement from Sir J. W. Bonser, who is at present on leave in this country:—

“I understand that the language used by me in a recent judgment questioning certain proceedings under the Waste Lands Ordinance has been interpreted to mean that I disapprove of the principle of the Ordinance. In describing the Ordinance as one of an ‘extraordinary’ nature I referred to the fact that it confers exceptional powers on the local Government. In my opinion it is not the province of a Judge to express either approval or disapproval of the Acts of the Legislature, but I may perhaps be permitted to state that I consider that the local circumstances render exceptional legislation desirable, not only in the interests of the general community to prevent the wanton destruction of valuable property, but also in the interests of the villagers themselves, for nothing is a more prolific source of crime in Ceylon than disputes respecting the ownership of land.

“At the same time, I have always entertained the opinion that where an Ordinance conferring exceptional powers prescribes the conditions under which the powers may be exercised, these conditions must be strictly observed.

“I may add that so far as I am aware the working of the Ordinance has not been attended by any real injustice or hardship, and that if any such were to occur the Supreme Court may be trusted to find a remedy.”

5. I have already in my despatch of the 10th of June, 1898,§ indicated to you the spirit in which I consider that these Ordinances should be administered, and I am confident that, while having just regard to the rights of the Crown being the rights of the whole community, your officers will continue to have a care for bona fide native claims as distinguished from those of land speculators.

I have, &c.,
J. CHAMBERLAIN.

* Nos. 12, 14, 15, and 20.

† No. 15.

‡ No. 3.

§ No. 4.

Challenger, F.W.S. A Report on the Scientific Results of the voyage of, during the years 1873-1876, under the command of Captain George S. Nares, R.N., F.R.S., and Captain Frank Turle Thomson, R.N. Prepared under the superintendence of the late Sir C. Wyville Thomson, Knt., F.R.S.; and now of Sir John Murray, K.C.B. Complete in Fifty Volumes. Price 101*l.* 15*s.*

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