





THE  
CUMBERBROOKE-CAMERON  
PAPERS

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DOCUMENTS ON  
BRITISH COLONIAL POLICY IN CEYLON

1796-1833

and edited by  
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VOLUME I



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## A NOTE ON THE SOURCES

THE main subject dealt with in these two volumes is the Colebrooke Reforms in Ceylon. The chief sources for the study of them are the five reports submitted by the Commissioners, W. M. G. Colebrooke and C. H. Cameron, and the dispatches of the Secretary of State on them sent to the Governor of Ceylon. The reports refer incidentally to many matters which require further elucidation, and the documents needed for this purpose are supplied in the second volume in four appendices. These in turn provide the necessary material for a study of the developments in Ceylon from 1795 to 1831.

Of the five reports submitted by the Commissioners the first three were printed together in 1832 as one continuous Parliamentary Paper by order of the House of Commons. The fourth, on the Compulsory Services, was a confidential report and was first published by Dr Colvin R. de Silva in the third volume of the Ceylon Literary Register (New Series). The fifth Report, on the Establishments and Expenditure in Ceylon, is being printed for the first time.

Of the dispatches of the Secretary of State on the Colebrooke Reforms a few have appeared in print. The dispatch of Viscount Goderich to Sir Wilmot Horton on the judicial reforms, the Ceylon Charter of Justice and the two letters from C. H. Cameron and Sir Richard Ottley were printed together as a Parliamentary Paper by order of the House of Commons on 31 May 1833. In the same year on 20 August were also printed by order of the House of Commons the King's Supplementary Commission and Additional Instructions to Governor Horton. The remaining dispatches are appearing in print for the first time. There are some differences in the Printed and the Written Reports and attention has been drawn to these by the use of italics or through footnotes.

The material in these volumes has been drawn mainly from the State Papers Colonial in the Public Record Office in London and from the records preserved in the Ceylon Government Archives. Series C.O. 54 among the Colonial Office Papers in the Public Record Office contains the Governors' dispatches with their enclosures, the Colonial Office memoranda

and drafts of dispatches from the Secretary of State as well as Colonial Office correspondence with the Treasury and other Government Departments, the Crown Agents, and other miscellaneous persons. Volume 122 in this Series contains the reports of the Commissioners, Colebrooke and Cameron. Series C.O. 55 contains the dispatches of the Secretaries of State to the Governors of Ceylon together with the Commissions and Instructions to the Governors prior to 1831. C.O. 416 consists of 32 classified volumes containing the evidence collected by the Commissioners.

Much of the material relating to Ceylon available in the Public Record Office is also found in the Ceylon Government Archives. Here there is a complete collection of the Ceylon Government Gazettes as well as many volumes relating to the Kandyan administration. Most of the regulations and proclamations printed in the second volume are taken from the Ceylon Government Gazettes or *A Collection of Legislative Acts of the Ceylon Government* printed in 1853.

There are two classes of footnotes in the first volume. The footnotes of the Reports themselves are indicated by the letters of the alphabet and the notes by the Editor by figures. An attempt has been made to adhere as far as possible to the original spelling. In the Printed Reports the spelling had been revised and made uniform except in a few cases. It is possible that the differences in the Written Reports and other writings are in many cases due to copyists.

This note will not be complete without a reference to the work entitled *Ceylon under the British Occupation, 1795-1833*, by C. R. de Silva, in which these sources are fully utilized. This work not only provides a valuable background for the study of the documents presented in these two volumes but also gives extracts from many others which a student of these will find very useful.

#### ABBREVIATIONS

P.R.	Printed Report
W.R.	Written Report
C.O.	Colonial Office
C.G.A.	Ceylon Government Archives
C.G.G.	Ceylon Government Gazette

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## INTRODUCTION

THE series of remarkable reforms which transformed the administrative, judicial and financial system of Ceylon, carried out between 1832 and 1834 on the recommendation of W. M. G. Colebrooke and C. H. Cameron are of much more than local interest. These changes were due mainly to developments in Britain and helped considerably a comparatively small island with a medieval social and economic system to attain independence within twelve decades and become an equal partner in the Commonwealth of Nations.

The student of British history will find these reforms interesting as the documents dealing with them reveal in a striking manner the attitude of Britain to her dependencies at this time. They give an insight into the radical changes that took place in British Colonial policy about the years 1822-34. They show the far-reaching results of the humanitarian and evangelical movements, which led to the abolition of slavery and a concern for the welfare of backward peoples, and the extent of the influence exercised by writers like Adam Smith, Jeremy Bentham and James Mill and other Radicals in shaping British policy in the spheres of administration, law and judiciary, and of trade and industry. They reflect vividly the belief at this time that British institutions were something universally valid and applicable to their colonies, irrespective of the differences in their social and economic conditions.

Of no less interest are these reforms to the student of Indian history. They serve as an illuminating introduction to an examination of developments in India from 1813 to 1861. When Ceylon became a Crown Colony at the beginning of 1802, its development did not proceed on lines parallel with that of other British colonies, but continued to follow that of India. In fact many of the important changes carried out in Ceylon as a result of the recommendations of Colebrooke and Cameron were similar to the reforms made in the Government of India within these fifty years. Owing to their vastness and complexity the problems of a sub-continent are not easy to grasp. The history of Ceylon during these few years affords

a simple parallel free from the intricacies that often cloud issues in India. Moreover, the reforms in Ceylon covered most aspects of life, political, administrative, social and economic, and give a comprehensive view of the changes which in India took effect piecemeal over a much longer period.<sup>1</sup>

The Colebrooke-Cameron reforms are of importance also as a prelude to the study of the developments that took place in Ceylon in recent years which aroused so much interest in the colonial world and outside. A number of constitutional documents connected with the Island were issued from the Colonial Office during the years 1945 and 1948. The first was the *Report of the Commission on Constitutional Reform*<sup>2</sup> published in September 1945. The *Statement of Policy on Constitutional Reforms in Ceylon*<sup>3</sup> followed in October. A sequel to the first two, *The Ceylon Order-in-Council*,<sup>4</sup> was issued on 15 May 1946.

The *Statement of Policy* contained the following decision: 'His Majesty's Government are in sympathy with the desire of the people of Ceylon to advance towards Dominion Status and are anxious to co-operate with them to that end. With this in mind His Majesty's Government have reached the conclusion that a constitution on the general lines proposed by the Soulbury Commission (which also conforms in broad outline, save as regards the Second Chamber, with the Constitutional scheme put forward by the Ceylon Ministers themselves) will provide a workable basis for constitutional progress in Ceylon.'

Accordingly the Order-in-Council conferred on Ceylon a constitution with a greater degree of autonomy than any British Dominion legally had in 1930 and more advanced than that of any other colony under the British. But on 18 June

<sup>1</sup> Even as far back as 1831 Colebrooke realized the value of a knowledge of Ceylon for an understanding of the history of India. 'Although administered by the Crown the island of Ceylon was originally a Hindu province,' he wrote, 'and from not having been subject to the inroads of the Mahomedans, it offers at this day the most perfect example to be met with of the ancient system of Hindu government. A short analysis, therefore, of the system may be useful, not only with reference to the particular interests of Ceylon, but in elucidation of some questions of considerable importance in relation to the British settlements in India.' I, p. 12.

<sup>2</sup> Cmd. 6667.

<sup>3</sup> Cmd. 6690.

<sup>4</sup> *The Ceylon Government Gazette*, 17 May 1946.

1947 the Secretary of State for the Colonies took a further step and announced that shortly after the new constitution came into being immediate steps would be taken 'to confer upon Ceylon fully responsible status within the British Commonwealth of Nations',<sup>1</sup> and this decision was implemented on 4 February 1948.<sup>2</sup>

These developments are no doubt due to numerous causes. But it cannot be denied that they are partly at least a logical outcome of the trend of British rule in Ceylon. The aim of British rulers in the Island was not merely to maintain an effective administration and a just civil and criminal jurisdiction in order to maintain their sovereignty over the people of Ceylon. British rule from time to time was also directed, consciously as well as unconsciously, towards modernizing the administration and the economic system and towards producing in the people a measure of political capacity which would fit them to be entrusted some day with their own government. Of these attempts which led finally to the recent advances, none was more remarkable than the Colebrooke-Cameron Reforms. They placed Ceylon for the first time on the path of modern development by making radical changes in the system of administration and the economy of the country, and set up a Legislative Council with unofficial members which could ultimately develop into a sovereign legislature.<sup>3</sup>

The recommendations of Colebrooke and Cameron are remarkable also for a generosity hardly paralleled in any period of British rule in Ceylon. Indeed, they were far more progressive for their age than, and do not suffer by comparison with, the declarations applicable or relevant to the colonies in the final Charter of the United Nations signed on 26 June 1945 by the representatives of the fifty nations that assembled at San Francisco. According to Article 55, the United Nations undertook to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, language or religion', and according to Article 73 'Members of the United Nations which have or assume responsibilities for the administration of

<sup>1</sup> Sessional Paper XXII (1947). Ceylon Government Press, Colombo.

<sup>2</sup> Sessional Paper III (1948). Ceylon Government Press, Colombo.

<sup>3</sup> I, p. 58.

territories whose peoples have not yet attained a full measure of self government, recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well being of the inhabitants of these territories, and to this end:

‘(a) To ensure, with due respect for the culture of the peoples concerned, their political economic, social and educational advancement, their just treatment, and their protection against abuses;

‘(b) To develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement.’

Colebrooke and Cameron, it cannot be denied, did not pay much attention to the cultures of the people of Ceylon. They could not have been impressed by them as they had deteriorated under the rule of the Portuguese and the Dutch in the Maritime Provinces and had suffered in the Kandyan Districts owing to wars and rebellions which constantly interfered with their normal life. Besides, the champions of the weaker nations among the British at this time were concerned rather with their political rights than with their civilization and culture. They generally believed in the superiority of the British way of life over that of any other nation, and many considered it their mission to spread their civilization among other peoples of the world. Colebrooke and Cameron, who appear to have shared these views, believed that a knowledge of English would lead to the advancement of the peoples of Ceylon and the acceptance of Christianity to their moral improvement, and, therefore, showed little interest in the religions or the cultures of the people. But in other respects they anticipated to a great extent the proposals of those who conferred at San Francisco twelve decades later. They wanted all distinctions between the rulers and the ruled, between Europeans and Ceylonese or among the Ceylonese themselves, abolished. They insisted that the British Government should have as their objective the welfare of the people, improve their economic and social

conditions, educate them and help them and set them on a path which was bound to lead them to self-government.

These recommendations, it is worthy of note, were made without pressure from any quarter. Unlike today, there was then no international opinion hostile to the colonial systems that existed. There was no demand either in Britain or in Ceylon for the redress of any grievances. 'I am not aware of the circumstances that led to this inquiry,' wrote Sir Edward Barnes, Governor of Ceylon (1824-31) to the Earl of Bathurst, the Secretary of State, 'as I do not know of any points at issue—nor of any subjects under discussion—nor of any information sought for by His Majesty's Government at Home which has been deemed unsatisfactory or inconclusive—nor have I heard of any complaints either in or out of Parliament—nor am I aware that any individual representations of dissatisfaction either openly or anonymously have been made to Your Lordship.'<sup>1</sup>

The Commission of Inquiry led by Colebrooke was not meant originally for Ceylon but for the Cape of Good Hope and Mauritius; to investigate the problem of slavery in the former and the continued political and racial dissensions in the latter. 'Such a Commission might indeed be less necessary in the Island of Ceylon,' said Robert Wilmot<sup>2</sup> in Parliament on 25 July 1822, in proposing the appointment of the Commission, 'but government had no hesitation to extend it to that island likewise, in order to satisfy the public regarding the manner in which its resources were managed.'<sup>3</sup> At this time the Cape, Mauritius and Ceylon were grouped together as three strategic points in the Orient captured during the wars against France (1743-1815). When a Commission was sent to inquire into the affairs of the first two it was natural to extend its scope to Ceylon because, as in the other two, its expenditure for many years had exceeded its revenue.

But though this inquiry was not demanded by anyone the reforms that resulted from it were indeed far-reaching and altered radically the political, economic and social structure of

<sup>1</sup> II, p. 24.

<sup>2</sup> Wilmot added Horton to his name in 1822. C. R. de Silva, *Ceylon under the British Occupation*, I, p. 269.

<sup>3</sup> I, p. 4.

the Island which British Officials had hitherto preserved or brought about by their rule; and in order to appreciate the proposals made by the Commission it is necessary first of all to glance at the history of Britain from the close of the War of American Independence up to the arrival of the Commission in 1829 as well as at the history of Ceylon under British rule up to the same year.

### *British Colonial Policy after the American War*

After the loss of the thirteen colonies in America, British statesmen made it their aim to preserve the rest of the Empire, and in order to achieve this object they modified from time to time their policy towards the Colonies.<sup>1</sup> They believed that the loss of the Colonies was partly due to the deficiencies of their constitutions. Consequently they did not favour the type of government that existed before the Rebellion on the North American seaboard and in the West Indies where authority was invested in a Governor, a nominated executive council and an elected assembly. They thought that this loss might have been avoided had the American Colonies possessed a constitution of the British type which preserved a perfect balance between Crown, Lords and Commons. They came, therefore, to the view that what the colonial constitutions lacked was a strong executive, effectively exercising the power of veto and other royal prerogatives, and a similarly potent second chamber to act as a check on the democratic spirit of the elected assembly. Hence in devising a new constitution for Ireland an attempt was made to establish it on the British model, but it failed. Such a constitution was set up in Canada

<sup>1</sup> For most of the matter in this section I am indebted to the chapter on 'The New Imperialism' by V. Harlow (*The Cambridge History of the British Empire*, II, p. 129). See also R. L. Schuyler, *The Fall of the Old Colonial System*; Helen Taft Manning, *British Colonial Government after the American Revolution, 1782-1820*, and 'The Economic Factors in the History of the Empire' by Richard Pares (*The Economic History Review*, vii, 2, p. 119). 'The permanency of their connexions with this country should therefore be the ground for every measure respecting our colonies,' wrote an adviser to the Secretary of State in 1783 or 1784. 'The advantages to be derived from them should be the second object of our attention and their prosperity to be encouraged only in so far as it may be consistent with these two.' Manning, p. 12.

but it did not bring about ultimately the results expected as the similarity was only in form, but not in the powers exercised by the Lower House. The constitutions in the West Indian territories colonized by British settlers were improved by rehabilitating the executive, but to appease the colonists the privileges of the assemblies were left intact. In those colonies in the same area which France had ceded in 1763, recaptured during the War of American Independence and returned to Britain at the end of that war, the British statesmen realized when France took the side of the colonists the inadvisability of establishing elected assemblies in which the majority of the members would be foreigners.

In the meantime another type of constitution was being evolved in the East. India had been conquered and ruled, not by the British Government, but by the East India Company which had received quasi-feudal concessions to trade in the East. When the British people learnt of the serious misgovernment in the province of Bengal, they wanted to establish in India a form of government which would put an end to abuses, rule justly, and preserve British trade. The remedy proposed at first was to do away with the rule of the East India Company and to establish a strong executive in India directly controlled by the executive in England. But William Pitt, the Younger, in 1784, agreed to a compromise to meet the wishes of the Company. He divided Indian affairs into two mutually exclusive spheres, the one comprising political and revenue administration and the other commerce. He left the commerce entirely in the hands of the Company, but appointed a Board of Control with a member of the Cabinet as President to supervise its political and revenue administration. The Indian executive was strengthened at the same time. The Governor-General of Fort William was given control over Madras and Bombay. In 1788 he was further allowed to override the decisions of his Council, and in 1800 he was also made Commander-in-Chief. Besides, along with the Governors of the other Presidencies, he was given greater control over the Civil and Military services than was possessed by Governors of Colonies.

When the War against Revolutionary France broke out in 1793, British statesmen thus had a wider experience of the

problems of government within the Empire. They realized the need for a stricter control by the executive in Ireland, in Canada and in the old West Indian Islands. They wished for direct rule from Britain in India instead of through a trading company. In islands where the population was predominantly foreign, they realized the danger of the application of representative government. Hence when new colonies such as San Domingo and Martinique in the Caribbean were acquired during the wars against Revolutionary France and Napoleon, they were granted constitutions on lines similar to that of India and that of Canada conferred by the Quebec Act of 1774, which prevented the French Canadians from joining the British Colonists and breaking away from the Empire. In all these colonies—as in India—executive powers, civil and military, were vested solely in the Governor. In each case a small council was to assist the Governor, but he was free to act contrary to its advice provided the reasons of the dissenting councillors were recorded and submitted to the Secretary of State. But as was conceded by the Quebec Act in Canada their ancient institutions were to be preserved. The Roman Catholic Church was to be maintained, although Protestant forms of worship were to be tolerated. French law and French courts were to be retained and the old fiscal system was to be continued under the superintendence of the British Treasury.

### *Ceylon under British Rule*

Such was the British attitude towards colonies when the Dutch settlements and their dependencies in South India were captured and taken over on 15 February 1796 by the Madras Government of the British East India Company.<sup>1</sup> But the Madras Government, acting on its own initiative, made Ceylon a part of its Presidency. It set up a form of military rule for the time being and, contrary to British policy at this time, extended to Ceylon its own system of revenue and methods of collection overturning at once 'ancient practices founded in necessity and long established habits in order to make room

<sup>1</sup> II, p. 59. See also W. Ivor Jennings, 'Notes on the Constitutional Law of Ceylon' in the *Journal of the Royal Asiatic Society, Ceylon Branch*, I, p. 51 (New Series).



for Theories more plausible perhaps but impracticable in the state of society in that Island'.<sup>1</sup>

This measure, which involved the abolition of the ancient system of *Rājakāriya* and the replacement of the Sinhalese Mudaliyars by South Indian Amildars, together with the rapacity of the Indian tax-gatherers, led to a revolt in 1797. The result was a reversion to the earlier form of government—the dismissal of the Indian officials, the reinstatement of the Sinhalese chiefs and the restoration of the system of *Rājakāriya*.

Even before the news of the serious consequences of the drastic changes carried out by the Madras Government reached Britain, it was decided, in accordance with the importance attached to the benefits accruing from direct rule, to remove Ceylon from the control of the East India Company and place it directly under the Crown. But in deference to the protests of the Company, Henry Dundas, who was President of the Board of Control as well as Secretary of State, finally decided on 19 April 1798 to keep Ceylon for the time being, like Bombay and Madras (Fort St George), separate within the Indian system.<sup>2</sup> The Governor was to be appointed by the Crown, but was to be under the direction of the Court of Directors and the Governor-General of Fort William, who in turn in non-commercial matters were under the supervision of the Board of Control of which he was President. The Governor was to exercise all legislative, executive, judicial and military authority but without an executive council of the type that existed in the Presidencies. The revenue and the control of trade including the cinnamon monopoly were to be the concern of the East India Company. The personnel of the Civil Service was to be under the Governor and for purposes of the administration of revenue and commerce they were in future to be drawn from Madras.<sup>3</sup>

The new arrangements came into force on 12 October 1798 with the arrival of the Governor, Frederick North, but they did not work satisfactorily. The Madras officials being ignorant of Sinhalese did not fit into the conditions in Ceylon which differed in many respects from those in South India. Besides, they indulged in corrupt practices, and when North exposed them, they tried to act against his authority. Hence on account

<sup>1</sup> II, p. 127.

<sup>2</sup> II, pp. 67, 71, 80.

<sup>3</sup> II, p. 81.

of the difficulties with which North had to struggle in carrying on the civil government as well as for other reasons,<sup>1</sup> Dundas announced to the Court of Directors on 30 December 1800 his decision to revert to the earlier proposal to place Ceylon directly under the Crown, and on 1 January 1802, abandoning the unfortunate connexion with India, he brought Ceylon under Royal Government with a political, financial and judicial system of its own.

### *The Recommendations of Dundas*

In devising the form of government for Ceylon Dundas had before him two types of colonial government: the traditional indirect method through local legislatures prevailing in the West Indies; and the new form of direct rule as worked out in India and applied through the medium of instructions which existed at the time in the conquered colonies of San Domingo and Martinique in the Caribbean. Of these two he adopted the Indian form for Ceylon. 'On the present resumption by His Majesty of the temporary power of interference in the affairs of Ceylon formerly delegated to the Company, it was far from being proposed,' he pointed out to North, 'to assimilate that Island or its Government to our Colonies in the West Indies. But on the contrary, whatever experience has shown to be politically wise in the Government of the British Territory on the Continent of India, and appears as is the case in this instance, applicable to the situation in Ceylon, it is the inclination of His Majesty's Government to preserve or to adopt.'<sup>2</sup>

Accordingly Dundas decided to establish as in India a strong and efficient system of government which could remove abuses and maintain just rule. 'The complete legislative power must remain as it now is, vested in the Governor alone subject to revision and confirmation or rejection at home. The only material difference . . . is that . . . it can no longer be exercised under the advice and control of the Governor-General in Council.' This legislative as well as executive authority, however, was to be exercised with the assistance of an advisory council as in the Caribbean colonies and in India. 'It may, however, be advisable', continued Dundas, 'for the sake of

<sup>1</sup> II, p. 107.

<sup>2</sup> II, p. 113.

more solemnity and as affording the means perhaps of giving more satisfaction in the country and to those who are liable to be regulated and affected by your proceedings either in your legislative or executive capacity, that you should form to yourself a Council with which you would consult on all great and important occasions, and that some form should be adopted for the promulgation and execution of all Acts and measures of this description by which it might be understood that they were passed or ordered by the Governor in Council.<sup>1</sup>

In other spheres too the Governor was granted considerable power. As in India he was to exercise greater power and latitude with regard to appointments, promotions and dismissals in the Civil Service than in other colonies.<sup>2</sup> In order to maintain British ascendancy this service as in India was to be exclusively British and recruited from Britain.<sup>3</sup>

As in India the ancient institutions were to be preserved. The peoples of the Island were to have their local habits, their ancient tenures, distinctions and religious observances preserved inviolate,<sup>4</sup> unless humane considerations required their modification.<sup>5</sup> As in India two sets of courts were to be established. A Supreme Court of Judicature manned by two British barristers was to exercise criminal jurisdiction over the whole island, civil jurisdiction over the Town and Fort of Colombo and the district around and over all Europeans residing in the

<sup>1</sup> II, p. 108. Even in matters of practice the provisions of the Government of Bengal were to be followed. All the Acts of Government and Proclamations of a legislative nature were to be numbered in a regular series on the lines of the Forty-first Regulation of 1793 of the Government of Bengal. II, p. 109. See also Ilbert: *Government of India*, p. 71.

<sup>2</sup> Here, too, the rules and regulations of Bengal were to be followed as far as circumstances permitted. II, p. 118.

<sup>3</sup> 'The duty and policy of the British Government in India therefore require that the system of confiding the immediate exercise of every branch and department of the Government to Europeans, educated in its own service, and subject to its own direct control should be diffused as widely as possible, as well with a view to the stability of our own interests as to the happiness of our native subjects.' Note on the Civil Service by Lord Wellesley, 10 July 1800.

'In every colony where the British flag flies the ascendancy should be with it, and the executive government must be British.' Carmichael in Demerara in an Address to the new College of Kiezers, 10 October 1813. C.O. 111, 13. C.H.B.E., II, p. 164.

<sup>4</sup> II, p. 110.

<sup>5</sup> II, pp. 117, 155.

Island in place of the Supreme Court of Criminal Jurisdiction over which the Governor presided. The civil cases of the people of the country, however, were to be tried in the new Provincial Courts presided over by the Civil Servants and appeals from these were to be heard by a High Court of Appeal of which the Governor was President, similar to the Sadr Diwani Adalat of which the Governor-General of India was President, which was to supersede the greater and lesser Courts of Appeal established in 1799.<sup>1</sup>

In the relations with the independent Kandyan Kingdom the policy adopted at the time by Wellesley in India was being tried. Dundas was anxious to secure some control of the Kandyan Kingdom, as such a step would 'add to the strength of our position in the Island without requiring any material addition of troops, and at the same time give additional facility to whatever measures may be in contemplation for improving the means of internal communication between different parts of the island'.<sup>2</sup>

Dundas hoped that North would be able to establish a garrison of British troops in Kandy and obtain by a treaty the management of the King's whole revenue and military force whilst in other respects the Kandyan Government would be administered according to its existing forms in the name of the King. 'A measure of this nature would enable you,' he explained 'without alarming the prejudices or interfering with the habits of the people to take upon yourself the direction of affairs; and without changing the channels through which they have hitherto been conducted, to substitute a humane, enlightened, liberal and steady policy to that succession of weakness, tyranny, bloodshed and usurpation, which appears to have prevailed in that country ever since the island was first visited by Europeans.'<sup>3</sup>

For the security of Ceylon Dundas wanted also certain regulations enforced within British territory. Following Indian practice he ordered the exclusion of unlicensed Europeans lest the Island 'might become an asylum to adventurers from every nation in Europe and a harbour for outcasts of every description',<sup>4</sup> and in order to prevent all attempts at European

<sup>1</sup> II, 111, 154-99.

<sup>2</sup> II, p. 133.

<sup>3</sup> II, p. 113.

<sup>4</sup> II, pp. 101, 113.

colonization he prohibited the grant of lands to Europeans outside the town and district of Colombo.<sup>1</sup>

In matters of trade too as in other matters Ceylon was to follow India. Dundas generally approved of the British economic policy of the day which still clung to mercantilism. He did not, therefore, suggest any radical changes in the mercantilist system the Dutch had followed. The trade of Ceylon, as already arranged in 1798, was to be a preserve of the East India Company. Ceylon was to have no commercial relations with any other power west of the Cape of Good Hope. It could trade with India and other countries of Asia but only under the dominion and protection of the East India Company.<sup>2</sup>

Within the Island itself he wanted Government to maintain as in Dutch times the monopolies of cinnamon and of the pearl fishery,<sup>3</sup> and suggested the sale of salt also being turned into a monopoly.<sup>4</sup> He wanted Government to continue the development of the resources of the Island as instructed in 1798, extend its trade and increase its revenue, and make Ceylon self-sufficient as far as possible with regard to rice. Government was to encourage its cultivation by the repair of irrigation works and by liberal grants of lands to the inhabitants.<sup>5</sup>

Dundas was equally anxious that the finances of the Island should be skilfully managed. The revenue and expenditure was to be placed under the control of the British Treasury. In Ceylon a Board of Revenue consisting of three members was to be appointed 'for the better management and collection of revenues with powers to superintend, examine and control all matters relative to the public Receipt and Expenditure'.<sup>6</sup> The regulations which were to govern it were to be fixed by reference to the regulations and usages of the Board of Revenue in the Presidencies of India.<sup>7</sup> Further he wanted a system of economy enforced to prevent 'any opinion prejudicial to the value and importance of Ceylon or to the advantage of the present arrangement being in the meantime formed at home, which will certainly be the case if the resources of this country

<sup>1</sup> II, p. 114.

<sup>3</sup> II, pp. 122, 124.

<sup>5</sup> II, p. 127.

<sup>7</sup> II, p. 120.

<sup>2</sup> II, p. 131.

<sup>4</sup> II, p. 128.

<sup>6</sup> II, p. 120.

(Britain) are even for a short time called upon to any material extent to aid those which the public have been induced to believe were to be derived from the possession of that Island'.<sup>1</sup>

But unlike the mercantilists Dundas was not out merely to regulate the economic system with the object of enriching Britain. He showed throughout his Dispatch a concern for the advancement of the welfare of the people of Ceylon. Such concern was expected in England at this time by the leaders of the humanitarian and evangelical movements who were working for the abolition of slavery and the improvement of the conditions of backward peoples. Such interest was also necessary to secure the attachment of the colonists to the Empire as well as to help them to contribute to the support of Government.<sup>2</sup>

Thus Dundas wanted the establishment of a strong government in which the Governor was all powerful and the Civil Service was British and which had as its aims the development of the resources of the country and its trade and the proper management of its finances, the preservation of the ancient institutions and the fostering of the welfare of the people, and pursued in British relations with the King of Kandy a policy similar to that followed by Wellesley in India.

### *British Rule in Ceylon from North to Barnes*

The Governors on the whole kept to the instructions of Dundas. The chief problem the first Governor, Frederick North (1798-1805), had to face was that of the Kandyan Kingdom which might at any time have joined the French to expel the British from Ceylon. Following Wellesley's policy in India he tried to get a British Regiment placed in Kandy and thus get control of the Kingdom. But he failed to come to any agreement as the King of Kandy had no rivals to fear like the rulers

<sup>1</sup> II, p. 120.

<sup>2</sup> 'Government was to afford protection and a due administration of justice to His Majesty's subjects in Ceylon, to meliorate their condition, and in proportion as we hereby add to their prosperity to enable them with more ease to themselves to contribute effectually to the support of a Government, which, guided by these views, cannot fail, while it conduced to the happiness and improvement of the inhabitants, to ensure their attachment and to promote the general interests and strength of the British Empire.' II, p. 107. See also II, p. 82.

of the Indian States who welcomed the help of British troops. Thereupon on the first provocation by the King, exceeding the Instructions of Dundas, he carried on a war in 1803 against Kandy, which ended disastrously for the British. Sir Thomas Maitland (1805-12) who succeeded North failed equally to come to any terms with Kandy, but the situation changed in the time of Sir Robert Brownrigg (1812-20). The Kandyan Chiefs owing to their differences with the King welcomed British intervention. Though territorial expansion was not the British policy at this time, Brownrigg did not miss this opportunity to occupy the Kandyan Kingdom, and thus, as required by Dundas, strengthen the British hold on Ceylon, removing a source of anxiety to British security and an obstacle to the improvement of the means of internal communication between the different parts of the Island.<sup>1</sup>

The injunction to preserve the ancient institutions proved even more difficult to carry out. Already according to instructions sent from England North had on grounds of humanity abolished mutilation and torture in the Maritime Provinces.<sup>2</sup> Brownrigg extended the same regulations to the Kandyan Districts as soon as they came under British rule.<sup>3</sup> Also on grounds of humanity North tried to discourage slavery, which was a well established institution among the Dutch and a practice approved by custom among the Tamils of Ceylon. The Chief Justice, Sir Alexander Johnston persuaded the Burghers and other inhabitants of Ceylon to liberate the children of slaves born after 12 August 1816. Brownrigg implemented this voluntary offer in 1818 by two Regulations, and made it possible for the slaves in the Maritime Provinces to redeem their freedom by payment.<sup>4</sup> Barnes in order to put an end to slavery altogether passed a regulation in 1821 to emancipate all children of slaves in the Maritime Provinces by purchasing them at their birth.<sup>5</sup>

Another ancient institution the British Governors found difficult to reconcile with British security. They found that the rule of the chiefs formed an *imperium in imperio* and a serious menace to Government. The Governors, therefore, gradually

<sup>1</sup> II, p. 133.

<sup>2</sup> II, p. 155.

<sup>3</sup> II, p. 228.

<sup>4</sup> II, p. 351.

<sup>5</sup> II, p. 371.

modified this system. North deprived the Mudaliyars of their *nindagam* the revenues of which villages came to them and over which they exercised unfettered seigniorial powers, and paid them salaries to make them dependent on Government.<sup>1</sup> Maitland relieved them of their judicial work and also took other steps to reduce their powers in the districts.<sup>2</sup>

When the Kandyan Districts came under British control Brownrigg could not, as in the Maritime Provinces, reduce the powers of the Chiefs as it was the Chiefs themselves who helped him to establish British sovereignty over their area. Therefore as Dundas suggested, he preserved the rights, privileges and powers of the Chiefs, the channel through whom the Government had hitherto been conducted. But he seized the opportunity afforded by the Kandyan Rebellion, in which most of the chiefs rose against British rule, to reduce their powers and make clear to them, in the Proclamation of 21 November 1818, their subordinate position and the extent of their rights.<sup>3</sup> As in the Maritime Provinces he deprived the chiefs of their *nindagam*<sup>4</sup> and paid them monthly salaries or remitted their taxes, took away most of their judicial duties and abolished the judicial fees which they had hitherto received.<sup>5</sup>

The system of *Rājakāriya* too was not fully approved of by some of the Governors. Feudalism was obsolete in Britain and was disliked for its association with serfdom. In Ceylon *Rājakāriya* reproduced several characteristics of that most typical feature of the serf's condition, the *corvee*, and at the same time gave power to the chiefs and preserved distinctions of caste based on birth. North objected to the system for these reasons. Further he believed that service tenures were a hindrance to the development of agriculture and that there would be greater production if they were abolished, lands were held in freehold, and every man allowed to enjoy with security the fruits of his industry. Guided by this conviction on 3 May 1800 he gave the option to the people to convert their service lands to freeholds and pay a grain-tax in place of the service rendered. This action received the approval of Dundas,<sup>6</sup> but on 1 May 1802, finding there was little response to his offer,

<sup>1</sup> II, p. 278.

<sup>3</sup> II, p. 233.

<sup>5</sup> II, p. 237.

<sup>2</sup> II, pp. 209, 213.

<sup>4</sup> II, p. 237.

<sup>6</sup> II, p. 127.



he exceeded the instructions of Dundas by doing away with the voluntary basis of the reform, substituting a grain-tax in place of the services, and retaining the right to exact work on adequate payment.<sup>1</sup>

Maitland did not wholly approve of this change. He did not raise any objection to the substitution of the grain-tax for services rendered for lands held, but restored the second form of *Rājakāriya*, the fortnight's gratuitous services rendered to Government in repairing village paths and bridges.<sup>2</sup> He made a further modification in the system of land tenure. In order to prevent the impoverishment of the people through loss of their lands he prohibited the alienation of lands originally held for service.<sup>3</sup>

Brownrigg, after the Kandyan Rebellion, brought the system of land tenure and *Rājakāriya*, like the powers of the Chiefs, into line with the changes that had been made in the Maritime Provinces. In place of *Rājakāriya*, holders of land, with a few exceptions, were ordered to pay an assessment tax of one tenth of the annual produce.<sup>4</sup> But Government retained the right to exact from them services according to ancient custom either for payment or for exemption from the grain-tax. Further the duty of clearing and making roads and of putting up and repairing bridges was declared a general gratuitous service falling on the districts through which the roads passed or wherein the bridges lay.<sup>5</sup> Government further claimed the right to abolish useless or unnecessary services and substitute more beneficial ones in their place.<sup>6</sup>

Barnes made a change in the way *Rājakāriya* was utilized, giving a wider interpretation to Clause 30 of the Proclamation of 1818. According to ancient custom the gratuitous services consisted in repairing village paths and bridges within the district in which the people lived. Barnes used *Rājakāriya* to build roads to Kandy in order to strengthen the British hold over the Kandyan Provinces though the work did not fall strictly within the definition of the term.

Apart from these reforms, the ancient institutions were on the whole preserved. To maintain the distinct customs of the

<sup>1</sup> II, p. 277.

<sup>2</sup> II, pp. 212, 301.

<sup>3</sup> II, p. 287.

<sup>4</sup> II, p. 235.

<sup>5</sup> II, p. 237.

<sup>6</sup> II, p. 237.

Sinhalese and the Tamils in the Maritime Provinces, the two forms of administration in the two areas employed by the Dutch were retained without any serious modification.

When the Kandyan Kingdom was occupied in 1815 Brownrigg assured to all classes of the people the safety of their persons and their property with their civil rights and immunities according to the laws, institutions and customs established and in force amongst them. He further declared that Buddhism would be inviolable, and its rites, ministers and places of worship would be maintained and protected.<sup>1</sup>

Even after the Rebellion of 1818, the separate system of administration for the Kandyan Provinces was continued. Brownrigg did not give the Executive Council and the Supreme Court established for the Maritime Provinces any power over them. Instead he delegated his executive and judicial powers to a Board of Commissioners who were to rule through Agents of Government, under whose control the Kandyan Chiefs were placed. All minor civil and criminal cases were left to be dealt with by the Agents of Government. All other cases were to be tried by the Judicial Commissioner or Agents of Government with two or more Assessors. Appeals from the Courts of the Agents were allowed to the Court of the Judicial Commissioner; and further appeals from that Court were to go before the Board of Commissioners and the Governor.<sup>2</sup>

As suggested by Dundas the Governors paid attention to the development of the resources of the country. Reference has already been made to the steps taken by North to abolish service tenures in order to encourage the cultivation of rice, with the same object he made liberal grants of land, repaired tanks, and introduced better qualities of rice and improved methods of cultivation. He reopened a coffee plantation of about a hundred acres which the Dutch had cultivated near Negombo. He extended the cinnamon plantations in Colombo so that he might not be dependent on the King of Kandy to obtain the full quota of cinnamon due to the East India Company.

Maitland too tried to increase the cultivation of rice. He asked the Collectors to give advances of grain and agricultural tools to the people. He requested them as far as possible to farm out to the cultivators themselves the tithes of their villages

<sup>1</sup> II, p. 228.

<sup>2</sup> II, p. 233.

in order to relieve them from the vexations of tax-gatherers.<sup>1</sup> But he soon realized that these methods were not adequate to produce sufficient revenue to place the country on a sound financial footing. Consequently he made an important deviation from the Instructions of Dundas. With the consent of the Secretary of State he permitted the settlement of Europeans in the Island and the grant of lands to them for the cultivation of commercial crops.<sup>2</sup>

Brownrigg, whose time was taken up with the occupation of the Kandyan Kingdom and the establishment of British rule there, devoted his attention only to advance British trade. He abandoned the barriers that existed between the Maritime and the Kandyan Provinces and allowed free trade between the two areas.<sup>3</sup>

Barnes, like North, wanted Ceylon to be self-sufficient in matters of food and took a keen interest in the repair of irrigation works. But his chief contribution was the impetus he gave to the development of commercial crops. He himself opened a coffee plantation of his own, besides establishing a government plantation. To encourage others to take to the cultivation of such crops he abolished in 1825 the export duties on coffee and cotton and in 1829 waived the land-tax for twelve years from coffee, cotton, sugar, indigo and opium and silk plantations and the export duty on the last four. He exempted labourers in the plantations in the Maritime Provinces from *Rājakāriya* so that planters might carry on their work without interruption.<sup>4</sup>

The task of carrying out Dundas's Instructions to place the finances on a proper footing was undertaken by Maitland. He did not consider that the Board of Revenue performed its functions efficiently. In its place he appointed a Commissioner of Revenue to act under his direct orders. He issued detailed instructions to all the officials from the Chief Secretary to the Collectors to ensure that all moneys were properly collected and spent.<sup>5</sup> Further he prohibited the practice of private trade carried on by officials in order to reduce to a minimum their opportunities for corrupt practices.

<sup>1</sup> II, p. 266.

<sup>2</sup> II, p. 314.

<sup>3</sup> II, p. 229.

<sup>4</sup> II, p. 279.

<sup>5</sup> II, pp. 213, 244.

The object of fostering the welfare of the people was carried out by the Governors in other ways besides the development of the resources of the country. North took an interest in education and the propagation of Christianity though this was not the policy of the East India Company in India at the time. In Ceylon the Dutch had carried on schools for the propagation of Christianity, but these had been neglected by the East India Company. As a result the Protestant Christians were going back to Buddhism and Hinduism and it struck North that this might weaken the Government's hold on the people. But North also believed that Christian education would lead to the moral improvement of the people, and undeterred by the hesitation shown by Dundas he revived the schools for the propagation of Christianity.

On his departure the schools were once more neglected for want of funds and Maitland took no special interest in them. But as a result of representations made by the leaders of the Evangelical Movement in England they were restored once more.

Brownrigg on the other hand took a keen interest in the spread of Christianity. He assisted the Christian Missionaries who began to arrive in Ceylon from 1812. He employed Wesleyan missionaries as teachers and allowed even a foreign body like the American Mission to establish itself in Jaffna.

Barnes approved of schools but did not consider it was the duty of the British Government to spread Christianity. He took the same attitude as Dundas and the officials of the East India Company. He abolished the posts of catechists who supervised the religious education in the schools and stopped the allowances paid by Brownrigg to the Wesleyan missionaries for their educational work. He disapproved of the permission granted by Brownrigg to the American missionaries to work in Ceylon and did not consider it expedient or prudent to allow subjects of a foreign state to gain that influence over the minds of the people which through their religious instruction they and their successors might in time acquire.<sup>1</sup>

Rather different from these were the directions in which Maitland showed his interest in the welfare of the people. He introduced the system of trial by jury in criminal cases in

<sup>1</sup> II, p. 55.

order to reduce the mistakes made by lawyer judges on account of their ignorance of Sinhalese and Tamil.<sup>1</sup> He instructed Collectors to make regular circuits and acquaint themselves fully with the conditions of the country and see that the people were well governed. He wanted them to settle all petty disputes while on circuit and thus make it unnecessary for people to go to a distant court for the purpose. 'It must be unnecessary here to add,' he wrote in 1808, 'that Government expects that in all instances, and on every occasion the greatest moderation be displayed to the whole of the Natives by the Collectors. —That, the power delegated by Government to the Collectors, be made use of with consideration and forbearance, and that they consider the only mode of ensuring the respect and conciliating the feelings of the Natives to be, by adopting a line of conduct at once firm, but moderate and considerate.

'Neither can it be necessary to state,' he added, probably thinking of the policy followed by the Madras officials, 'that the true interests of Government never can be to harass the Natives, with a view to immediate profit, but that on the contrary, the sole object of Government is, and always ought to be considered to be, to ensure the prosperity of the Island solely through the medium of generally increasing the prosperity and happiness of the Natives under His Majesty's Government.'<sup>2</sup>

The rights granted to the Governor by Dundas were in no way diminished during this period. On the other hand he exercised in addition powers he inherited from the Dutch Governor and the Kandyan King. It has been shown that in the Maritime Provinces he became the chief military executive and legislative authority and the judicial head in all civil matters, and in the Kandyan Provinces he was in addition the judicial authority in all criminal matters too. The claims to *Rājakāriya* gave him the further power to press labourers, regulate their wages and employ them gratuitously or compulsorily according to caste or custom both in the Maritime and the Kandyan Provinces, while the power exercised in regulating wages and imposing taxes and the system of monopoly gave him indefinite control over their resources.

According to the Charter of 1801 the Governor was placed

<sup>1</sup> II, p. 203.

<sup>2</sup> II, pp. 265-7.

beyond the jurisdiction of the Courts.<sup>1</sup> In 1806 he assumed the power to imprison or banish any person without trial or assigning any reason. In 1824 a regulation was issued to prevent the Governor's exercise of this power being questioned by the Supreme Court.<sup>2</sup> Further owing to the remoteness of the Island from Britain the Secretary of State could exercise little control over his actions apart from dictating policy, and in the absence of open discussion of public affairs the Governor became the exclusive organ from whom he could derive authentic information about the Island. Hence the authority of the Governor was regarded as absolute.

Thus on the whole the policy laid down by Dundas was pursued by the Governors. A strong government, in which the Governor had almost absolute powers, continued to function. The resources of the country were developed and trade and industry advanced, while the welfare of the governed became a definite objective of Government. Only in the case of the ancient institutions was there some deviation. They were modified or abolished when they clashed not only with the claims of humanity but also with British security, the development of industry and trade and the interests and the welfare of the people.

### *The Change in British Colonial Policy*

But this policy enunciated by Dundas and carried out by successive Governors was soon to come to an end as a result of another change that took place in British Colonial policy. As a result of the Industrial Revolution Britain became the workshop of the world and its political, economic and social organization gradually began to alter. About the same time there had been a sudden emergence of imperial evangelism due to a powerful humanitarian current in the spiritual life of the British people, which revealed a deep sense of duty and a concern for the lot of the common people.

These developments were accompanied by changes in ideas, sentiments and values which were given expression to by writers like Adam Smith, Jeremy Bentham, James Mill and other Radicals and religious leaders like William Wilberforce. There was an assault on the doctrinal system of mercantilism

<sup>1</sup> II, p. 190.

<sup>2</sup> II, pp. 45, 224.

and on economic activities which were implemented by the state or which benefited only a section of the people. Privileges based on birth or prescription were opposed, and equality of all men before the law was proclaimed. The importance of tradition was undervalued and the influence of reason on man was over-estimated. Utility and quantity became the chief criteria in the assessment of things. The greatest happiness of the greatest number was proclaimed to be the objective of government, and as a result democracy came to be considered the best form of Government. But individual rights were not ignored. Toleration and free discussion were welcomed and freedom of thought, speech and action was advocated. In the economic sphere, as the results of the industrial revolution gradually began to be felt, it was realized that the loss of the American Colonies did not necessarily lead to a reduction in British trade with those territories.

Consequently the views of Adam Smith along with those of Jeremy Bentham, James Mill and other Radicals began to gain ascendancy, and, from about 1820, began to influence British politics. Monopolies and exclusive privileges came to be rapidly abolished. Archaic systems and regulations which had no relevance to the economic conditions or the ideas of the day were swept away. The British system of law was reformed. The legal procedure was simplified, legal technicalities and fictions were removed, and costs and delays in litigation were reduced. Autocratic forms of government were condemned and Parliamentary reform advocated. A greater interest came to be taken in education. The opposition to slavery and the interest in backward peoples were intensified. Even the idea that the Empire should be a confederacy of nations in which the colonists were fellow-citizens began to take shape among a few writers.<sup>1</sup>

### *The Commission*

It was when these new ideas had begun to influence British Colonial policy that on 18 January 1823 John Thomas Bigge, a lawyer with West Indian experience, who in 1819 had been

<sup>1</sup> Knorr, Klaus E.: *British Colonial Theories* (1570-1850); Bensians, E. A.: 'Adam Smith's Project of an Empire' (*Cambridge Historical Journal*, I, p. 249).

sent as Commissioner to New South Wales to investigate the problems connected with the convict settlements there, and William Macbean George Colebrooke, who had considerable experience of the East,<sup>1</sup> were appointed Commissioners of Inquiry to the Eastern Colonies. In 1825 William Blair was added to the number, but Bigge and he had to return to England in 1828 owing to ill-health. Hence on 11 April 1829, Colebrooke came alone to Ceylon. But shortly after on 4 May 1829 Campbell Drummond Riddell, an Edinburgh lawyer, was appointed to assist him particularly with regard to judicial and legal matters. He arrived in Ceylon on 15 September, but left a few months later to take up an appointment in New South Wales. Another Scottish lawyer, Charles Hay Cameron,<sup>2</sup>

<sup>1</sup> Colebrooke was the son of Colonel Paulet Welbore Colebrooke, R.A. His mother was the daughter of Major-General Grant. He was born in 1783 and educated at Woolwich Military College. On 12 September 1803 he entered the Royal Artillery as a First Lieutenant. In the same year he was ordered to the East Indies. He was sent first to Ceylon in 1805. In 1806 he was sent to Malabar, but returned to Ceylon in 1807. In 1809 he went back to India and served in the Field Army during the disturbances at Madras. On 27 September he was promoted Captain.

In 1811 he accompanied the British expedition to Java, and took part in the several actions that occurred in that island. He served as Deputy Quartermaster-General there till on 1 June 1813 he was promoted Major and sent as Political Agent and Commissioner to Palembang in Sumatra. In 1814 he went on a mission to the Supreme Government in Bengal and resumed his duties in Java the following year.

On 19 August 1816 he returned to India on the restoration of Java to the Dutch. In 1817 and 1818 he served with the Indian army through the Maratha and the Pindari Wars. In 1819 and 1820 he served as Deputy Quartermaster-General to the force sent to reduce the pirates in the Persian Gulf, and, after the reduction of their fortresses, was employed in suppressing the piracy and slave-trade carried on by the Arabs. He returned to England in 1821.

After the work of the Commission of Inquiry was over Colebrooke served as Governor of a number of West Indian Islands till he returned to England in 1856, and once more served as an Army Officer, becoming a General in 1865. He died in 1870 at the age of eighty-three.

<sup>2</sup> Cameron was the son of Charles Cameron, Governor of Bahamas, and Lady Margaret Hay, daughter of the fourteenth Earl of Erroll. He was born on 11 February 1795, and in 1820 was called to the Bar at Lincoln's Inn.

In 1835 he went to India as a member of the Law Commission constituted by the Act of 1833. He assisted Macaulay in the preparation of the Indian Penal Code, and in 1843 became the fourth member of the Supreme



was appointed on 23 August 1829 to fill the vacancy created by Riddell's departure, and he landed in Ceylon on 26 March 1830. Neither the *Dictionary of National Biography*<sup>1</sup> nor Colebrooke's own account of his career<sup>2</sup> gives more than a list of his military and diplomatic activities in the East. His Reports, however, show that he had come under the influence of the evangelicals and of writers like Adam Smith, Jeremy Bentham, James Mill and the Radicals. Cameron was an accomplished classical scholar and a disciple of Jeremy Bentham. Thus both of them were in full accord with the changes in British colonial policy that were taking shape at the time.

In 1801, Dundas had feared that if the expenditure of the Ceylon Government exceeded its income, this would create a climate of opinion prejudicial to the arrangements he proposed.<sup>3</sup> This actually happened but to an extent he could not have then foreseen. The scope of the Commission of Inquiry was not limited to proposals for balancing the budget. 'The Commissioners would be directed to inquire,' said Wilmot in the House of Commons, 'into the whole state of each colony—into its whole civil government, into the extent to which its different offices might be diminished, both in number and salaries; into the state of its laws; and also into the practical administration of justice.'<sup>4</sup>

According to the Instructions issued to Bigge and Colebrooke the subjects of inquiry were to be the general administration of Government and the immediate control exercised by the

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Council of Bengal, a post first held by Macaulay. In 1848 he returned from India and lived for some years at Freshwater in the Isle of Wight as a neighbour of the poet Tennyson. In 1875, at the age of eighty, he came again to Ceylon as a coffee planter, and purchased 'Cameron Land' in Dimbula, near Kotagala Railway Station, and Rahatungoda Estate at Hēvāhāta. He died on 8 May 1880 at Nuwara Eliya, and was buried by the side of his wife at St Mary's churchyard, Bogavantalāva. Cameron's eldest son, Ewen, lived and died at Rahatungoda while his third son, Hardinge Hay, served in the Ceylon Civil Service (1870-1904) and retired as the Treasurer of the Colony (*Ceylon Observer*, 10 May 1880; J. P. Lewis: *Tombstones and Monuments in Ceylon*, Colombo, 1913; *Dictionary of National Biography*, III, p. 370).

<sup>1</sup> xxii, p. 467.

<sup>3</sup> II, p. 121.

<sup>2</sup> C.O. 54, 121.

<sup>4</sup> I, p. 4.

Governor himself or in conjunction with a Council in the several departments; local institutions, establishments and regulations, civil and military, and more especially those of a judicial and financial character.\*The Commissioners were to consider how far the Council of Ceylon had been effective and useful and whether similar councils were to be introduced into Cape Colony and Mauritius. They were to report on the extent of the Governor's civil, military and financial powers; on all public officers, and the extent and sources of their pay, emoluments and pensions; on the state of religion and education. The judicial inquiry was to include the administration of criminal and civil justice, the conduct and the regulation of the Police, and the introduction of the English language in the Courts. The financial report was to describe existing revenue and expenditure and recommend possible augmentations and retrenchments with a view to reducing the expenditure within the ordinary resources of the Colony. It was also to deal with the causes of embarrassment as produced from the circumstances and commercial relations and from the systems of finance there adopted.

With regard to Ceylon the Commissioners were to deal with land tenure, land grants and the land tax; the encouragement of agriculture by loans to cultivators and the introduction of machinery; forced labour and slavery; the pearl fishery; the working of the Charter of Justice; the judicial establishments in the Kandyan provinces; and the system of Civil Service with special reference to pensions and superannuation.

A comparison of these instructions with those issued by Dundas reveals to some extent the change British Colonial policy had undergone since 1801. There is no emphasis on the necessity for a strong government and the maintenance of the powers of the Governor. On the other hand Council government which leads to collective deliberation seems to be preferred. No suggestion is made of governing the Colony through ancient institutions. They were all to be investigated for the purpose of prospective regulation and practical improvement. The Commission was to consider the introduction of the English language into the courts of law and in all public proceedings, and inquire into the state of religion and education and report whether and in what manner the English national

system of instruction may be advantageously introduced.

Whatever were the objects of these Instructions Colebrooke and Cameron seem to have looked upon them as a request to examine the entire administration of Ceylon from the angle of the new conceptions that were gaining ascendancy in Britain and to make their recommendations accordingly. The fact that the Secretary of State generally approved their proposals shows that they were justified in the view they took.

Soon after his arrival in Ceylon on 11 April 1829 Colebrooke published His Majesty's Commission in English, Sinhalese and Tamil. As a result he received numerous petitions from people in various parts of the Island. Availing himself of the information he derived from these, he divided the inquiry into two branches, one comprehending the civil government and institutions of the country, its revenues, and the other specifically referring to the laws and judicial establishments. Next he framed a series of questions on all general topics referred to, and addressed them to the civil officers of Government and the judicial functionaries throughout the island.<sup>1</sup> It was after Colebrooke had thus planned the inquiry and conducted it almost to a close that Cameron began his work on 29 March 1830.<sup>2</sup>

Colebrooke and Cameron left Ceylon on 14 February 1831. On 24 December the same year Colebrooke submitted his first report, which was on the Administration of the Government of Ceylon. On 31 January 1832 he presented his second report on the Revenues of Ceylon. On 16 March he followed it with a confidential report on the Compulsory Services, and his last report on the Establishments and Expenditure of Ceylon was submitted on 28 May 1832, more than three years after his arrival in Ceylon. Cameron submitted his report on the Judicial Establishments of Ceylon on the day Colebrooke sent his second report. Much of the credit for his recommendations must go to Colebrooke as he did all the preliminary work in collecting the information.

### *The Proposals of Colebrooke and Cameron*

Imbued with the new conceptions of the day and impelled by a desire to change radically the conditions of the Island

<sup>1</sup> I, p. 10; II, pp. 1-23.

<sup>2</sup> I, p. 12.

Colebrooke and Cameron could not be satisfied with the system of government in Ceylon, its general spirit or its tendencies.<sup>1</sup> With its aims they could not altogether disagree. The development of the resources of the country and the fostering of the welfare of the people were as much their objects as they had been those of Dundas. But they were not satisfied with the limited extent to which these objects had been carried out and the methods adopted in achieving them. With their ideas of utility as a criterion of assessment and their disregard for tradition, their belief in democracy, in private enterprise and in free trade, they could not approve of ancient institutions out of harmony with their ideas, or commercial practices suitable to a mercantilist age. Nor could they, with their faith in the applicability of British institutions to all countries irrespective of their stage of development or differences due to geographical conditions or cultural reasons, regard the administration of Ceylon, as Dundas did, as something remote from British experience and best left to the control of the Governor for his direct rule in accordance with ancient customs. With their new conceptions of empire and ideas of equality they could not support a civil service limited to the British or distinctions between Europeans and Ceylonese or among the Ceylonese themselves. Nor could they, influenced by humanitarianism, support any system which was oppressive or which made distinctions between rich and poor. Thus in order to place the finances of Ceylon on a satisfactory footing, they considered it necessary to alter the basis of the system of government and economy and recommended radical changes all round to achieve their objects.

Of the two types of colonies, while Dundas chose the new form of direct rule, Colebrooke and Cameron preferred the traditional indirect method through local legislatures, and aimed at assimilating the system of government in Ceylon to that of the West Indian Colonies. Further they wanted swept away whatever prevented either the assimilation of the administration and the economy of the Island with those of Britain or their alignment in harmony with the new conceptions that had gained ascendancy there. 'The peculiar circumstances of Ceylon, both physical and moral,' wrote Cameron,

<sup>1</sup> I, p. 51.

'seem to point it out to the British Government as the fittest spot in our Eastern dominions in which to plant the germ of European civilization whence we not unreasonably hope that it will hereafter spread over the whole of those vast territories.'<sup>1</sup>

### *Economic Reforms*

Imbued with such ideas Colebrooke objected most strongly to the medieval system of *Rājakāriya*, which had been disapproved of already and modified by North and Brownrigg. He found that these services demanded by the Government hindered the development of agriculture, industry and trade by restricting the free disposal of labour and deterring people from outside settling in the country; by interfering with the occupations of the people, by retarding every little project of improvement of theirs except when labour was applied to the repair of irrigation works, and by limiting their industry to cultivating only what is requisite to satisfy their actual wants.<sup>2</sup>

Colebrooke objected to *Rājakāriya* also on account of the distinctions based on race and caste made in its application. *Rājakāriya* was not exacted from Europeans or their descendants, the Burghers and the higher classes of Ceylonese,<sup>3</sup> and the services demanded from the people varied not according to their strength or skill but according to the caste determined by their birth.<sup>4</sup>

Colebrooke objected equally to the oppressive manner in which *Rājakāriya* was administered. It had been enforced without regard to the ancient customs of the country or consideration of the claim and condition of individuals.<sup>5</sup> In some cases people had to do much more than they had been liable under Sinhalese Kings.<sup>6</sup> In others they had been compelled to render services for which they were not liable at all according to the tenures of their lands.<sup>7</sup> Contrary to ancient practice they had to work outside their districts far away from their homes.<sup>8</sup> The road service under Sinhalese Kings had amounted to an occasional clearing of forest tracks. But the construction of modern roads had involved sustained labour which no Kandyan King would have ventured to exact. This duty had fallen

<sup>1</sup> I, p. 182.

<sup>3</sup> I, p. 43.

<sup>5</sup> I, p. 56.

<sup>7</sup> I, pp. 198, 200, 201.

<sup>2</sup> I, pp. 51, 195.

<sup>4</sup> I, p. 52.

<sup>6</sup> I, pp. 196, 199, 200, 201.

<sup>8</sup> I, pp. 190, 197, 200.

more heavily on some, as the Headmen had connived at the absence of others who had paid them for this indulgence.<sup>1</sup> According to George Turnour, the Revenue Commissioner, this oppressive system would not have been enforced for a period of ten years (in the Four Korales) if Government had been aware to the fullest extent of its rigorous severity.<sup>2</sup> Besides the people had not been paid at all in some cases and in others inadequately, and they had been able to carry on merely because they did not depend on these wages alone for their sustenance. Some people unwilling to bear the hardships involved in the work allotted to them had abandoned their homes in order to escape it.<sup>3</sup> In one instance the oppressive manner in which the services had been exacted had even led to open resistance.<sup>4</sup>

For these reasons Colebrooke did not wish to tinker any longer with a system so objectionable, and recommended the immediate and complete abolition of *Rājakāriya* and the construction of public works by hired labour or by contract. The Governor was to be allowed to compel people to work only on an urgent occasion when voluntary labour was not available.<sup>5</sup>

The objections raised against *Rājakāriya* applied equally to the monopolies and other government activities as they were all carried out with the use of these services. Colebrooke being opposed to mercantilism objected to monopolies in any form as well as to government activities as they were injurious to the growth of commerce and the inflow and accumulation of capital.<sup>6</sup> He condemned particularly the Cinnamon Monopoly as, in addition to these reasons, its injurious effects fell heavily only on a particular section of the people and because unjust and severe regulations had to be enforced to protect it, such as confiscation of vessels, transportation, fines, imprisonment and hard labour.<sup>7</sup> Finally he considered that the profit derived after deducting the heavy expenses incurred in working the monopoly was in no degree in proportion to the injury it had caused to the inhabitants and generally to the resources of the

<sup>1</sup> I, pp. 195, 204.

<sup>3</sup> I, pp. 198, 201, 280.

<sup>5</sup> I, pp. 53, 54.

<sup>7</sup> I, pp. 90, 92, 93, 94.

<sup>2</sup> I, p. 194.

<sup>4</sup> I, pp. 55, 189.

<sup>6</sup> I, pp. 51, 103.

country on which other important branches of revenue depended.<sup>1</sup> He suggested, therefore, that the cultivation and collection of cinnamon be left to private enterprise, the government plantations be sold or leased at low rates in small lots, the re-occupation of the abandoned plantations be encouraged, and permission be granted to collect cinnamon freely in the jungles.<sup>2</sup> The Salt Monopoly was also condemned by Colebrooke on the ground that the high monopoly price checked both consumption and the use of salt for curing fish and prevented its export to foreign countries.<sup>3</sup> Believing in private enterprise he objected no less to other activities by Government in trade and industry such as the running of plantations of coffee and pepper and the Stud Establishment at Delft and the production of coconut oil.<sup>4</sup>

Colebrooke objected also to direct taxes as they usually interfered with the development of agriculture and industry. Of these the chief one was the land rent which gave room for vexatious interference by farmers of taxes and headmen. He disapproved of it also on account of the invidious distinction made in collecting it only from those who cultivated grain crops and not from those who planted commercial products. Further it was often paid in kind and there was considerable expense in collecting, storing and transporting grain; and when this grain was used for the subsistence of troops the landholders were deprived of the principal market in the interior in the supply of it to troops.<sup>5</sup>

Colebrooke recommended further the abolition of the tax of one-tenth of the value of forest trees cut down and of the licence needed from the Collector for cutting down trees, as they hindered the clearing of forests and retarded the trade in timber. He suggested in addition the sale or grant of uncleared lands in freehold to encourage cultivation.<sup>6</sup>

Colebrooke objected no less to the fish rents as they hampered a valuable industry. The fisherman could do nothing with their catch till the farmer's share was removed.<sup>7</sup>

Nor did he favour the proposal to restore the tax on coconuts

<sup>1</sup> I, p. 93.

<sup>3</sup> I, pp. 95, 96.

<sup>5</sup> I, pp. 79, 80, 81, 82.

<sup>7</sup> I, p. 98.

<sup>2</sup> I, p. 92.

<sup>4</sup> I, pp. 103, 104, 105, 224.

<sup>6</sup> I, pp. 46, 63, 88.

as it might discourage the application of capital to extend its cultivation. He objected to the restrictions on the distillation of arrack, the wholesale monopoly of which Government had established in Colombô, and the high custom duties levied, as they unduly affected the value of property, checked the industry of the inhabitants and discouraged the export of arrack.<sup>1</sup>

Colebrooke found that the way the custom duties had been regulated was also unfavourable to commerce. 'Although the custom duties which are now imposed,' he wrote, 'are regulated on a better principle than formerly, they are still levied in a great degree upon the produce of the island and upon imported articles of the first necessity.' He noticed that owing to heavy export duties the trade in arrack and tobacco had declined and the exports of coconuts and other products of the coconut tree had been checked. Judging from the effects of the reduction of export duties in 1820 he had no doubt that their progressive abolition would lead to a further augmentation of the trade and revenue of the island. He therefore favoured the abolition of export duties on produce.<sup>2</sup>

But Colebrooke had to see that the revenues of the Island were sufficient to meet its expenditure. He therefore did not find it possible to abolish immediately all monopolies or all the taxes and duties harmful to commerce. So in place of the cinnamon monopoly which produced a large revenue, he recommended the imposition, till circumstances made it unnecessary, of an export duty which would be less burdensome to the inhabitants and less expensive in collection.<sup>3</sup> For the same reason he did not find it possible to abolish the land rent immediately. He favoured a permanent settlement as short term leases aimed at periodical augmentation of assessment and thus discouraged improvements. As such an arrangement had been found impracticable he suggested that landholders throughout the island be allowed the option of redeeming at an equitable rate by instalments the whole amount of rents chargeable on their lands. He also recommended that the import duty on rice be retained till the revenues improved as a result of the reforms he recommended.<sup>4</sup>

In the case of the high price charged for salt he recommended

<sup>1</sup> I, p. 85.

<sup>2</sup> I, p. 109.

<sup>3</sup> I, pp. 93, 94.

<sup>4</sup> I, p. 83.



its reduction and the grant of permission for its collection for export and for curing fish, and the substitution of an excise duty to make up the loss till the revenues permitted the liberation of the salt trade altogether.<sup>1</sup> In place of fish rents he suggested a monthly boat licence.<sup>2</sup>

Colebrooke believed that all these changes resulting in the removal of restrictions on trade and the free disposal of labour, and the liberty given to anyone to cultivate any description of produce or to settle in the country, would lead to the settlement of Europeans and Indians in Ceylon, the encouragement of private enterprise, the improvement of wages, the accumulation of capital in the hands of the people, the gradual redemption of the land tax, the cultivation of waste lands and the development of trade.<sup>3</sup>

#### *Abolition of Discriminatory Administrative Regulations*

It has already been noted that Colebrooke had objected to *Rājakāriya*, the system of monopolies, and to land rents also on the ground that they distinguished either between Europeans and Ceylonese or between different sections of the Ceylonese themselves. Colebrooke and Cameron disapproved of distinctions being made in other respects too. Colebrooke objected to the discrimination made in the grants of lands to Europeans and Ceylonese. The success of European colonization, he wrote, would depend in a great degree on the impartial spirit of the government and the discontinuance of those distinctions in society which have hitherto led the natives to regard Europeans and their descendants as a caste imbued with many of their own prejudices, and entitled to certain privileges from which they have systematically excluded'.<sup>4</sup>

Cameron considered the extension of the jurisdiction of the Supreme Court to Europeans and the denial of it to natives beyond the limits of the town and Government of Colombo an unfair and invidious distinction. 'There is not in Ceylon,' he wrote, 'the same ground for the distinction between Europeans and natives as in Continental India. There the English law is administered to Europeans and the native laws to the natives; but in the maritime provinces of Ceylon the Dutch

<sup>1</sup> I, pp. 96, 97.

<sup>2</sup> I, pp. 98, 99.

<sup>3</sup> I, pp. 63, 116, 230.

<sup>4</sup> I, p. 67.

Roman law is administered, with certain exceptions, to Europeans and natives indifferently.<sup>1</sup>

Cameron wanted further the elimination of regulations and practices which made distinctions between rich and poor. He noticed that in Ceylon although the poor were granted an exemption from paying stamp duties they received scant attention compared to those who paid. He pointed out that all men, rich and poor, were equally entitled to protection, and that it was in the interest of government too to grant justice impartially and to all alike. 'There is no benefit,' he wrote, 'which a European government can confer upon its Asiatic subjects of the poorer classes so valuable, and no means by which it can secure the permanence of its own dominion so honourably and effectually as this (the providing for the effectual decision by public authority of the disputes arising among the poorer classes).' 'I can conceive no tie,' he added, 'which will bind the lower people so strongly to their government, as a judicial establishment so contrived as that the very same attention and discrimination should be employed upon their causes as upon those of their affluent neighbours.'<sup>2</sup>

Therefore to prevent this distinction as well as to make the Courts sufficiently cheap to make them accessible to the poorest he recommended the abolition of stamp duties and fees of courts and the grant of *batta* to witnesses on both sides. The stamp duty, he pointed out, was not imposed for the legitimate purpose of raising revenue but for the monstrous purpose of rendering courts of justice inaccessible. 'Stamp fees of court have been defended,' he wrote, 'upon the alleged ground that they discourage vexatious litigation, whereas in truth they discourage litigation in general when the party desirous to litigate is poor, and when the party is rich they encourage vexatious litigation by rendering a law-suit a more efficient instrument of oppression.'<sup>3</sup> Penalties are not inflicted upon those who institute unjust and frivolous suits but upon those who institute suits of any kind.<sup>4</sup>

Colebrooke and Cameron pressed that this equality of treatment be extended even to appointments made by Government. Colebrooke objected to the policy of recruiting civil

<sup>1</sup> I, p. 145.

<sup>2</sup> I, pp. 127, 141.

<sup>3</sup> I, pp. 121, 127, 177.

<sup>4</sup> I, p. 153.

servants exclusively from Britain or limiting the posts to those of British descent. He equally objected to caste being considered in the promotion of Ceylonese in the services. He wanted it declared that the offices of government were open to all classes without reference to caste or other qualifications than respectability and fitness for employment.<sup>1</sup>

Cameron wanted equally the inclusion of Ceylonese in the judicial service. By the appointment of a Ceylonese judge, he wrote, 'the honourable ambition of the upper classes of the Natives will be safely gratified, and the great mass of the people will be bound by ties of affection to a Government which ceases to withhold power and emolument from its Native subjects, as soon as they become qualified to fill them with advantage to the Native Community.'<sup>2</sup>

In order to provide the education by means of which Ceylonese of all classes may in time qualify themselves for some at least of these higher appointments, Colebrooke recommended the establishment of a College in Colombo. He also suggested the appointment of a School Commission composed of the Archdeacon and the clergy, the Agents of Government in the districts and the principal civil and judicial functionaries in Colombo, to deal with matters pertaining to this College and other English schools.<sup>3</sup> Cameron too was not against such measures. 'It is of the utmost importance with a view to the future stability of our dominion in the East and the improvement of our native subjects in general,' he wrote, 'that the higher classes among them should be rendered morally and intellectually competent to fill offices of trust.'<sup>4</sup>

Thus both Colebrooke and Cameron believed that the bond between Britain and Ceylon could be maintained not by retaining British ascendancy in Government but by sharing power with the people by giving them offices of trust, maintaining good relations between Europeans and Ceylonese and imparting justice equally to all both rich and poor.

#### *Unification of the System of Government*

There was no justification any longer for preserving distinct forms of government in the different areas. With the abolition

<sup>1</sup> I, pp. 68, 70. Also Indian Charter Act of 1833, Sect. 87; Court of Directors Dispatch, Sects. 105-8.

<sup>2</sup> I, p. 375.

<sup>3</sup> I, pp. 73, 74, 277.

<sup>4</sup> I, p. 374.

of the distinctions between Europeans and Ceylonese and among the Ceylonese themselves, of *Rājakāriya* in the Sinhalese districts and of the capitation taxes in the Tamil areas some of the main distinctions between the Sinhalese and Tamil regions were to disappear.<sup>1</sup> Colebrooke, in order to extend this unification, recommended the abandonment of the independent establishments for the Maritime and Kandyan Provinces which had checked the assimilation of the various classes of the population and had impeded the more natural and nearer connexion which the Kandyan District situated below the mountains had with those of the Coast owing to their trade relations.<sup>2</sup> In the new single system of administration he wanted the number of provinces reduced from sixteen to five, ignoring the division into Kandyan and Maritime Provinces or into Sinhalese and Tamil areas by annexing the Kandyan Provinces in the lowlands to the provinces on the Coast. The various classes of officials in the two areas were also to be assimilated and the distinctions recognized at the time were to be swept away.<sup>3</sup>

This process of unification was carried further by Cameron by recommending the establishment of a uniform system of judicial establishments and procedure accessible to every citizen of the Island, doing away with the courts under the control of the Governor, and placing all courts under the supervision of the Chief Justice. He objected to the Provincial Courts as they were presided over by judges neither connected with the profession of law nor qualified to administer justice. Besides they did not follow proper procedure and were not sufficiently controlled by the Appeal Court. They were also too much under the control of the executive government to exercise a proper degree of judicial independence. Moreover, the suitors who went to these courts did not find it easy to enforce their rights on property. There were constant delays owing to postponements. Further delays were sometimes caused in consequence of negligent execution of process and of fraudulent claims set up to property taken in execution. Testamentary jurisdiction too was carried on in a negligent manner.<sup>4</sup>

<sup>1</sup> I, p. 108.

<sup>2</sup> I, p. 52.

<sup>3</sup> I, pp. 52, 215.

<sup>4</sup> I, pp. 125, 135, 164.

Colebrooke also wanted positive action taken to assimilate the various classes of the population by the development of a common system of law, which would put an end to the conflicting systems that existed in the different regions or among classes of persons in the same place, and which would approximate gradually to the principles of English law, and place all persons on an equal footing in respect to their civil rights. He wanted the marriage laws which had been established in some districts revised and gradually extended to the Kandyan Provinces where polyandry prevailed. The various and complicated laws regulating inheritance were to be assimilated as far as possible along with a reform of the system of land tenures.<sup>1</sup>

### *Liberalization of the System of Government*

Colebrooke recommended further that this unified system of government should be a liberal one. Soon after Cameron's arrival, Colebrooke, along with him, recommended that the arbitrary powers allowed to the Governor to imprison or banish a person without trial be withdrawn.<sup>2</sup> Reference has been made to the proposals to terminate his judicial powers and the powers he exercised in exacting *Rājakāriya* and controlling monopolies. Colebrooke recommended further the diminution of the powers of control he exercised over the various departments. 'The ordinary transactions of the government were to be conducted as far as possible through established and responsible departments, acting under instructions from, and subject to the control of, the executive departments in England.' The Commissariat Department was to be placed under the British Treasury and the Collector and Controller of Customs under the Board of Customs in London. All heads of departments were further to be appointed from England. The Governor was to have only the power to suspend, not to dismiss, the officers of these departments in cases of misconduct.<sup>3</sup> In other words he suggested that the Governor should be deprived of all the additional powers conferred on him by Dundas.

The rights of the Governor were to be reduced further by enhancing the powers of other institutions. The Government of Ceylon was to be carried on in future not by the Governor

<sup>1</sup> I, pp. 55, 58, 59.

<sup>2</sup> II, p. 45.

<sup>3</sup> I, pp. 53, 213, 219.

alone but by Governor and Council. An Executive Council was to be established to assist the Governor in all details relative to the revenue and expenditure of the Island.<sup>1</sup> The same Council, expanded, was to form a Legislative Council.<sup>2</sup> 'In a community composed of different races, who are attached to ancient customs, and attentive to the effect of innovation, it is indispensable that changes in the law should not be adopted precipitately and without their being previously known to and considered by the people.'<sup>3</sup> Therefore to secure as great a degree of efficiency as may be attainable it was to consist of additional officials and influential inhabitants, Europeans and Ceylonese, who would give weight to its decisions and support and stability to Government. These members were to have the privilege of proposing measures for consideration and the Council was to have authority to call for public papers and to take evidence. The Governor was to be excluded from the deliberations of this Council to enable the members to communicate their views freely and to avoid involving the Governor in the public discussion of the Ordinances during the stages of their progress.<sup>4</sup>

Colebrooke expected that these arrangements would lead to the gradual improvement of the institutions of the Colony. They would provide that publicity in regard to the affairs of the Island which would conciliate public confidence. The deliberation in regulating them would protect the people from precipitate changes of law affecting their rights and interests and would remove some of the obstacles which had retarded the development of the Island possessed of such great natural resources.<sup>5</sup>

In making all these proposals for radical changes in the system of government and the economy of the country, Colebrooke and Cameron did not forget the primary aim for which the Commission was appointed. In recommending the appointment of Ceylonese to higher posts they did not lose sight of the fact that it would also lead to a reduction of expenditure. The Ceylonese, wrote Colebrooke, 'would unite local information with general knowledge and would even-

<sup>1</sup> I, p. 53.

<sup>3</sup> I, pp. 54, 56.

<sup>5</sup> I, p. 58.

<sup>2</sup> I, p. 56.

<sup>4</sup> I, p. 56.

tually be capable of holding responsible situations upon reduced salaries'.<sup>1</sup> Cameron pointed out that by the appointment of a Ceylonese judge four-fifths of the salary necessary to remunerate a European judge would be saved to the public.<sup>2</sup>

Colebrooke made a number of other proposals too. He recommended the abolition of the Cinnamon Department and the transfer of the superintendence of the plantations to the Government Agents and of the cinnamon market from London to Ceylon. He arranged for the abolition of two other departments by the suppression of certain posts and the transfer of the duties attached to them to others. The Auditor-General was to be entrusted with the duties of the Commissioner of Revenue and the Vice-Treasurer with those of the Paymaster-General. The Deputy Secretary's work was to be shared by the Chief Secretary and the Assistant Secretary. The number of Government Agents was to be reduced to five and they were to work with the aid of Assistants.<sup>3</sup> Colebrooke believed this reduction of the number of Agents was justified on the ground that their work would be reduced with the abolition of compulsory services and the formation of a Department of Civil Engineer and Surveyor-General which was to incorporate the existing establishments of the Colonial Engineer and of the Surveyor-General. He recommended further reduction in the establishments of the Governor and the Chief Secretary, of the Financial Departments and of the Government Agents as well as of the fixed Establishment of Pioneers and Artificers and of the Colonial Commissariat Department. He suggested a general reduction of all salaries and the abolition of pensions in the case of new entrants.

#### *The Criticisms of Barnes and Horton*

Such radical proposals based partly on abstract principles were bound to arouse criticism if not opposition. Barnes, to whom some of these proposals were referred for his opinion, having already objected to the appointment of the Commission, naturally disapproved of them too. He himself had made minor changes in the system of administration, but he saw no reason for altering radically the existing form of government.

<sup>1</sup> I, p. 216.

<sup>2</sup> I, p. 375.

<sup>3</sup> I, p. 213.

Nor could he conceive how such a system as envisaged by Colebrooke and Cameron could be introduced under the conditions that prevailed at the time. A conservative by temperament, if not by training and experience, he approached the problems of Ceylon from the angle of the policy of the time as laid down by Dundas and each one singly from the point of view of a ruler concerned with immediate issues of day-to-day administration.

In the view of Barnes the immediate need of Ceylon was roads both from the point of view of security and of the development of industry and commerce.<sup>1</sup> It cannot be denied that he was right in this as the later advancement of Ceylon owed a great deal to his road policy. He saw no objection to the exaction of *Rājakāriya* for this purpose when it suited the stage of development of the people and it was so difficult to secure labour in any other way.

Accustomed to mercantilism he saw no objection to the Cinnamon Monopoly. One of the most urgent problems of Ceylon was to find ways and means to meet the expenditure of Government. The Cinnamon Monopoly was the most important source of revenue at the time and he objected to any interference with it as such action might jeopardize the finances of the Island.<sup>2</sup> In the absence of capitalists he wanted Government to undertake the cultivation of cinnamon and aid those who grew commercial crops.<sup>3</sup>

Having already tried to prevent the removal of his powers to banish or imprison without trial, Barnes opposed any further reduction of the rights of the Governor or any other measure likely to weaken the executive. He would not agree to any form of government by discussion. 'I should most decidedly object,' he wrote, 'to a Government composed of members associated with the Governor and having the right of even deciding upon measures proposed by him and still more so of originating measures in themselves, as such a form of government must lead to discussion, and I hold it a maxim of government that the executive authority should never be engaged in personal discussions.'<sup>4</sup>

Barnes agreed that the only way the powers of the Governor

<sup>1</sup> II, p. 33.

<sup>2</sup> II, p. 35.

<sup>3</sup> II, p. 38.

<sup>4</sup> II, p. 26.



could be curtailed was by establishing a Legislative Council, but he did not consider it would result in any advantage to the country. As the number of European settlers with an interest in the soil was insufficient he thought the Council would have to consist of officials alone, and discussions among them or between them and the Governor would bring the Governor and the Government into contempt in the eyes of the governed. Being concerned with the preservation of the Empire he did not think it advisable to share power with the people of the country. 'Whatever Utopian ideas theorists may cherish of universal fraternity without regard to colour, religion or civilization,' he wrote, 'or whatever notions Levellers may wish to see adopted, I am decidedly of opinion that this people cannot nor ought to have under existing circumstances any greater share in the Government than they have at present. I am not one of those persons who think that black and white people can ever be amalgamated in the situations of society so as to do away with those distinctions which at present exist all over the world.'<sup>1</sup> In regard to the proposal to admit Sinhalese and Tamils gradually into situations held so far by Europeans he wrote, 'I should be glad to know where you would propose to draw the line; admitted to one situation they would have an equal claim to another, so that unless you contemplate the supercession of all European authorities, not excepting the Governor, I do not see where you could stop. My opinion is that the line is now well defined, that the natives are perfectly content, and that it ought not to be invaded.' Such a step he believed would ultimately lead to a separation of the Island from British control.<sup>2</sup>

Barnes did not approve either the proposal to establish a common system of courts for the whole Island. He was of the view that the Provincial Courts should be retained and presided over by Civil Servants who were familiar with the languages and customs of the people rather than by British barristers who were acquainted with British law.<sup>3</sup>

Expressing his opinions in answer to a set of questions submitted to him, Barnes was not in a position to look upon the proposals as a whole. In any case it is not likely he would have considered the problems in a different light unless he was

<sup>1</sup> II, pp. 25, 26.

<sup>2</sup> II, p. 30.

<sup>3</sup> II, p. 27.

prepared to approach them from a different angle accepting different values as Colebrooke and Cameron did.

Robert Wilmot Horton, as soon as he had time to examine the proposals of Colebrooke and Cameron in his executive capacity as Governor began to object not so much to the reforms themselves as to the sudden and radical way the changes had to be carried out. He approved of the abolition of *Rājakāriya*, but wanted it carried out gradually in the Kandyan Provinces as, since *Rājakāriya* was closely interwoven with the other institutions, its sudden abolition would disorganize the system of administration and the life of the people. With regard to the Cinnamon Monopoly he favoured free production but not free trade in cinnamon. With regard to the proposal to establish a Legislative Council he objected to the proposed exclusion of the Governor from the deliberations of the Council. He was not opposed to the inclusion of Ceylonese in the Legislative Council or of their admission to the Public Service, but he claimed that none who could hold such responsibility was available in the Island. As for Colebrooke's recommendations, more especially with regard to the finances of the Island, he was much more severe in his criticism and characterized them as crude and impractical.<sup>1</sup>

#### *The Approval of the Reforms by the Secretary of State*

Viscount Goderich, the Secretary of State for the Colonies, no doubt influenced by the new colonial policy, viewed differently the radical proposals made by Colebrooke and Cameron. He made no defence of the system that had grown up to that time and rejected generally the objections of Barnes and Horton. On the other hand he approved fully the principles on which the Commissioners made their recommendations. With regard to the changes proposed to alter the system of administration he accepted the recommendation to place the whole island under one common system and the division of the Island into five provinces irrespective of racial considerations.<sup>2</sup> He concurred with the proposal to liberalize the Government by the establishment of Executive and Legislative Councils in place of the Council of Government set up in 1831, suggesting only a few changes in the composition of the

<sup>1</sup> II, pp. 40, 41, 43, 44.

<sup>2</sup> I, p. 248.

Executive Council.<sup>1</sup> He agreed that the laws of the Island needed revision but wanted it carried out by local arrangement.<sup>2</sup> He fell in with the proposals to reduce the autocratic power of the Governor. He approved of the steps taken by his predecessor to abolish his arbitrary powers and to secure to the people of Ceylon the same protection against illegal arrests and imprisonment as was enjoyed in the United Kingdom.<sup>3</sup>

But Goderich was not prepared to go beyond this and weaken the Governor's power to such an extent as to make his control ineffective. He refused to withdraw the right of the Governor to override the decisions of his Council.<sup>4</sup> He objected to the transfer to England of some of the powers of control the Governor exercised over the Government Departments.<sup>5</sup> Nor did he approve of the proposal to deprive the Governor of the right to take part in the deliberations of the Legislative Council. 'I do not consider that the objections which have been urged against involving the Governor in discussions with the members of the Legislative Council are of sufficient weight,' he wrote, 'to counterbalance the disadvantages which would result from his absence, and from his consequent inability of personally explaining his own views or of meeting the objections of the Members.'<sup>6</sup>

Goderich also refused to accept the proposal to allow members the privilege of proposing measures for consideration, not because he feared this would weaken the position of the Governor but in order to prevent the valuable time of the Council from being improperly consumed in fruitless discussion. Further he objected to any question being debated unless it had the approval of the Governor.<sup>7</sup>

To the other proposals made by Colebrooke, Goderich generally assented. He agreed that all His Majesty's subjects should be treated alike and accepted the proposals for the abolition of the distinctions in the grant of lands<sup>8</sup> and of the capitation tax,<sup>9</sup> which was partial to certain classes in its operation. He agreed with the proposals with regard to the

<sup>1</sup> I, p. 249; II, p. 143.

<sup>2</sup> I, p. 251.

<sup>3</sup> II, p. 45.

<sup>4</sup> I, p. 249.

<sup>5</sup> I, pp. 249, 278.

<sup>6</sup> I, p. 251. See also the Report of the Donoughmore Commission, p. 24.

<sup>7</sup> I, p. 250.

<sup>8</sup> I, pp. 251, 255.

<sup>9</sup> I, p. 266.

recruitment to the Civil Service and decided not to make any new appointment of Writers, retaining the right to fill the higher offices from England.<sup>1</sup> He approved also the proposals for the spread of English education to afford the youths of the Island a means of qualifying themselves for different branches of the public service and because they would tend to the moral improvement of the people.<sup>2</sup>

Goderich wholeheartedly approved the main recommendations of Cameron with regard to the judicial establishments.<sup>3</sup> He agreed that complete uniformity in the Judicial Establishment and in the procedure, according to which its functions were performed, should be introduced throughout the Island, and approved of most of the proposals he made for the reform of the judiciary. A very large proportion of these he put into execution in the new charter and left the rest to be put into effect by the Judges in Ceylon or to be considered by the Legislative Council. On one important point alone he did not agree with Cameron. He refused to abolish all stamps on legal proceedings and all fees of court and institute the payment of batta to witnesses on both sides in all cases.<sup>4</sup>

Goderich agreed even more fully with the recommendations of Colebrooke to change the economy of the Island. He agreed completely with the strictures passed on the system of *Rājā-kāriya*. He considered the restoration of the gratuitous services, together with other unpaid services that had been exacted, to be contrary to the principle of the arrangement of 1801 by which a grain tax was substituted for the services of the people. Both on grounds of expediency and of justice he did not think it enough to put an end to the abuses of *Fā'ikāriya*, and agreed with Colebrooke that the system should be finally and effectually suppressed. Accordingly by an Order-in-Council of 12 April 1832, it was ordered and declared that none of His Majesty's Native or Indian subjects in Ceylon was to render any service to His Majesty in respect of the tenure of his land or in respect of his caste or otherwise, to which His Majesty's subjects of European birth or descent are not liable, any law, custom or regulation to the contrary notwithstanding.<sup>5</sup>

<sup>1</sup> I, p. 248.

<sup>3</sup> I, p. 350.

<sup>5</sup> I, pp. 233-42; II, p. 376.

<sup>2</sup> I, pp. 243, 252.

<sup>4</sup> I, p. 360.

The recommendations regarding the Cinnamon Monopoly received Goderich's approval equally. He ordered its abolition and the imposition of an export duty until other resources made it possible to dispense with it.<sup>1</sup> He further instructed the Government of Ceylon to disconnect itself from all trading and commercial pursuits, and carry out public works by contract.<sup>2</sup>

Goderich agreed with Colebrooke that many of the duties on local produce were too high and should be made as light as possible, and that the exemption of duties on other articles like coffee afforded an undue encouragement to them. He favoured the gradual reduction of some of them and the repeal of others, as such measures were likely to extend the trade and augment the revenues of the island.<sup>3</sup> But owing to the uncertainty of the effects of the abolition of the cinnamon monopoly on the revenues, and the difficulty of making forthwith other reductions proposed for equalizing expenditure with receipts, and a possible increase in the retired allowances, he refused to make any material alteration except in the cases of taxes objectionable on principle or the yield of which was not commensurate with the trouble and expense incurred in its collection. Further he wanted articles, exempted from any tax whatever, charged a low rate of export duty.<sup>4</sup>

Goderich, therefore, till finances improved, refused to reduce the salt tax, and the excise duty on spirits.<sup>5</sup> Until such time, he wanted the boat licences substituted for the fish tax.<sup>6</sup> But he agreed to the removal of the restrictions on the cutting of timber as they were injurious to the country and vexatious to the people, and disapproved of the burdening of coconut plantations with an additional tax.<sup>7</sup>

With respect to Land Rents he agreed with the objections raised against it by Colebrooke and the payment of it in kind. He favoured the proposal to redeem the Grain Tax at an equitable rate by instalments. He ordered that this money as well as that received from the sale of waste lands should be applied to the opening of roads, the repairs of ancient tanks and water

<sup>1</sup> I, pp. 257, 288; II, p. 377.

<sup>3</sup> I, p. 258.

<sup>5</sup> I, pp. 262, 265.

<sup>7</sup> I, p. 255.

<sup>2</sup> I, p. 256.

<sup>4</sup> I, p. 258.

<sup>6</sup> I, p. 265.

courses, and to the execution of other works of public utility.<sup>1</sup>

Finally he considered 'that the liberation of the trade in cinnamon, the gradual reduction of the fish duties, and the redemption of the land rents, concessions of the first importance to the inhabitants of Ceylon, and, combined with their exemption from compulsory services, an unfettered intercourse with the Continent and the settlement and improvement of waste lands, will afford such stimulus to trade and industry that the repeal of the Salt Tax and other injurious taxes will in a short time become practicable'.<sup>2</sup>

With the proposals for the reduction of expenditure Goderich generally concurred, but he wanted them carried out gradually and those already in service to be affected to a less degree.<sup>3</sup>

Thus on the whole the Secretary of State carried out the proposals recommended by Colebrooke and Cameron. It is true that in minor matters he did not wholly agree with them. He was not prepared for instance to go so far as Colebrooke in reducing the powers of the Governor. Though there was precedent for such proposals, experience had shown that such action would impair the efficiency of Government. He also showed more caution in introducing measures which might lead to a reduction in revenue. But he did not interfere with their main proposals though they were bound to alter gradually the political, economic and social conditions of Ceylon.

The Secretary of State no doubt realized the comprehensive nature of the proposals and that each set of recommendations was complementary to the others and formed an integral part of the whole. The establishment of an Executive and of a Legislative Council was related to the reduction of the Governor's powers. The development of a common system of law and the introduction of a common system of law courts could not be considered apart from the proposals to abolish *Rājakāriya* and the system of monopolies. The abolition of these was in turn essential for the creation of the new economy which the new institutions envisaged. Further the spread of English education was indispensable for the carrying out of these reforms successfully. Finally, these changes were to be made with a view to improvements in the future and not necessarily for the solution of immediate problems.

<sup>1</sup> I, p. 262.

<sup>2</sup> I, p. 268.

<sup>3</sup> I, p. 270.

Besides, such proposals were not something unique. Similar measures were being adopted at this time in India and in other parts of the Empire. The monopoly of the East India Company had been abolished in India in 1813, and in 1833 it was deprived of even the China trade. In the same year it was decided to develop in India a common system of law courts and with this object a Law Commission was appointed to prepare new codes. There were also attempts about this time to reduce expenditure. Further, steps were taken to admit Indians into the Civil Service and spread English education.

It may be further added that though the proposals of Colebrooke and Cameron were radical they were not altogether novel. In fact some of their proposals had been anticipated much earlier by others like North, Johnston and Brownrigg. North's act in the abolition of service tenures showed that the views of Adam Smith had been accepted in Ceylon nearly three decades earlier. 'Ceylon like England in feudal days,' wrote Maitland, dealing with the act of North, 'was at a stage when there being no money in the Island to pay for the protection afforded by Government the subjects under that Government agree to pay for that protection by a certain portion of their labour. It would have been a most strange and unaccountable measure, supposing it possible when we (England) were in this state of society, if one of the ancient Barons had pulled out of his pocket Adam Smith and said, "I will apply to you vassals, whose situation renders it impossible to carry into effect, all the rules and regulations laid down by him for a Society in the last state of Civilization and Wealth."<sup>1</sup>

The influence of the works of Adam Smith was no less shown in 1813 by William Orr. In proposing a Land Tax or fixed Quit Rent to be permanently established on all Landed Property in Ceylon he wrote: 'Mr Adam Smith says that any tax whatever not accurately defined and fixed in its quantum by some invariable standard is liable to abuse in the collection. Whilst Government demand is subject to continual variation it will be found impossible by any vigilance, activity or experience, altogether to prevent under assessment.'<sup>2</sup>

<sup>1</sup> See de Silva, C. R., *Ceylon under the British Occupation*, II, p. 347.

<sup>2</sup> *Ibid.*, p. 379; C.O. 416, 2; I, p. 80.

Sir Alexander Johnston as early as 1809 forestalled many of the proposals made by Colebrooke. He objected to the special powers of the Governor which permitted him to imprison or expel from the country certain persons without trial. He wanted Europeans in Ceylon and Ceylonese made eligible for admission into the Civil Service. He wanted the Cinnamon Monopoly and *Rājakāriya* abolished. He suggested the introduction of a general system of education. Exceeding even the recommendations of Colebrooke he recommended the establishment of a constitution similar to that of Britain in Ceylon with necessary modifications, including a legislature with representatives elected by the residents of Provinces.<sup>1</sup>

The acceptance of the proposals of Colebrooke by the Secretary of State, however, did not put an end to the attacks made against him. In 1842 Sir James Stephen, the powerful Permanent Under-Secretary of the Colonial Office wrote that 'almost every project emanating from him was visionary and obscure'.<sup>2</sup> But it is striking that the Governors who succeeded Horton made no serious complaint generally against the reforms carried out on the recommendations of Colebrooke. With the exception of a few specific proposals, they were accepted without question.

The fears entertained that the abolition of *Rājakāriya* would prevent the further opening of roads for want of labour proved to be without foundation. Colebrooke from the evidence placed before the Commission took the view that with adequate wages labour could be secured at least for work carried out not far away from the homes of the people,<sup>3</sup> and where such labour was not available it could be secured from India. In spite of the abolition of *Rājakāriya* Horton was able to

<sup>1</sup> These recommendations of Johnston appealed to the Marquis of Londonderry, but Lord Liverpool who succeeded him accepted only a few of the proposals. He separated the executive from the judiciary and extended the jurisdiction of the Supreme Court over the whole island, placing all courts under the Chief Justice. He established an Executive Council on the lines of the Privy Council in England by removing the Governor, the representative of the Crown from it and placing the Chief Justice as its President. But on the representations of Maitland he withdrew even these modifications and allowed the earlier arrangements to continue. II, pp. 200-26.

<sup>2</sup> C.O., 54, 222, 5 October 1842. <sup>3</sup> I, pp. 192, 203, 204, 206.



continue the road policy begun by Barnes and by 1837 linked with roads all the chief towns of the Island.

A close examination of the other proposals of Colebrooke and Cameron will also show that they were not so unpractical and visionary and that they did not follow the Utilitarians blindly. For instance, they did not recommend the introduction of British institutions to Ceylon entirely regardless of the differences in the conditions that existed in Ceylon. Colebrooke realized that the people of the rural areas were too backward to appreciate the new institutions and still needed a paternal form of government. He, therefore, recommended the revival of the regulation of 1808 which required the Collectors to make regular circuits through their districts, and the laying before the Legislative Council of the reports submitted by them to the Governor.<sup>1</sup> One of the duties they had to perform during these circuits was the settling of all petty disputes which would make it unnecessary for the people to go to a distant court for this purpose.

Colebrooke further did not want the ancient institution, the *gansabhāva*, abandoned. He attended a meeting of one of them near Kandy and was pleased with the regularity with which its proceedings were conducted. 'From the peculiar constitution of the village communities, composed as they often are of people belonging to particular castes, their ancient usages may be preserved,' he wrote, 'and it would be satisfactory to them if the appointment of the headmen of each village community or parish should be made on the nomination of the inhabitants who are proprietors of land or houses.'<sup>2</sup> On 24 September 1832, Colebrooke referred to this recommendation again in a communication to Goderich. 'In a paper which I have since drawn up I have stated the desire of the Native Inhabitants that means might be afforded to them of a summary decision of the numerous petty cases which arise, and which in the remoter parts of the country it is extremely inconvenient to them to be obliged to refer to the regular courts. I consider that the ancient mode of referring such cases to a Gansabe or Village Council would be advantageously preserved where it is established and restored where it has been superseded—and I refer to the several petitions of the Inhabitants in support

<sup>1</sup> I, p. 57.

<sup>2</sup> I, pp. 69, 70.

of my opinion that it would be acceptable to them. The persons composing the Village Courts (Gansabe) should be duly registered and the Headmen of the village or another qualified person should preside in it to promote regularity in its proceedings.<sup>1</sup>

Cameron, though he recommended a system of courts on modern lines, suggested several modifications to adapt them to local conditions. He did not recommend the division of courts according to subjects, but proposed the establishment of courts of original jurisdiction with exclusive jurisdiction over all cases civil and criminal. The union of jurisdiction in the same person, he thought, would be beneficial to the natives who were backward as this arrangement would enable them to refer all their petty disputes to the same arbitrator. As there was no supervision of a competent public in Ceylon to ensure correct decisions by the courts he recommended the appointment of three assessors to do the work of a jury, and further wanted an appellate tribunal in Colombo to examine the cases tried by the courts of original jurisdiction and thus prevent the impairing of the unity of law by decisions of a number of independent judges.<sup>2</sup>

To help these backward people further he recommended that the pleadings should consist of an oral altercation between the parties in an open court. 'The moral and intellectual conditions of the natives is such that the European magistrate who is to distribute justice among them can only do so effectually by the exercise of something like paternal authority; he must allow the parties themselves to come and relate their own story to him; he must be counsel for both parties, that is, he must be counsel for each so far as each appears to have truth and justice on his side; he must assist them in putting their statements into that form which will show whether there is really any question between them requiring for its decision the examination of witnesses or documents, or more deliberate consideration of the law applicable to their case, and which will also show at any future time precisely what it was which, upon that occasion *transivit in judicatum*. Such a process will prevent in a great degree the evil effects of the conspiracies between a suitor and his legal adviser to deny true statements of the

<sup>1</sup> C.O., 54, 122.

<sup>2</sup> L, pp. 165, 167.

opposite party, to make false statements for the purpose of delays and of escaping punishment.<sup>1</sup>

Cameron also feared that the courts would be employed to perpetrate that very injustice which they were meant to prevent. To obviate such abuse he thought it necessary to make a vigorous investigation into the truth of every allegation and cause the infliction of punishment upon every suitor who wilfully attempted to mislead the court. He recommended that the judge should punish by fine or imprisonment or both any party to the suit who shall have been guilty of an attempt to prevent or obstruct the course of justice. 'Fines then instead of operating as they now do to deter those who are seeking to protect their rights by legal proceedings, will operate only to deter those who use such means for purposes of fraud and oppression.' He wanted the utmost vigilance exercised to prevent legal proceedings being perverted to purposes of vexation and oppression. 'Vexatious law proceedings,' he wrote, 'are one of the most common modes by which the natives of Ceylon seek to satisfy their malignant passions.'<sup>2</sup>

Thus it is clear that had the recommendations of Colebrooke and Cameron been fully carried out the evil days into which the villages fell during the following decades might have been at least partly prevented. It is true that neither Colebrooke nor Cameron made detailed recommendations showing how a pre-feudal institution like the *gansabhāva* could exist side by side with modern courts. But that it could was shown when Government revived the *gansabhāvas* in the latter half of the nineteenth century to meet the very abuses which Cameron anticipated and showed ways of avoiding.

The chief specific criticism that has been made against the proposals of Colebrooke, however, is that affecting the Civil Service. 'I think it almost demonstrable,' wrote Sir James Stephen, 'that the Ceylon retrenchments were made by unskilful as well as unsparing hands, and that they are distinguished by parsimony and economy.'<sup>3</sup> According to Professor L. A. Mills, 'the drastic and ill-considered change which he advocated played havoc with the efficiency of the Civil Service'.<sup>4</sup>

<sup>1</sup> I, p. 172.

<sup>2</sup> I, pp. 172, 176, 177, 178.

<sup>3</sup> C.O. 54, 140.

<sup>4</sup> Mills, L. A., *Ceylon under British Rule*, p. 65.

It is true that Colebrooke made radical proposals with regard to the Civil Service. As was done in India about the same time, he wanted it opened to Sinhalese and Tamils as well as to those of European descent. If it was the policy of the British Government in England at this time to introduce equality of law within the Empire, it could not limit the posts in the Civil Service to the British alone. This proposal was also a corollary of the principle that Ceylon was to be administered for the benefit of its inhabitants. If the Sinhalese and the Tamils could not aspire to such positions owing to ignorance of English, it was Government's duty to establish English schools to provide the necessary education. In this respect Colebrooke's proposals were in line with those taken in India.

Moreover, if expenditure was to be kept within income, it was not possible to employ a large European staff in the Government services. Both Colebrooke and Cameron looked upon the employment of an increasing number of Ceylonese—both those of European descent as well as Sinhalese and Tamils—as a means for reducing the expenditure of Government.

Colebrooke found an additional reason for this step. He found that in Ceylon the descendants of European settlers had been employed as provincial magistrates and clerks in public offices. The establishment of English schools even on a limited scale had enabled some of the native inhabitants to qualify themselves for these situations. Therefore with the recommendation for the establishment of a College which would give further opportunities to Ceylonese to gain some knowledge of the general principles of law as well as 'such information on subjects of trade and finance as would lead them to just views of the effects of the system under which the Island has been administered' and make themselves fit to undertake more responsible duties, he probably did not see why at least the posts in the lower grades of the Civil Service could not be filled locally.<sup>1</sup>

The main criticism, however, is that his proposals, which were accepted by the Colonial Office, led to a general deterioration of the Civil Service. No doubt the wholesale reduction of salaries and the abolition of some of the higher posts to occupy which those in the lower grades looked forward led to dis-

<sup>1</sup> I, pp. 69, 71, 214, 215.

satisfaction in the services. But the blame for the deterioration of the service cannot be laid wholly or even to a great extent on Colebrooke. Even in 1832 the Civil Service was far from efficient. On 31 January 1832, Horton wrote to Goderich: 'Out of 36 Civil Servants 11 are decidedly incompetent, 9 are just within the pale of competency, 14 decidedly competent and 2 whose merits or demerits are yet unknown.'<sup>1</sup>

There were three main reasons for this inefficiency. Promotions were made according to seniority instead of merit. The higher posts were filled exclusively from those in the lower ranks. These men called Writers were recruited from England at the age of sixteen when their capabilities for doing such work could not be ascertained. Lastly there were too frequent transfers, sometimes from the Revenue Departments to the Judicial Departments or vice versa where the knowledge and experience required in one was quite different from those gained in the other. Thus it is not surprising that Colebrooke recommended the discontinuance of the recruitment of Writers, the employment of Ceylonese in the lower grades and the filling of the higher posts with men from England if competent men were not available locally. If the recruitment of Writers was stopped he probably did not see the same necessity for pensions as even lower salaries were a sufficient attraction to those of Dutch descent and the Sinhalese and the Tamils.

The situation ten years later was not very different. On 7 October 1842, Sir Colin Campbell wrote to the Secretary of State that seven of the chief officers of Government were in positions for which they were unsuited. The chief reason for this peculiar position was that seniority and not ability governed promotions and the constant transfers that resulted from it. The causes for the deterioration of the Service were many, wrote Campbell, but 'the principal seems to be the paralysing effect of constant attention to seniority in promotions—the consequent absence of any hope of advancement by reason of superior merit'. The other reasons attributed were the low salaries, the absence of pensions, the filling of vacancies from England resulting in slow promotion and the divided interests of the junior officers who took to agricultural pursuits as a means of increasing their incomes.

<sup>1</sup> C.O. 54, 117.

The need for higher salaries and for the restoration of pensions arose owing to a development for which Colebrooke was not responsible. In 1836 Horton had pointed out that it was not satisfactory to recruit officers to Class III from Ceylon and recruit to the higher classes others from Britain who had no experience of the country. Lord Glenelg therefore proposed to revive the recruitment from England to Class III of the Civil Service. Sir Stewart Mackenzie on 9 May 1838 pointed out that this proposal was entirely at variance with the principle of throwing open all places to the natives of Ceylon. But Lord Glenelg replied that he would continue to appoint Ceylonese to the Service if suitable men were available, and began to fill some of the posts with Writers from Britain. But the salaries in the lower grades sufficient for the recruitment of Ceylonese were inadequate for the British. Owing to this the new recruits could not be prevented from engaging in agriculture, especially as there was no provision of pensions or sufficient opportunity for promotion.

These new issues had to be faced and were taken up in 1845. The new recruits were given higher salaries and were not allowed to engage in agriculture. Those engaged in them already were discouraged from continuing. Pensions were restored and the salaries attached to certain posts were raised as prizes for promotion, and the opportunities for promotion too were increased. But the increase made in salaries as a whole was not so considerable and even those increases would not have been possible had not the finances improved at least partly as a result of the reforms recommended by Colebrooke.

The main consequence of these changes was that the Civil Service became once more almost a close preserve for the British and the principle suggested by Colebrooke and Cameron and accepted by the Secretary of State was ignored. If the right type of recruit was not available in Ceylon, the remedy lay in providing the necessary education and training to make Ceylonese youths fit themselves for the work. Had this been done there would have been better relations between Europeans and Ceylonese and less dissatisfaction with British rule.

Two other criticisms may be made of Colebrooke's proposals. The establishment of English schools and the neglect of the

vernaculars was undoubtedly a short-sighted step. In placing the schools in the hands of Christian clergy Colebrooke did not observe that strict neutrality which he wanted adhered to in matters connected with Buddhism.

In his proposal to establish English schools he was influenced by the view held by Englishmen at the time that Oriental learning was of little value and that a knowledge of English would lead to the moral and intellectual improvement of the Eastern peoples. He believed further that a knowledge of English was a necessity for Ceylon to emerge successfully from a feudal into a commercial society and for the people to be acquainted with the modes of thought and ideas of their rulers. In adopting English as a medium of instruction he was influenced by the great faith English people had at this time in human nature and in the ability of human beings to change their way of life. They believed that if only the minds of people were filled with the right kind of knowledge they would quickly transform themselves ignoring all their past traditions. English was adopted in India too at this time, and under the conditions that prevailed then no other step appeared possible. In placing education in the hands of the clergy Colebrooke followed English practice, and there was no other body in Ceylon at the time that could have undertaken the work. He was also influenced by the belief that 'the exertions made by the Christian missionaries for the diffusion of knowledge and for the correction of the habits and the morals of the people throughout the country had pre-eminently tended to promote the best interests of the country'. These reforms were proposed with a desire to further the interests of Ceylon, and in spite of their defects have not been without considerable benefit to the people who were affected by them.

Clive and Hastings, to a great extent, ruled India according to Indian methods and Indian standards. But the trial of Hastings showed that British officials in India were expected to rule according to British standards. Henceforth from the time of Cornwallis British ideas and British standards came to be increasingly applied in the Government of India. There was a set-back to this development for a short time when once more it became the fashion to rule India and foreign colonies conquered during the war against France according to the

ancient institutions of those countries. But this policy was reversed once more with the Charter of 1833, and British officials began gradually to assimilate the Indian form of government to British standards.

Colebrooke and Cameron have to be placed among these men. Their recommendations undoubtedly reveal the defects of their age. The results of the reforms would have been more effective had they been in a position to take into account the strength of nationality and tradition or the evolutionary view of life. As Horton observed they showed a superficial knowledge of Ceylonese character and underestimated the depth of caste prejudices.<sup>1</sup>

Nevertheless the reforms recommended by Colebrooke and Cameron have contributed greatly to the advancement of Ceylon. They have turned the course of the history of Ceylon in the modern direction and enabled Ceylon to fall in line in many ways with modern developments and ultimately to attain to the stage to which it has risen today as an equal member of the Commonwealth of Nations.

G. C. MENDIS

<sup>1</sup> See C. R. de Silva, *Ceylon under the British Occupation*, II, p. 589.



PART I



*Warrant for Commission of Inquiry,  
Instructions to the Commissioners,  
and their Reports*



## I

*Warrant for Commission of Inquiry*<sup>1</sup>

[2 September 1829]



*Warrant for Commission to examine and report upon the present state of the Laws, Regulations and Usages in the Settlements at the Cape of Good Hope and the Islands of Mauritius and Ceylon.*

GEORGE R Our Will and Pleasure is that you prepare a Bill for our Royal Signature to pass Our Great Seal of Our United Kingdom of Great Britain and Ireland in the words or to the effect following viz.:

George the Fourth by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith.

To Our Trusty and Wellbeloved William Macbean George Colebrooke and Charles Hay Cameron Esquires Greeting.

Whereas We did by Our Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland bearing date the Seventeenth day of November in the Sixth Year of Our Reign<sup>2</sup> nominate and appoint you the said William Macbean George Colebrooke together with Our Trusty and Wellbeloved John Thomas Bigge and William Blair Esquires<sup>3</sup> to be Our Commissioners to repair to Our Settlements at the Cape of Good Hope Mauritius and Ceylon with full power and authority to examine into all the Laws Regulations and Usages of the Settlements in Our said Territories and their Dependencies and whereas We did by Our certain other Letters Patent under the Great Seal of Our said United Kingdom bearing date the Twenty-second day of May in the Tenth Year of Our Reign nominate and appoint you the said William Macbean George Colebrooke together with Our Trusty and Wellbeloved Campbell Drummond

<sup>1</sup> C.O. 168, 12, p. 38.

<sup>2</sup> 17 November 1825.

<sup>3</sup> Bigge and Blair returned to England in 1828 owing to ill health. C.O. 168, 12.

*Warrant for Commission of Inquiry*

Riddell Esquires<sup>1</sup> to be Our Commissioners during Our Pleasure for executing all things which remained to be performed in fulfilment of the directions contained in Our said former Commission. Now know Ye that We have revoked and determined and by these Presents do revoke and determine Our said several recited Letters Patent and every Clause Article and Thing therein contained. And further know ye that We having special Trust and Confidence in your approved Wisdom and Fidelity have assigned, nominated and appointed and by these Presents do assign, nominate and appoint you the said William Macbean George Colebrooke and Charles Hay Cameron<sup>2</sup> to be Our Commissioners to repair to Our said Settlements at the Cape of Good Hope Mauritius and Ceylon and by these Presents do give you full power and authority to examine into all the Laws, Regulations and Usages of the Settlements in Our Said Territories and their Dependencies and into every other matter or thing in any way connected with the administration of the Civil Government the State of the Judicial Civil Military and Ecclesiastical Establishments Revenues Trade and Internal Resources thereof and to report to Us through One of our Principal Secretaries of State the information which you shall collect together with your opinion thereupon reducing your proceedings by virtue of these Presents and your Observations touching and concerning the Premises into Writing to be certified under your respective Hands and Seals And we do hereby require Our Governors of Our Said Settlements at the Cape of Good Hope and the Islands of Mauritius and Ceylon for the time being and all and every Our Officers and Ministers within Our Said Territories and their Dependencies to be aiding and assisting to you in the due execution of this Our Commission. And in the Case of the Death or necessary Absence of either of you the said William Macbean George Colebrooke or Charles Hay Cameron it is Our Will and Pleasure that the Survivor or Commissioner present shall have full power and he is hereby authorised and empowered in such case to proceed in the execution of this Our Commission

<sup>1</sup> Riddell arrived in Ceylon on 15 September 1829, but went away a few months later to take up a post in New South Wales.

<sup>2</sup> Cameron arrived on 25 March 1830, and landed on the 26th.

and to exercise the several powers and authorities herein granted to all intents and purposes in as full and ample manner as you Our said Commissioners might or ought to do jointly for and during Our Pleasure. In Witness &c. Witness &c. and for so doing this shall be your Warrant given at Our Court at Windsor this Twenty-second day of August 1829. In the Tenth Year of Our Reign.

By His Majesty's Command,

(Countersigned) GEORGE MURRAY

To Our Attorney Solicitor General

## II

### *Instructions to the Commissioners of Inquiry*

[Earl of Bathurst to  
J. T. Bigge and W. M. G. Colebrooke<sup>1</sup>]



Downing Street,  
London, 18 Jan., 1823

GENTLEMEN,

His Majesty having been pleased, in pursuance of an address of the House of Commons, dated 25th July last,<sup>2</sup> to give directions that a Commission under the Great Seal should be issued authorizing and empowering you to act as Commissioners for enquiring into the state of the Colonies of the Cape of Good Hope, Mauritius and Ceylon, it becomes my duty to furnish you with such Instructions as appear to be requisite for your guidance in the execution of the trust thereby reposed in you.

It is not my intention to advert to every specific object which in the wide range over which your Commission extends must pass under your examination; it will be sufficient at present that I should direct your attention to those points which will form the leading subjects of your enquiry; almost all of which may be comprised under these heads:

The General Administration of Government, and the

<sup>1</sup> C.O. 49, 8.

<sup>2</sup> Mr Wilmot (later Governor Wilmot Horton): 'The Commission which he proposed to send out was of a very general nature; for the Commissioners would be directed to inquire into the whole state of each colony —into its whole civil government, into the extent to which its different offices might be diminished, both in number and salaries; into the state of the laws; and also into the practical administration of justice . . .

'Such a Commission might, indeed, be necessary in the island of Ceylon; but government has no hesitation to extend to that island likewise, in order to satisfy the public regarding the manner in which its resources were managed.' *Parliamentary Debates*, Hansard New Series, VII, April to August 1822.

immediate controul exercised by the Governor himself, or in conjunction with a Council, in the several Departments.

The Local Institutions, Establishments and Regulations Civil and Military, and more especially those of a Judicial and Financial character.

The Public Documents concerning these three Colonies which are deposited in this Office and to which you have had free access will have supplied such preparatory information as will enable you on your arrival there to enter immediately upon the proposed Investigation. By the perusal of these documents you are already fully acquainted with the nature and extent of the powers vested in the Governors respectively by the Royal Commission and Instructions, and the modifications under which it has been His Majesty's Pleasure that the Laws and Institutions which existed under the former Sovereignty should be administered and maintained.

The only material difference, as far as concerns the form of General Administration in all these Colonies, is, that in one only it has been thought fit hitherto to appoint a Council.

In reporting upon the manner in which the Executive and Legislative functions are discharged, you will, therefore, state what degree of assistance may have been afforded, and whether any controul may have been exercised by the Council in one case, and the immediate effects and tendency of such an Institution; and in the other whether it might be advantageously introduced, under any and what modifications. And you will refer to the manner in which all Public Acts of Authority are framed, issued, promulgated and recorded. You will report how far the controul of the Governor extends over the Civil and Military Establishments, its operation in the immediate appointment or recommendation to Public Offices and employments, and in assigning and regulating the Emoluments respectively attached thereto; and whether with or without reference in these respects for approval to His Majesty's Government. You will also ascertain the extent of his controul over the funds and resources of the Colony, in levying, augmenting, appropriating or issuing them—and the authority which he exercises as to granting and disposing of Lands, with the terms and conditions of such Grants, and how far they are subject to the sanction and confirmation of His Majesty.

Always bearing in mind in this and similar investigations that this Commission is entrusted to you for the purpose of prospective regulation and practical improvement, founded upon present examination and upon retrospective enquiry.

On reviewing the List of Civil and Military Colonial appointments, when such may be deemed necessary for the accomplishment of those objects, the nature of the duties and functions of Public Officers of every description must be enquired into, and the amount of their respective Salaries and Emoluments from whatever source derived distinctly ascertained, and you will state your opinion as to the expediency of retrenchment or reduction in every case in which you may deem it advisable, and also as to the degree of compensation to which the persons affected may be fairly entitled, and the principle by which it should be regulated.

All Colonial Pensions or Allowances will in like manner be submitted to your investigation, so that you will have an opportunity of stating the amount of all such Grants, and the reasons assigned for their origin.

With respect to your enquiry into the Financial Management of the Military Establishments, you will carefully examine how far these Establishments may be maintained in a state of equal efficiency under any reduction of present Expenditure.

You will not fail to direct your attention to the state of religion—to the support afforded to the Church of England—and to other religious Institutions; and as connected with this subject to all Public Establishments for Education, (for Charitable purposes in particular) and you will report whether and in what manner the national system of Instruction may be advantageously introduced.

The Judicial Enquiry will embrace the whole system and administration of Civil and Criminal Justice, including the conduct and regulation of the Police, and the jurisdiction separate and concurrent of the Courts of Admiralty.

The introduction of the English language in the Courts of Law, and in all public proceedings connects itself with this branch of your investigation.

With respect to complaints which Individuals may be disposed to refer to you against any Established Authorities in the



respective Colonies, you will understand that you are not authorized to enter into an examination of such Complaints unless you receive specific Instructions to that effect from this Department, or unless in very special cases which cannot be anticipated. But it will be a particular and careful object of your enquiry to ascertain whether any impediments exist to the facility of their redress by the Courts of Justice within the Colony, or in cases where the Courts of Justice are incompetent to afford the relief required, to the transmission of such complaints to His Majesty's Government at home.

Your Financial Report will comprehend whatever relates to the existing sources of Revenue either of the Crown or of the Colony—their present extent and possible augmentation, and the comparative amount and expence of collection. The annual Expenditure fixed and contingent, with the means of providing any local and immediate checks, and the possibility of reducing it within the ordinary resources of the Colony. The state and administration of Government Property fixed and moveable—The Conduct and Superintendence of Government works—The employment of Convicts and Slaves—And the improvement of Roads, Harbours, etc.

The causes of embarrassment as produced from the circumstances and Commercial Relations of the Colonies and from the systems of Finance there adopted—The Public Loans and Securities. The Banking Establishments, their nature and extent, and exposition of the principles upon which they may be rendered more beneficial—The Debt of Government and its connexion with the state of the Colonial Currency, and a reference to the state of Exchange.

The foregoing Heads of Instructions apply equally to the three Colonies, but there remain some points upon which [it] will be necessary that they should be separately adverted to—

\* \* \*

In the prosecution of your enquiry at Ceylon your attention will be directed to the original tenures of Land, the expediency of making Grants of Land, and the conditions on which such Grants should be conferred, and the system of cultivation in the Cingalese and Kandian Provinces—to the effects of Loans

to Land Owners and aids afforded by Government—the effects of gratuitous and compulsory services and means of commuting them—the disposal of the Government Share of Crops—the means of promoting the Growth of subsistence—and effects of the introduction of machinery—The state of the Pearl and other Fisheries—The administration of the Laws under the revised Charter of Justice—the judicial Establishments in the Interior—The Laws and Regulations respecting Slaves, and for effecting the extinction of Slavery—Effects of the present system of the Civil Service with regard to Pensions and Superannuation, and future alterations and regulations to be adopted upon this point.

I shall conclude this communication with observing that it is not meant that you should be precluded from pursuing any other object of Enquiry, which tho' less prominent than those which I have enumerated, may usefully contribute to the stock of information which it is the desire of His Majesty's Government to collect, in order that they may be enabled to decide upon such measures as are best calculated to promote the immediate improvement and secure the lasting welfare of the valuable Possessions to which you are about to proceed.

I am etc.

BATHURST<sup>1</sup>

<sup>1</sup> Henry, Earl of Bathurst, Secretary of State for Colonial and War Departments, 1812-27.

### III

## *Report of Lieutenant-Colonel Colebrooke upon the Administration of the Government of Ceylon<sup>1</sup>*



*To The Right Honourable Viscount Goderich,<sup>2</sup> One of His Majesty's  
Principal Secretaries of State.*

London, 24 December 1831

MY LORD,

In the several communications made by me from Ceylon, your Lordship will have been generally apprised of the proceedings of the Commission of Inquiry in that island, and from the peculiar institutions of the colony, differing as they do from those of any other possession of the Crown, it may serve to elucidate the subjects on which I am about to report, to explain shortly the course adopted in the prosecution of the inquiry. After my arrival at Colombo, and the publication of His Majesty's Commission in the English, Cingalese and Malabar<sup>3</sup> languages, numerous representations, in the form of petitions, were addressed to me from different parts of the

<sup>1</sup> *Parliamentary Papers*, House of Commons, No. 274 of 1831-2 (xxxii, 65).

*Report of Lieutenant-Colonel Colebrooke, one of His Majesty's Commissioners of Inquiry, upon the Administration of the Government of Ceylon*; dated 24 December 1831 (with a Map of the Island of Ceylon).

*Report of Lieutenant-Colonel Colebrooke, one of His Majesty's Commissioners of Inquiry, upon the Revenue of Ceylon*; dated 31 January 1832.

*Report of Charles Hay Cameron, Esq., one of His Majesty's Commissioners of Inquiry, upon the Judicial Establishments & Procedure in Ceylon*; dated 31 January 1832.

This Printed Report covers 88 pages of the usual folio size. The Written Report is also on folio paper, but the margin covers nearly half the page. Part I consists of 258 pages Part II of 163 pages and Part III of 288 pages. C.O. 54, 122.

<sup>2</sup> Frederick John Robinson, Viscount Goderich and afterwards Earl of Ripon, Secretary of State for the Colonial and War Departments, 1827, 1830-3.

<sup>3</sup> The term Malabar was often used at this time for Tamil.

island, and several of them were signed by the inhabitants of towns, districts and villages, and by the people of particular classes or castes, with a request that they might be laid before His Majesty. The number of these petitions, and the great variety of topics to which they referred, precluded the possibility of inquiring into the merits of each particular statement, even if my instructions had authorized me to do so;<sup>1</sup> but I considered that the inhabitants were entitled to attention on subjects deemed by them of importance to their own interests. Where individual complaints had been addressed to the Governor, the practice had been to inquire into the grounds of the complaint through the local authorities, and a record of these investigations, with the Governor's decisions, was kept in the office of the Secretary to Government. Where general representations had been made against the laws or regulations of the island, they were noticed, or not, according to the views that the Governor might take of the subject. There appeared to be no instance, in which the natives had transmitted their complaints to His Majesty's Government, but there was no existing impediment to their doing so. The course therefore adopted by me was to avail myself of the information contained in the petitions in framing a series of interrogatories on all the general topics referred to, and which I addressed to the civil officers of Government and the judicial functionaries throughout the island. From the multiplicity of the subjects brought to my notice, I found it convenient to divide the inquiry into two branches, the one comprehending the civil government and institutions of the country, its revenues, and all general and statistical information relating to it; the other specifically referring to the laws and judicial establishments. From the frequent reference to the same persons on these several subjects of inquiry, and from their practical connection in many instances, it has been impossible to keep them entirely distinct from each other; and in treating of them apart, a general reference will be made to all the sources of information acquired, where confirmed by my own observation.<sup>2</sup>

<sup>1</sup> Instructions to the Commissioners of Inquiry, I, p. 7.

<sup>2</sup> A number of these sets of questions addressed by Colebrooke is included in II, pp. 1-23.

Before I closed my proceedings in the island I entered into correspondence with the Governor, in order to ascertain his opinions, and to state to him my own, on several most material points relating to the administration of the government, the establishments and finances of the island. Although my own opinion had been formed on most of the principal questions which had arisen out of my inquiries into the laws and judicial institutions, I was induced to reserve them, as Mr. Cameron had but recently joined the Commission, and was engaged in completing the inquiries I had pursued. In referring to the correspondence in question, it will be observed that my opinions have not always coincided with those of Sir Edward Barnes;<sup>1</sup> and it is therefore satisfactory to me that he has had an opportunity of explaining to your Lordship the grounds of his own, and of stating his objections to those which I have formed after a full investigation of the subject.

In these views I am supported by the opinions of some of the most intelligent and experienced members of the public service, and of other persons who have been long resident in the island.<sup>2</sup>

These preliminary observations have been called for under the responsibility attaching to me for the conduct of the inquiry. It was planned and conducted by me nearly to a close

<sup>1</sup> The views expressed by Sir Edward Barnes are given in II, p. 25.

<sup>2</sup> 'Colonel Colebrooke states in his Reports that he is supported in his general views with respect to the Colony by the opinions of some of the most intelligent and experienced members of the Public Service and of other persons who have been long resident in the Island. This assurance may have produced no inconsiderable effect on your Lordship's judgment—and as it is in direct contradiction to evidence which I have obtained here, it is fitting that I should place that "Evidence" distinctly before your Lordship.'—An extract from a private letter from Horton to Goderich, 13 October 1832. C.O. 54, 118. II, p. 39.

Horton submitted to Goderich the views of a number of official and unofficial persons on Colebrooke's Reports. Of these, the views of the Rev. D. J. Gogerly of the Wesleyan Mission are given in II, p. 42. Colebrooke replied that he did not refer to these persons. The views of Sir Alexander Johnston who was Chief Justice of Ceylon, given in II, p. 221, show that some of the officials in Ceylon did not differ fundamentally in their views from Colebrooke and Cameron. See also the Report on the Compulsory Services for the views of others (pp. 189-211 below).

before the arrival of my colleague,<sup>1</sup> and he has returned to this country on my certificate, that the evidence I had collected was sufficient.

In the course of my proceedings I have had occasion to recur to the experience I had acquired during my former residence in India. Although administered by the Crown, the island of Ceylon was originally a Hindu province, and from not having been subject to the inroads of the Mahomedans, it offers at this day the most perfect example to be met with of the ancient system of Hindu government. A short analysis, therefore, of the system may be useful, not only with reference to the particular interests of Ceylon, but in elucidation of some questions of considerable importance in relation to the British settlements in India.

*General description of Ceylon, Seasons, &c.*<sup>2</sup>

The situation and extent of Ceylon, its climate and resources, and the character and condition of its inhabitants, have been described in various publications; but from the nature of the information open to the Commission, and the more accurate knowledge of the country which has been recently acquired, some general observations on these heads may be found useful. Since the acquisition of the Kandyan territory, the country has been explored by several intelligent officers, and although many parts of it are still but imperfectly known, its general character and peculiarities are better understood than at any former period.

The island, being open to the influence of the two monsoons which alternately prevail in the Indian seas, includes a greater

<sup>1</sup> Colebrooke arrived on 11 April 1829. Cameron, according to a letter from Colebrooke to Sir George Murray, Secretary of State for the Colonial and War Departments (1828-30), arrived on 25 March 1830, and the Commission was read to him on 29 March. According to Colebrooke's diary Cameron landed on 26 March. Both Colebrooke and Cameron left Ceylon on 4 February 1831 (C.G.G.). See also Warrant for Commission of Inquiry, p. 2 above.

<sup>2</sup> The sub-headings which occur in Part I of the Written Report are left out in the Printed Report. Henceforth the Written and the Printed Reports will be referred to as W.R. and P.R. The headings here are taken from the index to P.R.

variety of climate than is to be found in any territory of equal extent on the continent of India.<sup>a</sup>

The eastern division, open to the north-east monsoon, partakes of the climate of the coast of Coromandel, which is hot and dry; and the western division, open to the south-west monsoon, of that of the Malabar coast, which is temperate and humid. The north-easterly winds, although producing rains, are drier than those coming from the south-west, and give an arid appearance to the country over which they blow, which is contrasted with the luxuriant verdure of the southern and western districts throughout the greater part of the year. The driest divisions are those which are situated between the range of the two monsoons, partaking slightly of the influence of both. The high mountains of the interior or Kandyan country do not range in any direction to the sea-coast, but are generally retired from it 30 or 40 miles, descending in some parts precipitously into the plains. There is a continuous range of low hills extending to the southern coast; and at the base of the mountains a tract of country considerably elevated above the sea, in which some large rivers take their rise. *The Ginderah and Walawe are the principal ones.*<sup>1</sup> To the eastward, northward and westward the country is low and flat. The highest mountain of the interior has been ascertained to be more than 7,000 feet above the level of the sea,<sup>2</sup> and forms the centre of a range of highland country of extremely irregular surface, and adapted to most of the productions of temperate regions, the temperature being lower than in the plains. This country being intersected by deep and often impassable ravines, and clothed with thick jungle or forest, the communications are rendered extremely difficult. Under the Kandyan

<sup>a</sup> The N.E. monsoon prevails from November to February, and the S.W. monsoon from April to September. The intervening or equinoctial months of March and October are those in which the variable winds and calms prevail. The seasons are subject to fluctuation, being sometimes earlier or later than the periods mentioned.

[Footnotes indicated by the letters of the alphabet are footnotes or marginal notes in the Printed Report.]

<sup>1</sup> Throughout the Reports, anything printed in italics is a marginal note in W.R.—unless otherwise stated.

<sup>2</sup> The highest mountain in Ceylon is Pidurutalagala which is 8,292 feet high. Adam's Peak which is 7,360 feet high is obviously referred to here. Unlike Pidurutalagala it is much higher than the rest of the range. See Map, p. 76.

government the opening of roads was prohibited, and the passes were strictly guarded. Narrow footpaths were made, by which men on foot could singly pass, climbing over rocks and through the thickets. In thus providing for the defence of the country, its improvement was necessarily retarded; and from the little intercourse that subsisted with the maritime provinces, the habits and institutions of the people were of the most simple and primitive kind, exhibiting curious memorials of their social condition in very remote ages.<sup>1</sup> Several fine rivers and streams rise in the mountains, and take their course to the sea on either side of the island, but in traversing the plains their currents become languid. During the rains they overflow their banks, and on the western side flood the country, but they rarely open channels to the sea which would render them navigable except for boats and coasting vessels. Supplied by the mountain torrents some of these rivers are calculated to afford in the dry seasons an unfailing resource to those parts of the low country where the rains are precarious, and where the fertility of the land has at all times more depended on irrigation from tanks and watercourses. It is accordingly not unusual to see, in districts now deserted and overgrown with jungle, the remains of such works by which the waters were conducted and distributed.

The "Kelani Ganga" is navigable for boats about 50 miles from Colombo to Ruanwelle, and is the medium of much internal intercourse, but higher up it is impeded by cataracts. The same observation is applicable to the "Mahaville ganga", which takes an easterly course from Kandy to Trincomale, and also to some other rivers which are navigable for the boats and rafts used in conveying produce during a great part of the year. Those rivers which circulate through the districts to the eastward and northward were formerly of great service in filling the numerous tanks, which rendered those districts the most fertile and populous of the island.

#### *Canals and Tanks*

The ancient inhabitants appear to have been peculiarly skilful in the execution of works for the collection and dis-

<sup>1</sup> A detailed description of the Kandyan Kingdom is found in Robert Knox's *An Historical Relation of Ceylon* (1681).



tribution of water, the most remarkable of which are the spacious tanks excavated in the plains,<sup>1</sup> and the dams constructed across the beds of rivers, or over ravines and vallies connecting small hills, and forming extensive lakes for flooding the plains in the driest season. I here allude to the ancient works which are to be met with in the district of Tangalle, and in the deserted provinces to the northward and eastward, now the resort of the wild tribe of Veddas, who live by deer-hunting. The lakes of Kandelay and Minery, each of which covers an area of several square miles, are situated in the plains extending from Trincomale to "Anarajpoora", the ancient capital of the island; and from thence across to Manar and Aripo, in which district a reservoir of great extent, called "The Giant's Tank", was formed, and a stone dike was constructed across the Aripo river to divert the current into it. These works are very ancient, that of Minery appearing, from authentic records which have been compiled, to have been constructed three centuries before the Christian Era.<sup>2</sup> They were executed for the improvement of lands, which were probably distributed amongst the people employed in the work, and who dedicated a portion of their revenues to the temples and priesthood.

The flatness of the districts bordering on the sea coast has occasioned the formation of extensive salt-water lakes or lagoons, which, from the channels connecting them, facilitate the intercourse of the maritime districts. Batticaloa, to the eastward, is much intersected by these lakes, which afford the means of internal communication. These lakes extend along the eastern coast to the northward of Trincomale, nearly separating the northern and southern parts of Jaffna.<sup>3</sup> This district, and that of Manar, lying contiguous to the coast of Coromandel, possess greater facilities of intercourse with the continent than the districts to the southward, the country vessels being able to cross over at all seasons, a circumstance that favoured the Malabars in their invasion and conquests

<sup>1</sup> Tanks were not usually excavated in Ceylon. They were constructed by building embankments and checking the flow of a stream which had high ground on either side of it.

<sup>2</sup> The Minneriya Tank was constructed by Mahasen (A.D. 274-302).

<sup>3</sup> By Jaffna is probably meant the peninsula as well as the present district of Mullaitivu.

of the country, and which facilitates the commerce still carried on with the continent.

In the districts of Colombo and Galle this intercourse is much impeded during the south-west monsoon, from the boisterous navigation across the Gulf of Manar, and the dangers of the coast. To obviate this inconvenience, canals have been constructed for connecting the lakes and rivers, and which are calculated to secure a convenient channel at all times for the conveyance of produce.<sup>1</sup> The coast-vessels can come over during the south-west monsoon to Calpentyn, an accessible port in the Gulf of Manar, and their cargoes are conveyed from thence by canals to Colombo. These canals, which are not yet completed, were first projected by the Dutch, who designed to carry them to a port to be formed at Barbaryn, between Colombo and Galle; and in furtherance of this plan a canal had been opened into the Caltura River, 25 miles to the southward of Colombo; another has also been partially cut from the Mutwal River at Colombo towards the lake of Negombo to the northward, to secure the advantage of a more direct communication. On this work I have made a separate Report.<sup>2</sup>

The means of internal navigation thus afforded to the inhabitants of this populous division will contribute largely to its improvement; and, with the advantages of climate and proximity to the coast of India, hold out a great inducement to settlers of all descriptions. The suburbs of Colombo extend to the banks of the Mutwal or *Kalaniganga*<sup>3</sup> River, and the lake which insulates the town is connected with it by canal.

Throughout the southern division, where the rains are copious, canals are not less useful in draining the low lands than in the conveyance of produce. Embankments are also much required to secure the crops from destruction by the flooding of the rivers during the rainy season.

In the northern division the works in greatest request are

<sup>1</sup> The system of canals was completed about a hundred years after the Dutch occupied Ceylon. See *University of Ceylon Review*, V, p. 55.

<sup>2</sup> See letter to Hay dated 13 December 1831 (W.R.). II, p. 321. Robert William Hay was Permanent Under-Secretary of State for the Colonies, 1825-36.

<sup>3</sup> 'Kalaniganga' is an addition in P.R.

tanks and watercourses, to secure the inhabitants against the frequent droughts to which those districts are subject.

The climate and seasons of the northern and southern districts are thus strikingly contrasted: on one side of the island, and even on one side of a mountain, the rain may fall in torrents, while on the other the earth is parched, and the herbage withered. The inhabitants in one place may be securing themselves from inundations, while in another they are carefully distributing the little water of a former season, which is retained in their wells and tanks. The works of any magnitude in these districts having been destroyed, it is not uncommon for the villagers to raise their scanty crops in the beds of the great tanks which formerly fertilized the surrounding plains. Much skill is displayed by the Kandyans in the cultivation of rice in terraces cut along the sides of hills, which are successively irrigated by the mountain streams descending to the vallies. This mode of cultivation is common in the south of India, Java and other Eastern countries, where works of magnitude are sometimes executed, and lands reclaimed by the co-operation of villagers.

#### *Soil and Productions*

Of the soil in the different divisions that of the southern plains is sandy, and resting on a strong red marl or clay called "Cabook", the base of which is granite. The Cabook rises in small hills, and being secure from inundation, the natives place their habitations on them. Their villages are surrounded with plantations of coffee, palm and other fruit trees; the low grounds are usually laid out in rice.

The Cabook affords a cheap material for the construction of roads and buildings, and in the southern districts is commonly used for both purposes.

The sandy soils of the south-west division are not considered fertile; and as the Cingalese but rarely improve their lands by tillage, they are much exhausted.

The cinnamon plant grows in sandy as well as in richer soils, where there is sufficient moisture; it therefore thrives luxuriantly within the influence of the south-west monsoon from Negombo to Tangalle, and in the interior districts having a western aspect.

From the humidity of the atmosphere the cocoa-nut palm also thrives well along the sea-coast of this division, and is thickly planted. These plantations contribute largely to the subsistence of the people, and are a great resource when the crops are destroyed from inundation. They also support several useful manufactures.

There are stronger soils in the elevated lands of Saffragam and Lower Ouvah, traversed by the Caltura, the Ginderah and Wallowe rivers; and the granite soils above the mountains are considered fertile, especially where forests have been cleared.

The productions of the hilly country of the interior, or those which are adapted to it, are various. Coffee grows luxuriantly, and with little care, although the produce is improved by culture. The province of Ouvah, which is drier and less wooded than the country about Kandy, yields tobacco of fine quality.

The provinces of Ouvah, Wellasse and Bintenne, to the eastward, are much depopulated, and difficult of access; but they are represented to contain some fine tracts of arable and pasture country.<sup>1</sup> These, and the adjoining districts of Saffragam and Tangalle, appear to have been formerly populous and productive; and this observation applies also to the extensive plains situated northward of the hills, of which the soil is generally fertile. These districts, with [the] exception of Tangalle, have been nearly depopulated; and in several of them are the remains of numerous tanks.

\*The province of Nuwerakalawa,<sup>2</sup> containing the ruins of the ancient capital, from the number and dimensions of the tanks, must at one time have been the most populous in the island.

The soil of the northern division is sandy and calcareous, resting upon madrapore. The lands being level, and but little elevated above the sea, are irrigated from tanks and wells. They are manured and cultivated with care by the Malabar inhabitants. A natural reservoir is found near Jaffna, the water of which it has been attempted by [the] government to raise by steam. It is supplied from springs; but at a certain depth the

<sup>1</sup> The fighting during the Kandyan Rebellion (1817-18) took place mainly in these three regions, and much of the country was devastated.

<sup>2</sup> Nuvarakalāviya, the present Anuradhapura District, is so called from the three main tanks of the district, Nuvaravāva, Kalāvāva, and Padaviyavāva.

water becomes brackish, and still deeper it is salt. This reservoir, it was considered, would afford a constant supply of fresh water for the irrigation of the lands around it.

The chief productions of the Jaffna district are rice and tobacco, but cotton and various other plants are adapted to it. The dryness of the climate renders it a good sheep country, and the palmyra palm is as great a resource in the northern districts as the cocoa-nut palm is to the southward. Groves of these palms surround the villages, and are productive in seasons of drought when the crops fail. The fruit of the palmyra falls when ripe, and can be preserved. The leaves, like those of the cocoa-nut, are used for the construction of the native huts, as a substitute for paper, and for various other purposes. The toddy, or sap, is similarly drawn as a beverage, and for distillation. The timber of the palmyra is much esteemed for rafters, and is exported in large quantities to the continent.

The coast from Chilaw to Manar and Jaffna on the western side, and from Tangalle through the Mahagampattoo to the eastward, contain the most extensive and valuable salt formations which are met with on these coasts. They are accounted for by the peculiar dryness of the climate at certain seasons, and the rapid evaporation after rain. Salt is collected in the Jaffna and Manar districts, at Chilaw and Putlam, and also at Trincomale and Batticaloa. In some places it is formed spontaneously, and in others by solar evaporation in salt pans, or fields enclosed with embankments. The "Leways" or natural deposits, on the eastern coast, at Hambantotte, yield the largest supply of the finest salt. It is cheaply collected, and has obviously at former periods been a source of prosperity to the districts around, which are now depopulated. It is not certain whether these pits are connected with the sea, but the salt formed in the dry season crystallizes spontaneously, is of great purity and more slowly dissolved when exposed to the moisture of the atmosphere than that which is artificially prepared.

The sea fisheries are productive in all parts of the coast; and in the neighbourhood of the salt formations, where a market for fresh fish cannot so readily be found as nearer to the towns, the quantity of fish that might be cheaply cured for consumption and for exportation would constitute a valuable resource to the people.

The common boat used in fishing is a canoe, formed from a single tree, with an outrigger to support the sail. Large flat-bottomed boats are also used in shoal water. The Seer, and other large fish, are caught on the western coast, the Pomfret to the northward, and the Bêche de Mer, or sea slug.

The pearl fishery, in the Gulf of Manar, is rather an object of precarious and hazardous speculation than of regular industry, and in estimating the general resources of the island is of inferior importance to the common fisheries. From the descriptions of ancient travellers, it is carried on nearly in the same manner that was practised several centuries ago. As the trade was formerly open (the native princes receiving a tenth part of the pearls collected), there was more commercial activity than at present. The ancient towns of Mantotte and Putlam, and the districts around, probably derived much of their prosperity from the pearl fisheries, which at all times have attracted a great concourse of speculators from the continent, and of people in search of employment. At certain seasons the young oysters are seen floating in masses, and are carried by the current round the coast. They afterwards settle, and attach themselves by a fibre or beard to the coral rocks, and on sand they adhere together in clusters. When full grown they are again separated, and are locomotive. The pearls enlarge during six years, and the oyster is supposed to die after seven years. The natural history of the pearl oyster is imperfectly known, and the banks have been found suddenly to fail when a productive fishery had been anticipated. They are fished at a depth of six or seven fathoms, and in the calm season, when land and sea breezes enable the boats to go out and return daily.

Of the mineral productions iron is abundant in some provinces, and also plumbago. The latter has recently been exported with some prospect of advantage; limestone has been found near Kandy.

The gems of Ceylon may be considered the least important of its mineral productions, and, as a government monopoly, have ceased to be of any consequence.

The forests extend over several provinces of the eastern and western divisions, and contain much useful and valuable timber. Of those which can be exported with advantage, the

ebony, calamander and satin woods are the most esteemed, and the Sapan wood for dyeing. As the latter wood can be cut into logs of any size, it is easily transported from the forests of the interior.

The jak-tree is more serviceable to the inhabitants than any other, excepting the palms. The fruit of it is nutritious, the leaves afford fodder for cattle, and the timber is generally used for household purposes, the furniture made from it having some resemblance to mahogany. Plantations of the jak-tree have been made, but they are inadequate to meet the demand.

The replies of the several collectors and agents of government, which contain a particular account of the seasons, productions and peculiarities of their respective provinces, will afford further information on these subjects.<sup>1</sup>

### Climate

Respecting the climate of Ceylon, I can refer with confidence to the intelligent observations of Dr. James Forbes, the inspector of hospitals, and to the journals he has furnished of the atmospheric changes in the interior and maritime districts for a series of years. The general conclusion to be drawn from these details is, that where the country is depopulated and overgrown with jungle, or exposed to the influence of malaria from uncultivated marshes, endemic fever returns at certain seasons, though irregularly; and that at other periods the country is healthy.<sup>2</sup>

<sup>1</sup> The questions to which these replies were given appear in II, p. 1.

<sup>2</sup> 'Until the eighteen-seventies there was a strong school of thought which did not believe in contagion at all. They thought that in an epidemic of cholera or "fever" the cause was not some material thing which passed from patient to patient, but some malignant alteration in the air . . . The favourite doctrine concerning the cause of fevers was that of "miasma". It was believed that decaying matter, marshy ground, fever patients, septic wounds, and the like gave out miasma, a subtle gaseous poison capable of causing disease. The word *malaria* enshrines this theory. It was known that ague—which today we call malaria—was commonest in marshy places, and these were supposed to give out *mal aria* or *bad air* which caused the disease of ague, which was therefore called malarial fever. The word *malaria* in the early nineteenth century does not mean the disease, but the hypothetical poison which caused it. Thus in discussing the origin and

The maritime districts, and especially those which are the most populous, are more free from miasmata than those of the interior, and hence the climate of Ceylon may be expected to become more uniformly salubrious when the country is more generally cleared and cultivated. By draining the marshy grounds, and clearing the jungles in the environs of Trincomale, the climate of that place has been improved; on the other hand, the most productive province of the interior (Seven Korles) has become unhealthy from the numerous tanks which have recently fallen into ruin, and the consequent growth of jungle and the generation of marsh miasmata. *The jungles which produce fever consist of rank shrubs of rapid and luxuriant growth, which spring up in marshy grounds, or over uncultivated tracts.*<sup>1</sup>

The lands situated in the neighbourhood of Colombo are low, and subject to inundation from the Mutwal River; but as they are regularly cultivated, the atmosphere preserves its purity. An uncultivated marsh, situated to the northward of the town, and which it has been proposed to drain and cultivate, renders the northerly winds which blow over it less wholesome.

At Colombo the mean daily variation of the temperature does not exceed  $3^{\circ}$ , while the annual range of the thermometer is from  $76^{\circ}$  to  $86\frac{1}{2}^{\circ}$  of Fahrenheit. At Galle the mean daily variation is  $4^{\circ}$ , and the annual range from  $71^{\circ}$  to  $87^{\circ}$ . At Jaffnapatam the mean daily variation is  $5^{\circ}$ , and the annual range from  $70^{\circ}$  to  $90^{\circ}$ . At Trincomale the greatest daily variation is  $17^{\circ}$ , and the annual range from  $74\frac{1}{2}^{\circ}$  to  $91\frac{1}{2}^{\circ}$ . At Kandy the mean daily variation is  $6^{\circ}$ , and the annual range from  $66^{\circ}$  to  $86^{\circ}$ ; and higher up the hills, at Neura Ellia, a military convalescent station, the mean daily variation is as high as  $11^{\circ}$ , while the annual range of the thermometer is from  $35\frac{1}{2}^{\circ}$  to  $80\frac{1}{2}^{\circ}$ .

In Colombo the quantity of rain that fell during the year

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spread of fevers the medical books of the period 1800-65 make a great play with malaria, miasma, foul exhalations, and putrid streams; and as few places were free from exhalations perceptible to the nose it was easy to account for every case of illness.' Sherwood Taylor: *Century of Science*, p. 75.

<sup>1</sup> A marginal note in W.R.; but the words 'after rain' which follow the word 'tracts' are omitted in P.R.



1830 was 102 inches, of which 81 inches fell in the months of April, May, October and November.<sup>a</sup>

### Roads

The principal roads in the maritime provinces extend along the sea-coast, and carriage-roads have been made from Colombo as far as Chilaw to the northward, and through Galle as far as Matura to the southward. Carriage-roads have also been made from Colombo to Kandy, one by the way of Kurunegalle, which is in a direction towards Trincomale through the flat country; the other over a nearer pass of the hills. Several other roads and communications through the districts have been opened, and some are now in progress. The main road to Kandy is a work of great magnitude, having been carried through some difficult passes of the hills, and connected by several bridges, the largest of which, over the Mahavillegange, near Kandy, is still unfinished. An iron bridge is intended to be thrown over the same river on the Kurunegalle road.

The natural resources of the island, and the advantages which it derives from its position over the neighbouring continent, appear to have been more highly appreciated in ancient times than they are at present. From the wars carried on by the natives, and the devastations committed by the Malabars who invaded the country, its agricultural prosperity had declined before the Portuguese made their first settlement on the coast. The ancient capital of Anarajpoora was abandoned in the 18th century,<sup>1</sup> but the external commerce of the island was not materially checked till the Portuguese established a monopoly of its productions, and interrupted those maritime relations which had subsisted before the discovery of the passage round the Cape of Good Hope. Previous to that event, the central situation of Ceylon led to its ports

<sup>a</sup>	11	inches	in	April
	21	"	"	May
	29	"	"	Oct.
	20	"	"	Nov.

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81

<sup>1</sup> Anuradhapura was the capital of Ceylon till the beginning of the eleventh century when the Chōlas made Polonnaruva their seat of government.

being frequented by ships from China, India and Arabia, then the entrepots of general commerce, and to which countries the productions of the island were carried. *The ports of Colombo and Galle were favourably situated for this trade, and may again be much frequented. Trincomale is chiefly important as a naval station, although the country was once populous, and exported grain and provisions to the Coromandel coast.*<sup>1</sup>

### *Population*

The magnitude of the ancient works for the irrigation of the country sufficiently attest that it must formerly have been much more populous than it is at present. Some districts are entirely depopulated; and with the exception of Colombo, Galle, and Jaffna, they have all declined.

The latest returns that have been made up were called for in 1824, and from these it appears that in the Southern or Cingalese provinces the number of males and females was 399,408; in the interior or Kandyan provinces 256,835; and in the Northern or Malabar districts, 195,697; making the total population of Ceylon 851,940. Compared with the returns from the maritime provinces in 1814, they exhibit an aggregate increase of 119,222 in 10 years, a rate at which the population would be doubled in 35 or 40 years.<sup>a</sup>

These returns contain the number of males and females in every village, and the number of each class or caste; and as registers are kept of marriages and births in the maritime provinces, they may be considered generally correct. The returns from the Kandyan provinces are less detailed, and are derived from less authentic sources.

Population in Ceylon may be considered to increase faster than capital has accumulated; but as the inhabitants, with exception of those resident in the principal towns, are in the possession or occupation of land, they have in general the means of subsistence.

<sup>a</sup> Total Population of the Maritime Provinces in

1814	-	475,883
1824	-	595,105
		<hr/>
Increase		119,222

<sup>1</sup> A marginal note in W.R. No evidence of any export of grain is available.

## Castes

Of the inhabitants of the island, the Malabars, who occupy the northern districts, are Hindus, and have retained the religious distinctions of caste, and the language and customs of the tribes of Southern India, under some modifications which have been obviously derived from their intercourse with the Cingalese. The language and customs of the Cingalese, who occupy the interior and southern divisions, are in some respects peculiar; and as they have undergone but little change in the Kandyan provinces from a very remote period, the origin of the system which has been established by the European governments may be distinctly traced from them. The civil institutions of the Cingalese, who profess the religion of Bhood, are obviously derived from Hindu origin. The possession of their lands on tenures of service, and the division of the people into classes, according to their various trades or occupations, subsist also among the Malabars, and probably prevailed throughout the continent of India before the Mahomedan conquests; but the abolition of the religious distinctions of caste has constituted a marked peculiarity in the institutions of the Bhoodists, which drew on them the hostility of the Brahmins, and produced the religious wars which depopulated the country and led to the settlement of the Malabars in the northern district of the island.<sup>1</sup> The civil distinctions of caste have doubtless originated in an attempt to introduce a division of labour,<sup>2</sup> and these distinctions have been rendered hereditary from the privileges acquired by particular castes, and by the practice of assigning lands for the conditional performance of labour or service.

Although the ostensible employments of particular castes have been frequently changed, and different occupations are constantly engaged in by people of the same caste, the intermarriage of the high and low castes is prohibited by the Kandyan law, and many absurd distinctions are recognised and enforced, by which the latter are degraded and reduced to a servile condition, which becomes hereditary.

<sup>1</sup> This was not the cause of the wars. See G. C. Mendis: *Early History of Ceylon*, chapters iv and v.

<sup>2</sup> The civil distinctions of caste do not appear to have originated in this manner.

The highest and most esteemed caste is that of Vellales or Goyas, whose occupations are purely agricultural, but as land is assigned for the performance of every description of service, the practice of agriculture is not confined to this class, but is exercised by persons of all castes for their subsistence.

#### *Tenure and Distribution of Land*

The lands are generally cultivated by small hereditary proprietors or tenants, and usually under a conditional tenure, obliging them to make contributions or to perform some public or private service, although in some instances the lands are held under free grants.

Rice being the ordinary food of the people, the arable lands are divided into rice-fields, or grounds enclosed by embankments to retain water. In the low country, where they can be irrigated by rivers or tanks, extensive tracts are thus laid out. In the hills the rice-fields are cut in terraces, which are watered by the mountain springs or streams led out. These fields are separated by tracts of high ground attached to them, which are cultivated once in eight or ten years by cutting down and burning the jungle. These are distinguished as "chena" or commons, and "owitzte"<sup>1</sup> or wooded lands. The produce being irregular and precarious, they are not usually considered service lands, but are liable to assessment when cultivated in grain. The rice-fields which can be annually cultivated are registered in "panguas" or shares: in the registers (*lekam meteyas*)<sup>2</sup> is inserted the nature of the service to which the owner or occupier is liable. A "Gama" or village is a term applied to the lands of a division on which the cultivators usually reside in small communities or hamlets, and sometimes to a single estate or field with its occupiers, and may therefore include one or many shares.

"Royal Villages" are crown lands which, under the native government, were generally cultivated by tenants at will, who delivered the whole produce for the use of the King's household, and who held other lands which they cultivated for their own

<sup>1</sup> *Oviti* are dry and unwatered meadows which are sown once in three years or so with unsprouted paddy.

<sup>2</sup> A marginal note in W.R.

subsistence; but in some cases the cultivators had "parveny" or hereditary titles to their fields.<sup>a</sup> If they did not hold other lands they retained half the produce for their subsistence, or retained the whole, performing some personal service in return for it, as domestics or retainers. The royal lands were often granted or assigned to chiefs ("nuidigamma") who engaged to perform certain services to the State for them, and made similar engagements with the tenants. These grants were either hereditary or for life; and the retainers (nillikarias), if in possession before the assignment was made to the chief, acquired permanent titles.

Hereditary or parveny titles could also be acquired either by grant or by undisturbed possession for 30 years,<sup>b</sup> and also by clearing and cultivating waste lands.

When free grants of service-lands were conferred, the proprietors and their descendants were exempt from obligations of service. The hereditary proprietor of service-lands might voluntarily surrender the lands, or otherwise dispose of them, if he disliked the service, but he could not be dispossessed. In some cases he might find a substitute, and where females inherited the lands, they were always allowed that privilege. Besides the lands which are held on tenure of service to the government or to chiefs, there are others which have been dedicated by the native government or by individuals for the support of colleges of Bhoodist priests (wihares), and of heathen temples (dewales). From the policy of the Kandyan government these various tenures have been distributed throughout the different provinces in a manner to divide the possession in almost every village, and thus to prevent the union of any large body of retainers under one superior. Lands cleared and cultivated were dedicated by the people to the king, or to the chief or temple under whom they held, from whom they

<sup>a</sup> Many of these titles are of ancient date, and engraved upon copper.

<sup>b</sup> By a Proclamation of the Governor, dated 18th September 1819, it was provided that a possession of land for 10 years should be a sufficient bar to any suit brought for recovery of the same.<sup>1</sup>

<sup>1</sup> 'We do further declare and ordain, that for the future, the quiet and undisturbed possession of land for the Term of Ten years, commencing from and after the date of these presents, without action brought, shall be taken as a sufficient plea in bar to any suit brought for the recovery of the same.' C.G.G. 25 September 1819. C.O. 58, 2.

claimed protection, and to whom they made contribution or rendered service.

### *Ancient Government*

The classification of the people, and the distribution of lands, being the basis of the Kandyan system of government, the civil and judicial administration of the country before the conquest was entrusted to chiefs, who superintended the employment of the people assigned to particular duties, and who for their services were freed from contribution for their own lands. These chiefs were placed over particular departments of the State, or in the government of the provinces, which were subdivided into "korles" and "pattoos", to which inferior chiefs were appointed.

The heads of villages (vidahns), to whom the people immediately referred, were sometimes appointed; but in some cases their offices were hereditary, and lands were ordinarily assigned for their support or use, and for that of other village functionaries. The headman of each village directed the labour of the people under authority of the chief of his province, or of the particular department to which their services were assigned, in which case the provincial authorities exercised no control over him; he was also entrusted with the police of his division, and a village council (gansabe)<sup>a</sup> was assembled by him when required for the investigation of cases which were referable to its jurisdiction.<sup>1</sup>

The superintendence of agriculture was the duty of a particular class of persons (Majoraals), who attended to the embankments, to the repair of tanks, and the distribution of water, an office of much importance in a country so dependent upon artificial irrigation.

As the changes effected in this ancient system have materially differed in the maritime and the Kandy provinces, it will be necessary to consider them apart.

<sup>a</sup> I attended one of these assemblies near Kandy, and was gratified in observing the regularity of its proceedings. The landholders of the village were assembled, and the witnesses duly examined. The case in question, relating to the boundary of lands, had been decided by the Judicial Commissioner's Court, and having come before the Governor in appeal, was referred back for further evidence, and for the verdict of a jury of the village in which the lands were situated.

<sup>1</sup> The Gansabhā in the Wet Zone during this period appears to have exercised only judicial functions.

*Portuguese and Dutch Governments*

The sovereigns of the country having been found in possession of a monopoly of cinnamon, and other valuable productions, the Portuguese first obtained these objects by treaty, but having acquired the sovereignty in 1597, at the demise of a King of Kandy<sup>1</sup> who had become a Catholic, an arrangement more favourable to the people was made. Their laws and customs were confirmed to them in an assembly of the chiefs at Colombo, and they were allowed freely to trade in cinnamon on delivering a fifth part of their collections to the government.

These conditions were subsequently revoked by Philip the Second in 1626,<sup>2</sup> and in the continual wars in which the Portuguese were subsequently engaged with the people, they lost the sovereignty they had acquired, but they devastated and impoverished the country.

The Dutch, who dispossessed the Portuguese of their settlements in 1656, assisted by the Kandyans, introduced a system still more rigorous. A monopoly of the trade being a primary object with them, their arrangements were chiefly made with a view to it. All private trade was prohibited in the most valuable productions of the island, and in those of other countries which the people had been accustomed to import. To obtain the labour of the people in the various works they carried on, they confirmed their land tenures, and employed them gratuitously in erecting magazines and fortresses, and in collecting cinnamon and other productions of the country.

Of the people who abandoned their lands to escape from these laborious services, some retired to the interior, and others sought private employment in the towns. The latter were compelled, under severe penalties, to re-occupy their lands, and to work for the government during three months in the year. To prevent all evasion they were not allowed to mortgage or sell their lands without leave, and the customs and distinctions of caste were rigorously enforced by penal regulations.

The natives of the Continent, when allowed to settle in the

<sup>1</sup> The reference is to the King of Kotte and not of Kandy. The assembly was held at Malvana and not in Colombo.

<sup>2</sup> This probably refers to the expulsion of the Moors from Portuguese territory in 1626 on the orders of Philip IV.

island, paid a capitation tax (oliam),<sup>1</sup> or were liable to work gratuitously for the government.

The civil and judicial administration was intrusted to native officers, who acted under the modeliaris of korles or counties, and were subordinate to a European functionary in each province. These officers composed a native court called the "Landraad".

The Wannias or Malabar Chiefs,<sup>2</sup> exercised similar powers. The revenues were collected through native receivers, who were generally the majoraals and heads of villages, who superintended the cultivation of the lands. The public functionaries, who received small salaries, were remunerated by the assignment of lands called "accommodessans", which they held free from taxes and services. To obtain these advantages, and to acquire influence, the offices under government were eagerly sought by the natives, and the number of them was greatly increased by honorary and titular appointments.

Previous to the capture by the British forces in 1796, the Dutch, with a view to secure the exclusive monopoly of the island trade, had acquired possession of the entire sea-coast. They were thus enabled to control the supply to the interior of salt and some other necessaries of life.

#### *British Government Established*

The administration of the affairs of Ceylon under the government of Madras was entrusted to a major-general commanding the forces, assisted by three civil officers, who were stationed at Colombo, Galle and Jaffnapatam.

On the transfer of the settlement to the Crown in 1798,<sup>3</sup> a Governor was appointed, with authority to nominate a council of advice, and several gentlemen were sent from England to fill the principal offices, and to form a civil estab-

<sup>1</sup> II, p. 288.

<sup>2</sup> The Vanniyars were Tamil chiefs of a part of the Northern Province. The others were called Maniagars.

<sup>3</sup> In 1798 Ceylon ceased to be under the Madras Government of the East India Company and was placed in the same status as Madras and Bombay in relation to the Governor-General of Fort William in Bengal. Ceylon became a Crown Colony on 1 January 1802. It was only then that an advisory council was established. See Dispatch of Dundas to North, 13 March 1801. II, p. 107.



lishment for the island in some respects resembling the civil service of India.

The further colonization of Europeans in Ceylon was prohibited, and the trade in cinnamon was reserved as a monopoly in the hands of the Crown. The principal changes effected in the Dutch system consisted in the liberation of some branches of trade by the substitution of custom duties on the articles of commerce, the abolition of inland customs or transit duties, the substitution of salaries to public servants for the mode of remuneration by the assignment of lands, and the assessment of land rents in commutation of all unpaid services exacted in virtue of the land tenures.

The exigencies of the public service during the Kandyan war that ensued having led to the renewal of the claim on the services of the people, this claim has not been subsequently relinquished, and all persons of certain castes, without reference to the possession of lands, are required to serve according to their caste, and to what is declared to be "custom", payment being made to them for their labour at certain rates which are fixed by the government.<sup>1</sup> The inhabitants of the town of Colombo and its suburbs, (gravets), entitled "burghers", have been exempted from this general obligation. In 1809 the making of roads was declared to be a gratuitous service falling on the inhabitants of the districts through which they passed.<sup>2</sup>

On the appointment of the Supreme Court of Judicature in 1801 the civil and judicial administration was separately provided for.<sup>3</sup> The "Landraad" courts were abolished, and the territory being divided into eight districts, a collector and a provincial judge were appointed to each from the civil service. The collectors were entrusted with the power of magistrates, and were charged with the collection or farming of the revenue, the superintendence of public works, and the authority to call out the inhabitants for labour or service when required. They were enjoined to make annual circuits through their districts and to transmit journals and reports to the government; but this practice has been discontinued since 1824.<sup>4</sup>

<sup>1</sup> Proclamation of 3 September 1801. II, p. 279.

<sup>2</sup> This circular was issued by A. Wood, the Commissioner of Revenue, on 11 April 1808, and not in 1809. II, p. 301.

<sup>3</sup> Charter of Justice, 18 April 1801. II, p. 170.

<sup>4</sup> II, p. 265.

The reports of the collectors which were made anterior to that period contain many valuable details respecting the state of the country. A separate department was created for the collection of cinnamon, and the superintendence of the plantations which had been formed by the Dutch. The "Chalias" or cinnamon peelers, a caste of people who, with others, were appointed to this labour, were placed under the department, and the superintendent, who held registers of these people in the different districts, called them out when required, and exercised a separate authority as magistrate over them.

#### *Settlement of Europeans allowed*

In 1810 the prohibition against the acquirement of land in Ceylon by Europeans was withdrawn, and in 1812 Europeans were allowed to receive grants of land, not exceeding 4,000 acres, and free from tax for five years.<sup>1</sup>

#### *Kandyan Provinces acquired*

The Kandyan provinces, which had been first acquired by the British Government in 1815, were settled on their present footing after the rebellion in 1818, and have been separately administered by the Governor, without the assistance of his Council. These provinces were placed under the immediate superintendence of a Board of Commissioners, which Board is now composed of the commandant of the troops in Kandy and two civil servants, having charge respectively of the judicial and revenue departments. The Kandyan territory is divided into eleven provinces or districts, of which five,<sup>a</sup> situated above the hills around Kandy, are placed under the immediate superintendence of the Board of Commissioners, to whom the government agents resident in those districts

- <sup>a</sup>
1. Uduratte.
  2. Four Korles.
  3. Matale and East part of Nuwerakalawa.
  4. Harasiapattoo and Tumpane.
  5. Hewahette and Walapane.

<sup>1</sup> Dundas forbade the acquisition of lands by Europeans in Ceylon except within the District of Colombo. II, p. 114. This prohibition was removed by the Secretary of State in 1810: Government Advertisement of 21 July 1812 in C.G.G. 22 July 1812. II, p. 314.

directly refer. The districts situated more remotely from Kandy, and below the hills, are also placed under government agents, but who are entrusted with the same authority which is exercised by the collectors in the maritime provinces. In one district (Seven Korles) a separate agent for part of the judicial affairs has been appointed, but the government agents in that and all the other districts are charged with the civil and judicial duties and with those of police. With exception of the government agencies in the three provinces of Saffragam, Seven Korles and Tamankadawe, which are held by civil servants, these offices have been filled by officers of the regiments stationed in the island.

The separate administration of the Kandyan provinces is maintained under the convention which was concluded in the name of His Majesty with the Kandyan chiefs in 1815,<sup>a</sup> and modified in some of its provisions by a Proclamation of the Governor, issued after the rebellion in 1818,<sup>b</sup> by which the authority of the chiefs was curtailed. By the 4th clause of the Convention of 1815, the dominion of the Kandyan provinces was vested in His Majesty, subject to the condition of maintaining the laws, institutions and customs of the country; and by the 5th clause, the religion of Bhood was declared inviolable, and its rights, members, and places of worship, were to be maintained and protected.

In pursuance of these arrangements, which were generally approved by His Majesty,<sup>1</sup> the government of Ceylon has

<sup>a</sup> See Convention, dated 2 March 1815. [C.G.G. 6 March 1815; II, 227.]

<sup>b</sup> See Proclamation, dated 21 November 1818. [C.G.G. 28 November 1818; II, 231.]

<sup>1</sup> See Dispatch of Earl Bathurst (38), dated 10 November 1819 (W.R.): 'Upon the provisional arrangements which you have made for the administration of the Kandyan territory and which are detailed in your proclamation of the 21st November, I have only to acquaint you that the Prince Regent has been pleased to express His entire approbation of it as a temporary measure. But His Royal Highness anxiously looks forward for that Information which you have required from the members of the Board of Commissioners in Kandy as to the manners and customs of the people, as upon that must depend His Royal Highness' decision as to the permanent Government of the Country, and whether it may be proper to extend to that part of the Island the system under which the other parts of it have for so many years been successfully administered.' C.O. 55, 63, Bathurst to Brownrigg, 10 November 1819.

enforced its claims to the services of the inhabitants, as originating in ancient custom or the tenure of lands, while it has been regarded by the chiefs and priests as reciprocally bound to support the authority of the privileged classes, and to compel an observance of the religious customs, even where the people have manifested reluctance or negligence in their performance.

On the settlement of the country in 1818, a considerable change was made in the Kandyan tenures of land. A rent of one-tenth of the produce, to be levied in kind, was imposed on the land, and the claim of the government to the gratuitous services of the people, in virtue of their particular tenures, was relinquished, the Government reserving to itself the power of employing all persons according to the customs of the country, or the tenures of their lands, on paying them for their labour at an established rate. To this rule there were certain exceptions. The hereditary lands of certain chiefs were exempted from contribution in reward of their fidelity and services. The lands of all chiefs and headmen employed in the public service were also exempted, as a remuneration for their services, the exemption in this case being allowed only during the period of their employment.<sup>a</sup>

Persons employed as public messengers in the conveyance of mails, or in personal attendance on the chiefs, were also required to serve gratuitously on being exempted from the tax on their lands. The people of certain low castes, who were appointed to collect cinnamon for the government, were also exempted from the tax. They consisted of certain classes of people who had been employed about the Kandyan court, and in services which were not required under the British Government.

As it was considered desirable to provide for opening communications through the country, the duty of clearing and making roads, and of putting up and repairing bridges, was declared (as in the maritime provinces) a gratuitous service, falling on the inhabitants of each district through which the roads and bridges were required. Certain districts, the inhabi-

<sup>a</sup> Under the Kandyan government, the inferior offices were annually resumed and re-granted on payment of a fine, which constituted one branch of the public revenue.

tants<sup>a</sup> of which adhered to the government during the rebellion, were assessed only at the rate of one-fourteenth of the produce of their lands, and the estates forfeited during the rebellion when restored were subject to an assessment of one-fifth of the produce.

### *Temple Lands*

The crown lands (royal villages) where they have not been granted away to individuals, are cultivated by tenants who contribute half the produce. It was customary also, in some cases, to assign other lands to these tenants for their support, in which case they delivered the whole produce. Lands assigned for the support of temples and colleges of priests were exempt from the grain-tax, but the holders of these lands were bound to render certain services to government when called on, and they have been employed on the roads in common with the holders of government lands.

In consequence of the prevailing disposition in the native Kandyans to dedicate their lands to the temples, by which they generally released themselves from services and contributions to the government, a proclamation was issued by the Governor, in the year 1819, to provide for the registry of temple lands, and to prevent such assignments without the sanction of government.<sup>b</sup>

The possessions of the temples constitute a large proportion of the cultivated lands in the Kandyan provinces. In the several temples and colleges there are registers of the lands dependent on them, but these registers not having been examined, their extent has not been accurately ascertained. At my request translations were made of the registers in the principal temples of Kandy; and from these it appears that the tenants and proprietors of what are called "Temple Lands" in the several provinces are liable, on the requisition of the chiefs and priests, to render services and contributions of various kinds. These are minutely detailed in the registers, and the occupier of each allotment of land has a special duty assigned to him, or a special contribution to make, either for the repairs of the

<sup>a</sup> See Proclamation, 21st November 1818, clause 19. [C.G.G. 28 November 1818. II, p. 236.]

<sup>b</sup> Proclamation, 18 Sept. 1819. [C.G.G. 25 September 1819. II, p. 319].

temples, the subsistence of the chiefs and priests, and their attendants, or on occasion of the annual festivals. The regulation of these festivals, which are annually held at Kandy, and at the provincial temples, was the prerogative of the King of Kandy, and the holders of temple lands are still summoned by authority of the government. To those who reside at a considerable distance, the necessity of making long journeys to deliver some trifling article of little value, or to assist at some protracted ceremony, became irksome and inconvenient; and as they are liable to detention for a month at Kandy during the annual festival, these duties are very negligently performed, and numbers omit them altogether. In 1820 the government agent for Saffragam (a distant province to the southward), stated the willingness of the landholders to pay a tax in commutation of the temple service; but in deference to the chiefs and priests, who were opposed to innovation, the measure was not adopted. Some landholders, from their influence, have been allowed to pay a composition to the temples, instead of rendering personal services for their lands. The laxity of the people, and the remissness of the government officers in enforcing the orders for their attendance, has been urged as a subject of complaint by the chiefs.

Where the lands are situated near to the temples, and in districts where roads are constructing, the service is less unpopular, as it is in reality less severe than the government service; but any improvement in the condition of the tenants of the Crown would strengthen the desire of the tenants of the chiefs and temples throughout the country for a similar reform of their tenures. If temple lands should hereafter come into possession of persons who are not Bhoodists, new objections would probably be raised to the performances of the temple service by such persons.

No account being preserved or rendered of the contributions now made, and the chiefs having earnestly requested that the attention of His Majesty's Government may be drawn to the prevailing desire among the natives to study the English language, it might tend to reconcile them to a change of system if, in regulating the contributions for the temple lands, and in reforming the service tenures, the concurrence of the chiefs and priests could be obtained to the appropriation of

a part of the revenues to the maintenance of an English seminary.

Although unconnected with the subject of the lands, it may be mentioned in this place, that the possession and exhibition of the relic of Bhood is regarded by the natives of the Kandyan provinces as the most important of the prerogatives of the King of Kandy to which the British Government has succeeded. This relic is deposited in a golden casket in the principal temple at Kandy under the charge of the Board of Commissioners; and when it is exposed to view the people of all classes are expected to repair from the remotest provinces to the capital. The exhibition of this relic in 1828, in the presence of the Governor and other British authorities, gave occasion to the assemblage of a large concourse of people from the provinces, and to the contribution by them of a considerable sum, which has been placed in the custody of the Board to be appropriated to the embellishment of the temple.<sup>a</sup>

This ceremony, which was conducted with great pomp, had been but rarely renewed by the Kandyan Kings, from the manifest inconvenience of drawing so large a concourse of people from their districts.

The selection and appointment of chiefs and priests of temples was a prerogative of the Kings of Kandy, which is still exercised by the government, although in the nomination to the priesthood the recommendation from the wihares (colleges) are usually attended to. This interference of the government in the religious affairs of the country, although induced from considerations of policy, has been attended with much inconvenience. It has failed to satisfy the chiefs, and it has checked the improvement of the country, and the advancement of the people. While the government was bound, by the convention of 1815, to protect the people in the free exercise of their religion, the interposition of its authority to enforce an observance of its rites is at variance with those principles of religious freedom which it is a paramount duty to uphold. Nor can it justly afford to the Bhoodist faith a greater degree of support than it extends to the Christian religion, and to other systems, including the Hindu and Mahomedan. In some districts, particularly those of Colombo and Galle, the

<sup>a</sup> Rix dollars 10,000, or 750*l.* sterling.

Christians are more numerous than the Bhoodists, and the exertions made by the Christian missionaries for the diffusion of knowledge, and for the correction of the habits and morals of the people throughout the country, have pre-eminently tended to promote the best interests of the country.

### *Forms of Legislation*

The form observed in the promulgation of laws in Ceylon, has been by regulations of the Governor in Council when applicable to the maritime provinces, and by proclamation of the Governor when applied to the Kandyan provinces.

The acts or orders of the executive government are promulgated in the form of "Government Advertisements", or of "Government Minutes", which have been recorded in Council, and also by circular letters from the Chief Secretary, addressed by the authority of the Governor to the heads of departments, collectors, sitting magistrates, or other civil authorities in the districts, but these letters have not always been published for general information.

As the English language is not generally understood, the regulations of government, the proclamations and government advertisements, are published, with translations, into the native languages (Cingalese and Malabar).

The members of the Council are appointed by the Governor, and their duty is to advise and consult with the Governor only when convoked by him. New laws, or changes in the law, intended to be applicable to the maritime provinces, are proposed by him in the form of minutes, and the laws are passed either in conformity to these, or modified upon the suggestions of the members, when approved by the Governor. If the Governor should pass a law without the concurrence of the Board, the members who dissent from it may record their opinions.

### *Executive Government*

On reference to the proceedings of the Council, it does not appear that any record is kept of the consultations, except in particular cases, which have been chiefly those wherein questions have arisen in which the Governor and the Chief Justice, as first member of Council, have been at issue. Nor



does it appear that any instances have occurred in which the opinions of a majority of the members have been opposed to that of the Governor.

On the publication of the regulations of government in the maritime districts, and of the Governor's proclamations in Kandy, they take immediate effect, subject to the approbation of His Majesty, although this condition is not expressly promulgated.

If the Governor should decide that any regulation passed for the maritime provinces should be extended to the Kandyan provinces, it is published there, with the addition of a declaratory order to that effect. On these occasions it has been customary for the Governor previously to refer the regulation to the Board of Commissioners at Kandy for their opinion of its applicability; and where objections have been stated by them, the regulation has in some instances not been extended to the Kandyan provinces.<sup>1</sup> In the executive administration of the government, the references to the Council have not been frequent. The proceedings of the Governor, in his executive capacity, are usually recorded in the Secretary's office, or in that of the particular department charged with the execution of the measure.

A record is kept of the proceedings of the Board of Commissioners at Kandy; but all measures proposed by them are submitted for the approval of the Governor before they are carried into effect.

The Governor being restricted from authorizing contingent disbursements exceeding 75*l.* without the concurrence of the Council, it has usually been recorded when their sanction to such disbursements has been given, the estimates for the proposed work being laid before the Board. In the Kandyan provinces the Governor authorizes such expenditure on his own responsibility. The principal civil departments at Colombo, and the collectors of the maritime districts, act under the general instructions which were framed for their guidance in 1808,<sup>2</sup> and which have been subsequently modified. The revenue commissioner and the government agents in the Kandyan provinces act under special instructions which have been compiled for them.

<sup>1</sup> II, p. 280.

<sup>2</sup> II, p. 244.

*Public Works*

The public works of a general nature which have been carried on under the authority of government have been the construction of roads and bridges, the opening of canals, the erection and repair of government houses, barracks and public offices. In those cases, where a specific disbursement has been made on a particular work exceeding the sum of 200*l.*, the authority of the Secretary of State to incur the expense has been previously applied for and obtained. The works of a local nature have consisted of the erection and repairs of public buildings at the seats of magistracy, of grain and salt stores in the districts, and of rest-houses along the principal roads; also the construction and repairs of district roads, tanks and water-courses, the draining of lands and securing them from inundation by embankments, and the forming of cinnamon, coffee and other plantations.

The works of a general nature have been undertaken by the direction of the Governor either on the written or verbal report of a professional officer, or upon his own judgment without such report; but in the maritime provinces the estimates have been subject to approval in Council in cases where the expenditure on any particular work has exceeded 75*l.* Works of a local nature have usually been recommended by the collector of the district, and undertaken on his own estimate, if approved by the Governor. In instances where some considerable work has been proposed, the report of a professional officer has been required; but, *with exception of the great roads,*<sup>1</sup> the collector has usually superintended them, and reported on them when undertaken by contract.

As public works have generally been executed by means of the labour of the inhabitants, who have been required to work either at the rates of wages fixed by government, or gratuitously, according to circumstances, the authority of the Governor has of late years been usually obtained for calling out the number required for the work, and the duty of pressing them has devolved upon the native headmen, by whom the details have been regulated. In some districts the headmen have kept diaries of the number of labourers thus employed, but not always so; and where returns have been compiled from these

<sup>1</sup> An addition in P.R.

records, it does not appear that any fixed rule has been observed either in regard to the duration of the service, to the description of labour on which the people have been employed gratuitously or for pay, or to the rate of their remuneration when paid at all.

As in the maritime provinces the people are required to serve according to what is generally termed "custom" or "usage" without reference to their landed tenures, no registers have been formed by which the headmen are bound to be guided in calling them out. In works of a general nature which are not superintended by the collectors of districts, estimates have not usually been framed, but the authority of the Governor has been given for calling out the number of people from the districts which are required to furnish labourers.

When public works are undertaken partly in the maritime and partly in the Kandyan provinces, they are conducted under the regulations which are respectively in force in them, the number of labourers required in each instance being divided into reliefs, according to the distance they are required to travel from their homes.

The most laborious and extensive services which the people have been called upon to perform have been those of felling and dragging timber from the forests to the banks of rivers, constructing roads and bridges, collecting salt, catching, attending and collecting forage for elephants for public use, and conveying public stores; also the collection of cinnamon in the forests by the castes on whom this duty has devolved.

When public labour is not gratuitously performed, the wages are paid by the collector of the district according to certain rates fixed by the government.<sup>a</sup> Where works have been superintended by officers of the corps of Royal Engineers, they have kept diaries of the number of pioneers on the fixed establishment who have been employed under them, but not of the number of the natives called out to assist, of whom there appears to be no regular account. All that is known on the subject is the number whom the collectors or agents of government have been authorized to call out by reliefs: the number of reliefs, and the time of their employment, being dependant upon the duration or extent of the work to be performed.

<sup>a</sup> Government Minute, 16 November 1825. [II, p. 306.]

*Forced Labour*

Besides the demand on the services of the people for public works or labour executed under the authority of the government, there are various other purposes for which they are liable to be called out by the collector. Fishermen are required to furnish boats for service and attendance at the pearl fisheries, and on other occasions. When individuals travel on the public service they are furnished with "coolies", or porters,<sup>1</sup> for carrying their baggage and palanquins, at rates fixed by government; and provisions are ordered to be supplied to them at rates also fixed at the stations where there are no markets. When persons of distinction are travelling, the people of the Washer caste are required to cover the rest-houses with white cloth, which the latter furnish. Temporary buildings are sometimes erected for their accommodation; and the inhabitants are required to decorate the roads with palm-leaves, and to carry torches at night from village to village along the road. In some cases these services are remunerated; in others the people are required to render them gratuitously.

When particular provinces are infested by herds of wild elephants, the inhabitants are called out to aid in destroying them; and since the government has formed an establishment of draft and carriage elephants, it has been a particular service to catch and train them for the public service, or for sale. Individuals who catch them on their own account sell them to the government at an established price, and cannot retain possession of them without special license.<sup>2</sup>

The extent to which the labour or services of the people have been required by the government in the different provinces, it would be impossible to estimate. The Returns furnished to us by the collectors of the maritime districts, and by the government agents in the Kandyan provinces, are too imperfect to be depended upon; but as those which have been framed by the collector of the Colombo district from the diaries of the native headmen, during 11 years from 1820 to 1830, are the most complete, the result will admit of being stated, although not quite accurate. From these Returns it appears that the people have been called out for periods varying with the extent and duration of the work; that the average number of day-labourers

<sup>1</sup> II, p. 309.

<sup>2</sup> II, p. 330.

thus employed annually on public works in the district of Colombo, or in collecting materials, has been 93,535,<sup>1</sup> or 296 daily for working days, of whom 26,190 have served gratuitously, and 67,345 have been paid, at rates varying from 4½d. to 6d. per day; that 50,000, who were paid at these rates in the year 1830, were employed in the care of elephants and stock, and providing forage for them; that from 20,000 to 30,000 day-labourers have been employed in some years for the conveyance of salt and government stores, but the number could not be accurately ascertained, as the moormen, till the last year, were bound by caste to carry salt for government as a gratuitous service, and no account was kept of their number. *The foregoing numbers are taken from the returns, and represent the number of labourers called out, multiplied into the number of days that they were employed.*<sup>2</sup>

The persons who are exempted from the general obligations of labour or attendance are the burghers, or descendants of Europeans, and the higher class of natives. In some instances, where they were owners of land, these persons have been called upon to find substitutes to aid in the embankments required to protect the rice fields from inundation; but some works undertaken for the benefit of the towns have been executed by the people of the country without such assistance. *A road round the Lake of Kandy, and a bankshall at Colombo, are of this description.*<sup>3</sup> Labourers on public works have sometimes obtained substitutes and paid them 5d. per day when receiving 2½d. from the government.

In the Kandyan provinces, where public labour is still performed by the people as a service for their lands, there is less irregularity in the mode of distributing it, as the owners or occupiers of certain panguas, or shares, are required to serve in rotation; but in all cases the authority possessed by the native headmen over them is open to abuse, in the opportunities they have of appropriating the labour of the people to their own purposes, or of excusing them from public work out of favour,

<sup>1</sup> Average number per day—298 (marginal note in W.R.). A note in W.R. in pencil adds: 'That is to say, not that this number of people have been actually called out daily within the year; but that labour to the extent to which 93,535 men could perform in *one* day was executed during the year.'

<sup>2</sup> Marginal note in W.R.

<sup>3</sup> Marginal note in W.R.

or for a pecuniary consideration. Such abuses are acknowledged to exist, and are proved by reference to some of the Returns, although they are generally difficult of detection, from the inducement of the people to acquiesce in such irregularities of their headmen, especially where the public labour is gratuitously performed, and more severe than that which they perform for the headmen. It is acknowledged also to be an ancient custom of the country for the people to assist each other gratuitously in the tillage of their lands, and that the headmen usually obtain assistance in this manner without payment.

In some districts through which the main road to Kandy has been carried, the people called out have been constantly employed for several years, and no correct account of the number can be procured. They have been usually relieved at certain periods of the year, and for short intervals, to enable them to cultivate their lands. The authority to return to their homes has, on application, been granted by the Governor, and in certain districts has not extended beyond a few weeks in the year, which is all the time allowed to them for those labours in which the subsistence of themselves and their families throughout the year may depend.

As the people are obliged to provide their own subsistence, it is admitted that they occasionally earn their daily food by private labour, when they can elude the government overseers. It has been also observed that labour has been assigned to men which could have been performed with less sacrifice by animals, such for instance as the dragging of timber from the forests, a labour which has been advantageously performed by elephants.

The people thus detained from their agricultural pursuits, and worked without remuneration, are much less efficient than the government pioneers (a body of men who are subsisted and regularly paid), or than hired labourers generally would be, and their reluctance to perform the labour has exposed them to punishment by the overseers of works. In the maritime provinces these overseers are expressly authorized by a Government Advertisement, dated in 1802,<sup>a</sup> to inflict corporal punishment on the labourers, and under this regulation the

<sup>a</sup> Government Advertisement, dated Trincomale 28 April 1802. [II, p. 305.]

superintendent of the cinnamon plantations has considered himself authorized to inflict it on the Chalias or cinnamon peelers, for neglect of work.

### *Granting of Lands*

The authority exercised by the Governor in the granting of lands has been regulated, in respect to Europeans, by the Government Advertisement of 1812,<sup>1</sup> which limited the extent of such grants to 4,000 acres; but as few applications have been made, such grants have been of rare occurrence, and in these instances difficulties have occurred. In the present state of agriculture in Ceylon, the high lands called "Chenas", although waste lands, are usually retained for pasturage of cattle, and except in the uninhabited parts of the colony, these lands, though uncultivated, are private property, which the landholders are unwilling to dispose of.

From the declining state of some districts, and the neglect of ancient works, lands which were formerly cultivated have been deserted, and are overgrown with jungle. To these lands the natives assert their hereditary claims, and as the support of those works on which their fertility depend was considered the duty of the ancient government, the assistance of the present is claimed to restore them.

The property of the crown being much intermingled with that of individuals, the influence of government has been exerted in some instances, where grants of the former have been made, to induce the contiguous proprietors to surrender their claims on pecuniary compensation being made, or in consideration of other lands to be conceded to them. The attachment of the natives to their hereditary possessions, and their jealousy of the interference of government, have induced them generally to yield with the greatest reluctance to such proposals, and in some instances to reject them.

The grants of land made to natives have been more limited in extent than those made to Europeans, varying in different districts from 10 to 100 acres.<sup>2</sup> By a proclamation of the

<sup>1</sup> II, p. 314.

<sup>2</sup> See replies of Collectors to Question 35 (marginal note in W.R.).  
II, p. 315.

3rd May 1800, not more than 36 acres were grantable to one person, a limitation which has checked the application of capital to land, and the improvement of agriculture.<sup>1</sup>

### *Clearing of Lands*

There is a regulation in force for restricting the felling of timber without license of the government even on private grounds, and for imposing a tax of one tenth on the value of the timber cut.<sup>a</sup> These regulations are also great obstacles to the improvement of uncleared tracts of jungle or forest. Lands are usually granted to natives subject to the payment of tithe, and to such regulations as the government may establish, the lands being resumable in three years if not duly cultivated.

It does not appear that any persons are disqualified by caste from acquiring lands, or that natives of the continent of India are excluded, although their liability to be called on for performance of public labour in common with the natives of Ceylon has discouraged them from settling in the country. When it is considered that lands in Ceylon are liable to an assessment only of one tenth of the produce, while those on the continent are commonly assessed at one third or one half, there is adequate inducement for the agricultural classes in Malabar to seek a settlement in the island, and for those who possess capital to employ it in the repairs of tanks, by which extensive tracts of waste lands would be reclaimed and rendered productive. At present the high rates of assessment on the continent, although rigorously imposed, leave the landholders at liberty to carry their labour to any market that offers, and to realize a subsistence from extraneous sources.

### *Resumption of Lands for Public Uses*

All lands in the maritime provinces of Ceylon are resumable for public purposes under a regulation of government, by which it is provided that such resumptions shall be made under an act of the Governor in Council, and the terms of payment adjusted by arbitration.<sup>b</sup>

<sup>a</sup> See Regulation of Government, No. 2 of 1822. [II, p. 325.]

<sup>b</sup> Regulation of Government, No. 15 of 1822. [II, p. 317.]

<sup>1</sup> II, p. 316.



In the Kandyan provinces lands may be resumed for public purposes on the authority of the Governor alone, compensation being granted to the proprietors on a valuation made by the commissioner of revenue, with the concurrence of the Board of Commissioners. The inhabitants whose lands have been resumed have in some instances declined to accede to the terms offered, or have remonstrated against the resumption upon any terms, of their hereditary possessions.

From the state of society in Ceylon, this removal from their villages, and the occupation of lands in another part of the country, may involve a considerable change of habit to the landholders. Some new service attaching to the land may have to be performed under other authorities, and where they may be unable to obtain the assistance of their relatives and neighbours in the village of their lands, or in the performances of occasional service for them.

### *Public Service*

There are three distinct classes of persons who are employed in the civil administration of the country. The gentlemen of the civil service who are sent out from England as "writers" form the first, and from this class are selected the heads of departments in Colombo;<sup>1</sup> the provincial judges and collectors, the judicial and revenue commissioners in Kandy, and the agents of government in two of the Kandyan provinces.<sup>2</sup>

The junior civil servants are employed as assistants to the collectors of districts, or in the office of the chief secretary to government, and are appointed to responsible situations after having passed an examination in one of the native languages (Cingalese or Malabar).

The next class are the provincial magistrates, of whom there are sixteen; and the clerks in public offices, who are Europeans, or their descendants, settled in the country.

The third class are the native officers, the highest of whom in the maritime provinces are the modeliers of korles or

<sup>1</sup> 'Commissioner of Revenue, Auditor and Accompt. General, Vice-Treasurer and Commissioner of Stamps, Postmaster-General, Deputy Secretary to Government, Superintendent of Cinnamon Plantations, Collector of Customs, Colombo, Sitting Magistrate, Colombo.' (Marginal note in W.R.)

<sup>2</sup> Seven Korles, Saffragam. (Marginal note in W.R.)

districts, the interpreters to the courts of justice, and the modeliaris and interpreters of "cutcherries", or collectors' offices.

According to the ancient usage of the country the modeliaris were the commanders of the lascoryns or district militia, and they are still so recognized, although at present employed in the civil administration of the country, and in the execution of public works; there are gradations of native officers in authority under them. The civil officers employed by the native government were superseded by the Dutch. In the Kandyan provinces they are still retained under various designations, and through every gradation of rank, although their functions are now exercised in subordination to the European authorities in the districts. These native appointments are still regulated in a great degree by custom and caste.

Besides the headmen of the establishments, who are numerous, and the "titular" headmen, who receive no emolument from that appointment, there are, according to custom, headmen appointed to each class or caste. The perquisites enjoyed by them have for the most part been abolished, although they are still retained by some. The modeliaris of the caste of fishermen are allowed a portion of the fish caught. Where the appointments have not been expressly made, the duty of representing the caste, and of distributing the public labour or service which the people are required to perform, devolves upon the headmen of the establishment, who are chiefly selected from the Vellale or agricultural caste, the most numerous and influential. The headmen at the seats of magistracy are generally acquainted with the English language, but the modeliaris and the headmen of korles and castes are often ignorant of it. In 1828 a regulation was made that no native headman should in future be appointed who could not read and write the English language.<sup>1</sup>

From habit and prejudice, as well as from interest, the headmen uphold the distinctions of caste, and counteract the attempts of the subordinate castes to improve their condition.

The government has brought forward some individuals belonging to inferior castes, whose qualifications have entitled

<sup>1</sup> No such Regulation, Minute, Rule or Circular is available.

them to advancement, although it has generally favoured the pretensions of the higher castes, particularly the Vellales. *The modeliar of the caste of Washermen has thus been advanced to the office of Cashier of the Treasury. In general the rivalry between the inferior castes is as great as the jealousy of the higher towards the lower castes. The contests of the Barber and Washer castes have been terminated only by a recent decision of the courts, which have rejected the pretensions of the Washermen to demand the services of the Barbers.*<sup>1</sup>

From the more recent acquirement of the Kandyan country, and the nature of the institutions which exist in it, this submission to the prejudices of the people is even more absolute, although the disposition of the government and its officers to relax the authority of the chiefs has tended to weaken the dependance of the lower castes upon the higher, and to render them impatient of the control and subjection in which they have been held. In the maritime as well as in the Kandyan provinces this spirit has given rise to numerous complaints and representations, which have been addressed to my colleagues and myself by the inhabitants of all classes, in which the headmen have only joined when their own privileges have been concerned. *The degradation of some Kandyan castes has been carried to the utmost limit of servility. The lowest are the Rhodias, a class of outcasts, who are excluded from all communion with the others, and inhabit villages of their own. Persons were thus degraded for their crimes, and the degradation was entailed on their posterity.*<sup>2</sup>

When vacancies occur all appointments to the higher offices are provisionally made by the Governor, who selects the candidates according to their seniority when otherwise qualified, such appointments being subject to confirmation by the Secretary of State.

The magistrates and clerks in public offices are also appointed by the Governor. The modeliar and principal headmen hold their appointments under warrant of the Governor, and are recommended to him by the commissioner of revenue, the provincial headman being recommended by the collectors of districts.

In the Kandyan provinces appointments are similarly made by the Governor, on the recommendation of the Board of

<sup>1</sup> Marginal note in W.R. See C.O. 416, 17.

<sup>2</sup> Marginal note in W.R.

Commissioners, and include the chiefs or principal headmen of provinces and departments, the chiefs of temples, and the priests in the colleges or wihares.

In the Cingalese provinces the headmen are for the most part stipendiary, and in the Kandyan provinces they are remunerated by remission of taxes for themselves and their retainers. In the northern or Malabar provinces they receive, with a few exceptions, no authorized remunerations, and the headmen of villages and castes are commonly appointed on the nomination of the inhabitants. There is, however, no established form of election, a deputation of the villagers making a return to the magistrate of the candidate approved of by them.

### *Civil Administration*

The number of principal headmen in the Cingalese districts amount to 243, those in the Malabar districts to 112, and those in the Kandyan provinces to 47. *These numbers include the functionaries appointed to provinces or departments, but not the headmen of villages, who are more numerous.*<sup>1</sup>

For a practical view of the system under which the government of Ceylon has been administered, I can refer to some extracts made from the Minutes of the proceedings of the Board of Commissioners at Kandy, to the copies of Reports and Circuit Diaries of the district collectors, to the evidence of the European functionaries,<sup>2</sup> and to that of the native chiefs and headmen.

Of the representations of the native inhabitants, addressed to my colleagues and myself, in the form of petitions, many, although personal cases of complaint, elucidate correctly the effects of the regulations in force. Their statements are often overcharged, but they contain many facts of importance, which have been confirmed on inquiry, and they are deserving of attention, as well from the nature of the grievances complained of, as from the intelligent manner in which the effects of the regulations are frequently explained.

<sup>1</sup> Marginal note in W.R.

<sup>2</sup> In particular the Evidence of Mr Boyd (Commissioner of Revenue), Mr Turnour (Revenue Commissioner of Kandy), Mr Anstruther (Collector of Colombo), Mr Eden (Deputy Secretary to Government), Mr Walbeoff (Superintendent of the Cinnamon Department), Mr Marshall (Auditor and Accompt. General). (Marginal note in W.R.)

After a careful review of the system, I am bound to report my opinions, that while it is free from some of the prominent objections to those which have been adopted on the continent of India, the general spirit and tendency of it has been unfavourable to the improvement of the country. Some beneficial measures have from time to time been adopted, but no regular control has been exercised over the acts and proceedings of the Governor, nor has his recognized responsibility for the measures adopted by him on his own judgment been rendered practically efficient. From the remoteness of the settlement, the nature of the government, and the absence of all open discussion of public affairs, the Governor has been almost the exclusive organ through whom authentic information has been derived, and with whom any measures of improvement have originated. Without his co-operation no beneficial change could be effected, and the inhabitants have been accustomed to regard his authority as absolute. When unpopular measures have been enforced by him, they have usually remonstrated against them, and in some instances have resisted their operation.

As measures have been proposed and adopted without any previous notice, the people have had no opportunity of explaining their objections to the passing of regulations which have injuriously affected their interests. Besides the system of monopoly maintained, and in some cases extended, by the government, the power exercised by the Governor of regulating duties and imposing taxes has been injurious to commerce and to the influx and accumulation of capital.

#### *Forced Services*

The claims which have been enforced by the government to the labour of the native inhabitants have been also very unfavourable to agricultural industry and improvement, except in cases where that labour has been applied in the repairs or execution of works required for the cultivation of rice; and it is deserving of remark, that this branch of agriculture is less prosperous in Ceylon than on the Continent, where the land-tax is considerably higher, and from whence large quantities of grain are annually imported into the island for consumption.

These claims to public labour have given an interest to government in upholding the distinctions of caste, and the privileges of the headmen, through whom it has exercised an indefinite control over the people and their resources.

*Proposed Incorporation of the Kandyan Provinces*

The maintenance of separate and independent establishments for the maritime and the Kandyan provinces has been impolitic, in the check it has opposed to that assimilation which it is on every account desirable to promote between the various classes of whom the population is composed. By maintaining a separate government at Kandy, the influence of the chiefs has been upheld to the prejudice, in some instances, of the people.

The Kandyan districts which are situated below the mountains have a nearer and more natural connection with those of the coast, with which they maintain a trading intercourse; and as the whole country is divided into a greater number of districts than are required, it will, on every account, be desirable to incorporate them.

Upon this inspection of the old charts, it will be seen that the boundaries of the districts are very imperfectly regulated, either with reference to the convenience of the inhabitants or to the transaction of public business.

In placing the whole island under the administration of the Governor and Council, all laws should in future be promulgated in their name, and entitled "Ordinances of the Governor and Council";<sup>1</sup> and in incorporating the sixteen provinces or districts now superintended by as many government agents and collectors under the authority of the Governor or of the Governor in Council, the country should be divided into five provinces,<sup>a</sup> the principal stations being at Colombo, Galle, Jaffnapatam, Trincomale and Kandy, and a government agent should be appointed to each of these stations, and such European and native assistants as may be required.

In a distant settlement, where reference cannot promptly

<sup>a</sup> See Map annexed to this Report.

<sup>1</sup> Ordinances of the Governor-General-in-Council (W.R.). The alteration was no doubt made as the proposal was to exclude the Governor from the deliberations of the Council.

be made to higher authority, and where the people are unprepared for popular institutions, a discretionary authority, to be exercised under due responsibility, may be necessarily confided to the Governor; but as the exercise of that discretion could only be required on extraordinary occasions, it would be desirable that the ordinary transactions of the government should be conducted, as far as possible, through established and responsible departments, acting under instructions from, and subject to the control of, the executive departments in England.

The officers of these departments would be liable to suspension for misconduct, but not otherwise removable, as at present, at the pleasure of the Governor. A strict adherence to these instructions would prevent irregularities and promote adherence to system, without precluding a departure from them in any instance in which the Governor might consider it his duty, to sanction it, such deviation being immediately reported, with the reasons for it, by the Governor, and his authority in writing transmitted with the records or accounts of the executive department.

#### *Executive Council*

For the assistance of the Governor in all details relative to the revenues and disbursements of the Island, and to supersede the appointment of committees for investigating these matters, there should be constituted an Executive Council, to be composed of the secretary to government, the treasurer of the island, the auditor-general, the surveyor-general, the collector of customs at Colombo, and the government agent for that district.

Returns of the revenue and disbursements should be brought before them, and the opinions of the members recorded. The board should have authority to call for information when required, and the minutes of their proceedings should be transmitted by the Governor to the Secretary of State.

#### *Substitution of Voluntary Labour*

When the labour of the inhabitants may be required on public works, they should be hired voluntarily; and if they can-

not be engaged in the places where the work is to be performed, advertisements should be published throughout the country, and even on the neighbouring coasts of India, announcing the nature, the terms, and the duration of the employment. If these measures should fail, which is not probable, the Governor should have no authority without a legislative enactment to press labourers or workmen, nor to regulate their wages in any case, nor to employ them gratuitously or compulsorily with reference either to caste or custom. Excepting on special and urgent occasions when voluntary labourers cannot be procured, a legal sanction for calling out the inhabitants should not be granted, and even in extreme cases [until] other resources have been found.

The difficulty of procuring coolies or pioneers during the Kandyan war induced the government to raise a body of men by voluntary enlistment upon the Continent, and who, from their great utility, are still employed.

It may further be remarked, in support of the opinion that the natives of India are not indisposed to emigrate, that numbers annually come over to Ceylon to seek employment during the pearl fisheries, and in the coasting trade of the island.

The regulations proposed would strictly apply to the ordinary and contingent demands for labourers, and especially in collecting cinnamon, conveying stores, and in constructing and repairing roads, bridges and government buildings.

In recommending the appointment of an executive council, I have had in view to provide for the future legislation of the island, apart from those duties of an executive character, which have hitherto been exercised by the Governor with or without the advice of his council.

In the composition of a colonial legislative council, it is necessary to provide (so far as the nature of so imperfect an institution may admit) for the intelligent and independent discharge of its functions.

In a community composed of different races, who are attached to ancient customs, and attentive to the effect of innovation, it is indispensable that changes in the law should not be adopted precipitately, and without their provisions being previously known to and considered by the people.



*Conference with the Chiefs*

In consequence of the representations made by the native inhabitants, conferences were held by me with the principal chiefs, priests and headmen at Kandy and Colombo, and, in my progress through the country, with the people of all classes. It was generally admitted by them, that to secure the due administration of justice, and to protect the rights of the people, a digest of the laws and customs of the island ought to be prepared for the guidance of the courts of justice. The existence of particular customs recognized by different classes of people, the uncertainty that prevails with regard to them, and the spirit and effect of several regulations which have been enforced by the European governments on the alleged authority of custom, suggest the necessity of such a revision; and in Kandy, where the prejudices of the people are the strongest, no objection has been urged by the chiefs to the adoption of a code which would be applicable in common to the maritime and to the Kandyan provinces. It was submitted, however, that the sense of the people should be previously collected in regard to its provisions. The higher class of natives are the ordinary expounders of the prevailing customs, and are employed as assessors in the Kandyan courts, as they formerly were as members of Dutch landraad courts, but the headmen of the villages are generally considered, and admitted by the chiefs to be, more conversant with the traditional customs of the country than themselves. A desire was accordingly expressed by the chiefs that some of the most intelligent inhabitants of every class (chosen principally from the village headmen) should be assembled for the purpose of considering the state of the laws, and the changes it would be desirable to adopt.

Although the chiefs themselves are for the most part exempt from the public burthens, they admitted that the people were much discontented, especially from the demands that have been made upon their services and labour, and which have recently led in one instance to open resistance.<sup>a</sup> It was also

<sup>a</sup> "This occurred soon after my arrival in the island (April 1829). Landholders of a province in the Interior having refused to work in Kandy on the ground that the intervals of relief did not afford them time to remain at their homes. One of them was flogged and the rest then submitted." (Marginal note in W.R.) For fuller details, see Report on Compulsory Services, p. 189 below.

alleged that these demands on their services, which had in some instances exceeded those to which the people had been liable under the native government, had been enforced without regard to the ancient customs of the country, or consideration of the claims and condition of individuals.

#### *Legislative Council Proposed*

On these and other questions of general importance the people are entitled to expect that their interests and wishes may be attended to, and their rights protected; and although the ignorance and prejudice which still prevail generally throughout the country may preclude the adoption of their views upon all subjects, it would be consistent with the policy of a liberal government that they should have an opportunity of freely communicating their opinions of the effects of the legislative changes that may be proposed. To attain this object, and to obviate the objections that may be urged against involving the Governor in the public discussion of the Ordinances during the stages of their progress, it may be deemed necessary in constituting a legislative council to provide that the Governor should take no part in its deliberations.

To secure as great a degree of efficiency as may be attainable, this body should be composed of a large number of the principal officers of government, civil and military, than have hitherto been appointed to the council. The heads of general departments at the seat of government, the attorney-general, and the government agent of the Colombo district, would properly be appointed to it, provision being at once made for the admission of any respectable inhabitants, European or native, whom His Majesty might hereafter be pleased to appoint.

#### *Laws and Principles of Legislation*

It would be desirable that each member should have the privilege of proposing measures for consideration, and that the council should have authority to call for public papers, and to take evidence.

Measures recommended to their consideration by the Governor should, in the same manner, be submitted to deliberate investigation.

When the measures proposed have been approved by a

majority of the council, bills founded upon them should be drafted by the law-officers of the government, and printed for general information.

The petitions of the inhabitants, when respectfully addressed, and presented by the members, should be recorded by the council, and it would facilitate inquiry and promote useful discussion if the government agents were authorized, at the requisition of the council, to take information in their respective districts; and in order to afford the Governor and Council at all times the fullest information of the state of the country, the regulations of 1808 requiring the collectors to make circuits through their districts should be revived,<sup>1</sup> and the reports of the government agents to the Governor should be laid before the council.

When bills have been passed by the council, they should be laid before the Governor, and submitted by him to the judges of the Supreme Court for their opinion, whether they have been framed in conformity to the principle on which it might be His Majesty's pleasure that all changes in the colonial laws should be regulated; and previous to their confirmation by the Governor, the judges should be required to certify that they do not contain provisions repugnant to the Acts of Parliament, or to the Orders of His Majesty in Council.

When passed by the Governor they should have the force of provisional laws or ordinances until the pleasure of His Majesty might be known, excepting where new taxes or duties may be imposed, in which case their confirmation by His Majesty should be previously obtained.

To provide as far as possible for the independent discharge of their functions, the members of the legislative council should be required to make oath not to disclose the opinions of each other.

If the bills passed by the legislative council should be rejected by the Governor, or if those proposed by him should be thrown out by a majority of the council, a report of the proceedings should be forwarded to the Secretary of State; and if the proposed ordinances should be approved by the King, they should be returned to the Governor with His Majesty's command for their promulgation in the island.

<sup>1</sup> II, p. 265.

In any case where the judges had certified that a bill contained clauses which the Governor and Council were incompetent to pass, and which it might nevertheless be desirable to recommend for adoption, the proposed law should be transmitted to England with such explanations as would enable the Government of His Majesty to decide whether to confirm it by an Order in Council, or to obtain the authority of an Act of Parliament for its confirmation.

Without involving the Governor in the discussions of the council, or exposing its members to any influence unfavourable to the independent discharge of their legislative functions, provision may be made by these arrangements for the gradual amelioration of the colonial institutions, for that publicity in regard to the affairs of the island which will conciliate public confidence, and for such deliberation in regulating them as will protect the people from precipitate changes of the laws affecting their rights and interests.

Such a council is not proposed as an institution calculated in itself to provide effectually for the legislation of the island at a more advanced stage of its progress. It will tend, however, to remove some of the obstacles which have retarded the improvement of a settlement possessed of great natural resources, and it would eventually constitute an essential part of any colonial legislature for which the island may be prepared at a future period. In the meantime the efficiency of the legislative council may be improved from time to time by the appointment to it of respectable and influential inhabitants of the island, who would give weight to its decisions, and support and stability to the government.

In regard to the existing laws and customs of the maritime and the Kandyan provinces, I would in this place observe, that the recognition of various and conflicting systems which are applicable to the inhabitants of particular provinces, or to different classes of persons in the same place, has led to much practical inconvenience, and has in some instances been productive of injustice.

On introducing a more comprehensive system, a gradual approximation to the principles of English law would not be incompatible with the maintenance of such parts of the Dutch and native laws as may be just in themselves and congenial to

the habits of the people, keeping in view that the laws of Holland, although extended in practice by the courts to the native Cingalese, apply more particularly to Europeans and their descendants, who are commonly called "Burghers" and who have considered themselves exempt from the operation of those native customs which have been upheld and enforced by the government in the exercise of an arbitrary authority over the native Cingalese.

In recommending a revision of the civil laws of Ceylon, with a view to adapt them more generally to the condition and circumstances of the people, it will be incumbent on the government to commence by renouncing in express terms all claims to the labour and services of the native inhabitants, and to place them, in respect to their civil rights, upon an equal footing with Europeans and all other descriptions of persons who may settle in the country.

The custom and usages of particular classes may continue to be recognised on adequate proof of them being adduced, and where their maintenance may not be incompatible with the rights of others.

When the distinctions of caste have ceased to be countenanced by the government, the unrestricted intercourse of the various classes will gradually obtain; and to improve the moral habits of the people it will be desirable to revise and extend the marriage laws which have been established in some districts. In the Kandyan provinces the union of one woman with several brothers is a custom still recognised, and which has led, it is apprehended, to many cases of infanticide.

The laws in force for regulating the inheritance and distribution of property, which are various and complicated, should also, as far as possible, be assimilated, a measure which may be connected with a reform of the system of land tenures under which the government still claims the services of the Kandyan people.

### *Slavery*

There is reason to infer that some of the subordinate castes were originally slaves, who, in the revolutions of the country, were left to provide for their own support, and were recognised on the footing of servile castes; deriving their substance from

the land; and in the Kandyan provinces it has been a custom for debtors to become the slaves of their creditors. Personal slavery, however, is nearly extinct in the Cingalese provinces, but it still exists among the Malabars in the northern districts of Ceylon. The number of slaves in the district of Jaffna, according to the Returns of 1824, was 15,350. The number of domestic slaves throughout the maritime provinces does not exceed 1,000, and they are chiefly the property of the Dutch inhabitants or their descendants, who in 1816 agreed to enfranchise the children born of them after that date.<sup>1</sup>

The slaves of the Malabar districts were first registered in 1806, and in 1818 provision was made for annulling all joint ownership in slaves, and for enabling all slaves to redeem their freedom by purchase.<sup>a</sup>

To lead to the abolition of slavery, a regulation was passed in 1821 for the emancipation of all female slave children, by purchase at their birth; the government engaging to pay to their owners the sum of two or three rix-dollars according to the caste of the mother.<sup>b</sup>

The number of children who have been registered as free by the subscribers to the address to the Prince Regent, in 1816, is 96; *50 male and 46 female children.*<sup>2</sup> The number of female children who in 1829 had been purchased by government under the regulation of 1821, was 2,211; and the number of slaves who had purchased their freedom under the regulation of 1818, either by labour on public works or otherwise, was 504; *or males 200, females 171, and children 133.*<sup>3</sup>

By the provision of this law, the value of the slave is determined by arbitrators; and it may be objected to the regulation of 1821, that the government should have fixed the sum to be paid for each female child with reference to caste, and at so low a rate as three rix-dollars (or 4s. 6d.) for the highest, which sum the owner was bound to accept. It would be more just that, as in the case of adult slaves purchasing their freedom, arbitrators should be appointed to determine the rate.<sup>c</sup>

<sup>a</sup> See Regulation of Government, No. 9 of 1818, clause 15. *Ibid*, clause 24. [II, p. 369.]

<sup>b</sup> *Ibid*, No. 8 of 1821. Covia caste, Rix Dollars 3. Nallua, or Palla caste, Rix Dollars 2. [II, p. 371.]

<sup>c</sup> Regulation of Government, No. 9 of 1818, clause 24.

<sup>1</sup> II, p. 360.

<sup>2</sup> Marginal note in W.R.

<sup>3</sup> Marginal note in W.R.

Latterly the Malabar slaves have not come forward in any numbers to redeem their freedom by purchase, but many children have been enfranchised under the regulation. These laws are objected to by the Malabar proprietors, who have complained of the compulsory manumission of their slaves; but as the gradual extinction of slavery in Ceylon may be accomplished with so little sacrifice, the regulations of 1818 and 1821, with some modifications, should be maintained, and their operation extended to the Kandyan provinces, where personal slavery to a limited extent also prevails.

With regard to the criminal law, I will only in this place observe, that the provisions of the Act of Parliament (9 Geo. 4, c. 74), have been taken as the basis of those alterations which have been recently proposed by the judges of Ceylon; and as that Act was expressly framed for India, there are no circumstances of a peculiar kind that would render it inapplicable to Ceylon, and much advantage would be derived from the recognition of one uniform principle of the criminal law to be administered throughout the British possessions in the East.<sup>1</sup>

### *Colonization*

From the great extent of unoccupied land in Ceylon, it might have been expected that the invitations held out by the government during the last twenty years would have encouraged many persons to settle in the country; but the regulations of government, which opened the island to the enterprize of European settlers in 1812, have hitherto failed, as well as the attempts to promote an influx of Indian settlers from the Continent.

European colonization had not been encouraged by the Portuguese and Dutch governments. Under the Dutch, the public functionaries acquired property to some extent, chiefly in houses and plantations near the towns, or they invested their funds in mortgage on such property, and the employment of a limited capital was thus secured to the country.

<sup>1</sup> An Act for improving the Administration of Criminal Justice in the East Indies (25 July 1828). See *A Collection of the Public General Statutes passed in the Ninth Year of the reign of His Majesty King George IV.* London, 1828.

Many of the Dutch having removed with their property to Batavia after the capture, they were not replaced by English settlers, and the savings of the English functionaries have usually been remitted to Europe, or invested in the government debentures, at high interest, which were issued for their accommodation.

The regulations of the service prohibit the civil servants from engaging in trade, and the nature of their duties would have precluded them from giving much attention to agricultural pursuits, had they not otherwise been discouraged by the fiscal regulations, the government monopolies and restrictions on trade, and the interference with the free disposal of native labour. To these discouragements may mainly be ascribed the ill success of the few individuals, unconnected with the public service, who have attempted to colonize.

While Ceylon was under the government of Madras, an industrious class of natives was introduced from the continent, some of whom have settled in the island; but their capital has been chiefly employed in trade, and the number is less considerable at present than might have been expected. I have already observed, that native settlers of every description have apparently been discouraged by their liability to compulsory demands on them for government labour. The comparatively low rents imposed by government on lands in Ceylon might otherwise have attracted them.

In the present state of the country there is no private capital applicable to the restoration of ancient works, or the clearing of lands; nor can the government afford assistance to any extent in the execution of these useful works. The policy, therefore, of giving the utmost encouragement to settlers from abroad is unquestionable. In giving effect to the measure of 1812, it appears to me of primary importance to remove the distinctions which still subsist in the terms and conditions on which lands are granted to Europeans, and to the natives of Ceylon and India.<sup>1</sup> These distinctions have been the occasion of jealousy and ill-will. Where extensive tracts of land are applied for either by European or by native settlers, they should be considered alone with reference to the means of the applicant for executing the works required for the cultivation

<sup>1</sup> II, pp. 314, 315.



of the land, such as clearing the forests, and repairing or constructing the tanks by which the land may be irrigated.

By a regulation, passed in the year 1822,<sup>a</sup> for the preservation of timber, a tax of one tenth of the value of forest trees, and of one eighth of the value of jack trees growing in gardens, was imposed, if cut down; and such timber could only be cut by a license from the collector. This unjust and impolitic regulation ought to be repealed, by which the timber trade would be encouraged, and the clearing of lands promoted. It would also accelerate the improvement of the country if the uncleared lands now liable to an assessment of one tenth of their produce, when cultivated, should either be sold or granted in freehold; and no restrictions should be imposed on persons of any class or caste who may be desirous of settling in the country.

In the case of European settlers, all claims to the assistance or favour of government should be discountenanced, experience having shown that such dependance, while unjust towards others, has been unfavourable to the settlers themselves, from the jealousy it has excited in the native landholders. With the removal of all restrictions on trade, on the free disposal of labour, and the liberty of cultivating all descriptions of produce, I anticipate that the regulations recommended for the granting of lands, will include every necessary encouragement which the government can be required to hold out for the settlement and improvement of the country.

The application of capital to agriculture will gradually remove the inconvenience arising from the poverty of the cultivators, and the subdivision of lands.

The rice-lands are usually cultivated in fields of moderate extent, and the produce divided; but it would be in the power of intelligent persons possessing capital to extend the farms, and to execute works that would augment their produce.

It does not appear that the natives are indisposed to hire their labour on moderate terms, where regular employment is held out to them. In Colombo the constant demand for servants and labourers has led numbers to engage in voluntary employment; and the same effect has been observed wherever

<sup>a</sup> Regulation of Government, No. 2 of 1822. [II, p. 325.]

a constant demand has existed. A competition has even arisen amongst the labourers for employment on reduced wages.

In the country, the possession of small portions of land contributing to the maintenance of their families, although creating a feeling of independence, has enabled them to work upon terms which are inadequate to support labourers who have no other resource than their daily wages; wages must be expected to rise with the diminution of this resource. The people are generally anxious to acquire land, and are extremely jealous of all encroachment on their hereditary possessions; and as there is no effective demand for labour throughout the country, and no legal provision for the indigent and infirm poor, the practical effect of the system has been to render the claims on government for relief less frequent and extensive than if the people had not possessed such a resource.

Occasional assistance has been afforded by government when the crops have failed, by the distribution of grain for subsistence, but this relief has been granted only in seasons of famine or scarcity; and the advances of grain made either for subsistence or for re-sowing the land, have been usually repaid to the government out of the ensuing crop, with an interest of 25 per cent. As private speculators have usually claimed 50 per cent., to which the landholders are often obliged to submit, these terms have been acceptable; and the government has often rejected applications for advances on these conditions.

The itinerant traders, on whom the people of the interior depend for supplies (there being no market towns), barter for the produce with an exorbitant profit to themselves; and the subsistence of the landholder is thus reduced to a miserable pittance.

The government has at all times drawn largely on the resources of the people in the taxes and duties it has imposed, in the monopolies it has enforced, and the gratuitous services it has exacted. When it is considered that in some places the peasantry have laboured on the roads, without wages or subsistence, during several months of the year, it is evident that the possession of land for their support would alone have enabled them to sustain the burthen.

The constant demand for voluntary labourers on public works, and in the government service, would, if justly remunera-

ted, constitute in itself an effective stimulus to industry, which the present coercive system has chiefly tended to discourage.

### *Wages of Labour*

*The peasantry of India, as well as Ceylon, generally possess land, from which they derive part of their subsistence,*<sup>1</sup> and the wages of labour in the neighbouring provinces of the Continent are as low as in Ceylon, and in some instances lower; any considerable rise would therefore be checked by the competition of strangers. The wages of common labourers vary in different parts of the island from 6d. a day in Colombo to 3d. and 4½d. a day in the country. The government has interfered to fix these rates when requiring labourers; but higher demands are made to private employers, according to circumstances. Those who possess small portions of land rarely derive their support from them exclusively, but employ themselves in the fisheries, in trades and manufactures, and in the petty traffic of the country; and from the small amount of their individual gains there is reason to conclude, that if they could obtain regular employment near their homes, or even at a distance, from 6d. to 1s. a day would be generally acceptable to them.

The wages of mechanics and artisans are proportionately higher than those of labourers, but still extremely moderate; and from the frugal habits of the natives, and the resource derived from their lands, a slight augmentation of these wages would add materially to their comforts.

### *Subdivision of Lands*

The minute subdivision of lands has been accelerated in the maritime provinces by the Dutch law of inheritance. In fields, gardens and plantations, which are farmed or held in joint ownership, the interest of an individual proprietor is often limited to such fractional portions as are valued at a few pence. *For example, the inheritance of one person will consist, in land, of nine-tenths of a seer of rice; in trees, of five-twelfths of a cocoa-nut tree, and two-thirds of a jack tree.*<sup>2</sup>

The attachment of the natives to these possessions is evinced by the fact, that they are often the subject of protracted law suits.

<sup>1</sup> Marginal note in W.R.

<sup>2</sup> Marginal note in W.R.

There are a few native landholders in the Colombo district who possess about 1,000 acres each; but under the laws of inheritance these will in time be subdivided.

The employment of capital in agriculture, as it would promote the cultivation of waste lands, would, as I have before observed, also tend to re-unite property in farms, without necessarily disturbing the interests of the numerous claimants amongst whom the rent would be divided.

In the south-western division of the island, the cinnamon, pepper, cocoa-nut and coffee plantations, would claim attention; and in the northern division, cotton, opium and tobacco. By extending the cultivation of these and other productions the internal markets for grain would be encouraged; the cinnamon gardens planted by the Dutch, which have been abandoned, would be re-occupied, and pepper, which is now imported, would be re-cultivated for exportation.

The manufacture of cocoa-nut oil, of coir rope and cable, and the distillation of arrack or rum from sugar, would become objects of general speculation, as they are now a source of profit to a few European merchants.

Europeans of the mechanical and labouring classes would find no inducement to settle in Ceylon, unless possessed of sufficient skill and capital to become tradesmen, farmers or master mechanics, a description of persons who would be of great utility in the country.

The wealth acquired by persons of this class at the presidencies of India has been the effect of the high premium derived from their superior industry and integrity, and to this class may almost exclusively be ascribed the introduction of several useful arts, which the natives have learned to imitate.

The low wages of labour in the principal towns is favourable to the success of an industrious settler of this class, and the cheapness of provisions and of house rent, is calculated to diminish the difficulties attending a first settlement.

A regulation of government recently passed in Ceylon,<sup>a</sup> for releasing the natives from compulsory demands on their labour when employed in plantations of certain colonial produce, is liable to various objections. From the diversity of soil and

<sup>a</sup> Regulation of Government, No. 4 of 1829, clause 4. [II, p. 280.]

climate, some situations are better adapted than others to particular productions; but in any case there can be no advantage, in the present state of the markets, from forcing the cultivation of coffee, sugar, and cotton. The regulation in question is confined to the maritime provinces, and the revenue commissioner at Kandy has stated other objections to its application in the interior, which it would be my duty to urge upon attention, if I had not already recommended the liberation of the inhabitants at large from all compulsory services.<sup>1</sup>

Although European skill and capital may lead to improvements, and afford profitable returns in various branches of industry and manufactures, it is not to be expected that great advantages can be monopolized by that class of settlers. The profits which satisfy the natives would not attract European competitors to the employments already in their hands, *excepting where improvements can be introduced*,<sup>2</sup> and as the natives are prepared to engage in any undertaking, the success of which has been sufficiently assured by the example of others, the first projectors could not expect to retain a premium on their speculations beyond the ordinary rates of profit in the country. The views of European speculators would therefore be limited eventually to a moderate return upon their capital invested in local improvements, of which they would be better assured by co-operating with the natives, and profiting by their experience and frugal management, than by engaging in any exclusive undertaking. Although it is desirable that speculators should entertain moderate views, it may be expected that the returns upon capital will continue for some time to be higher than in Europe, and that the demand will be permanent.

If European colonization in Ceylon should be effectually promoted, the benefits to be expected from it would depend, in a great degree, on the impartial spirit of the government, and the discontinuance of those distinctions in society which have hitherto led the natives to regard Europeans and their descendants as a caste imbued with many of their own prejudices, and entitled to certain privileges from which they are systematically

<sup>1</sup> See the Minute of the Board of Commissioners (marginal note in W.R.), II, p. 280.

<sup>2</sup> An addition in P.R.

excluded. The nature of these prejudices may be inferred from the fact, that they have constituted the sole difficulty in uniting the different classes upon juries.

The public service should be freely open to all classes of persons according to their qualifications; the exclusive principle of the civil service should be relaxed, and the means of education held out to the natives whereby they may in time qualify themselves for holding some of the higher appointments.

### *Civil Establishment*

On its present footing the civil service consists of thirty-eight effective members, the senior of whom are exclusively employed, as I have before stated, as the heads of civil departments, as collectors of districts, and as provincial judges, while the junior civil servants are employed as assistants to the collectors, or in the office of the chief secretary to government.

There are twenty-five principal appointments in the island, to which the gentlemen of the civil service are alone eligible.<sup>a</sup> The means of selection therefore are much too limited, and most of the government agencies for the Kandyan provinces have accordingly been held by officers selected from the regiments serving in Ceylon, who have performed these duties

<sup>a</sup> Offices held by Civil Servants.

Commissioner of Revenue.  
 Vice Treasurer and Commissioner of Stamps.  
 Auditor and Accountant-general.  
 Paymaster-general.  
 Deputy Secretary to Government.  
 Superintendent of Cinnamon Plantations.  
 Collector of Customs, Colombo.  
 Sitting Magistrate, Colombo.  
 Collector of Colombo.  
   Ditto - Galle.  
   Ditto - Tangalle.  
   Ditto - Batticaloa.  
   Ditto - Trincomale.  
   Ditto - Jaffna.  
   Ditto - Manar.  
   Ditto - Chilaw.  
 Provincial Judge of Colombo.  
   Ditto - - - Galle and Matura.  
   Ditto - - - Jaffna.  
   Ditto - - - Trincomale.  
 Revenue Commissioner of Kandy.  
 Judicial ditto at Kandy.  
 Government Agent for Seven Korles.  
   Ditto - - - Saffragam.  
 Fiscal and Magistrate of Jaffna.

efficiently and creditably upon small salaries in addition to their military allowances<sup>a</sup>—

The descendants of European settlers have been employed as provincial magistrates and clerks in the public offices. The establishment of schools even on their present limited scale has enabled the natives to qualify themselves for these situations; and the European clerks, whose services in the different offices have been extremely useful, claim the attention of government to their present discouraging prospects.

### *Employment of Natives*

The subordinate employment of the natives in every department connected with the administration of the districts has given them also much practical experience, and has enabled them to acquire a degree of influence which, under liberal encouragement, might be exerted in support of the views of government for the improvement of the country. Being usually selected from the higher castes, they foster the prejudices of the people in favour of a system from which the ascendancy of the privileged classes is derived.

As the qualification of natives of respectability to fill the higher appointments under government cannot be immediately expected, it would not be expedient to abolish at once the various offices of a subordinate nature now held by them throughout the country, even though their functions should be changed. The headmen of korles and districts would cease to be employed in pressing the people and superintending their labour on public works, but they would still be retained in the exercise of civil authority as subordinate magistrates, and as officers of the native militia (Iascoryns).

From the peculiar constitution of the village communities, composed as they often are of people belonging to particular

<sup>a</sup> Offices held by Military Persons.

Agent of Government for Uwa and Bintenne.		
Ditto	-	Three Korles.
Ditto	-	Four Korles.
Ditto	-	Matale.
Ditto	-	Harasiapattoo.
Ditto	-	Hewahette.
Ditto	-	Lower Uwa and Wellasse.
Judicial Agent for the Seven Korles.		
Sitting Magistrate at Kandy.		

castes, their ancient usages may be preserved; and it would be satisfactory to them if the appointment of the headman of each village community or parish should be made on the nomination of the inhabitants who are proprietors of land or houses. The qualification for the office of village headman should be the possession of property in the village to a certain amount; and where a vacancy occurs, the government agent, or his assistant, in the district, should collect the votes, and the appointment should be made in conformity to the wishes of the majority. In the district of Jaffna, where the headmen are thus nominated, the elections have been made without regularity or form; it will, therefore, be necessary to define the qualifications of electors, and to regulate the mode in which the votes are to be taken; also to provide that in cases where corruption has been practised the nomination should be set aside, and the person disqualified from holding the office. *The office of headman of a village should be subject to renewal every three years.*<sup>1</sup>

Of the subordinate places held by natives in the several departments of government, the number should be eventually reduced.<sup>2</sup> By encouraging the native families to be competitors for petty employments, for which they enjoy small salaries or an exemption from taxes, they have neglected other pursuits by which they might have improved their resources and benefited the country from their exertions. The offices which may be retained should be adequately remunerated, and declared open to all classes of the inhabitants, without reference to caste or to other qualifications than respectability and fitness for employment. A competent knowledge of the English language should however be required in the principal native functionaries throughout the country. The prospect of future advancement to situations now exclusively held by Europeans will constitute a most powerful inducement with the natives of high caste to relinquish many absurd prejudices, and to qualify themselves for general employment.

With this view, it would be highly expedient that the intention of the government to open the civil service to His Majesty's native subjects should be publicly declared.

<sup>1</sup> Marginal note in W.R.

<sup>2</sup> 'For the reductions proposed I refer to the Schedule I have prepared of these establishments' (marginal note in W.R.). See p. 213 below.



From the nature of the employment now open to the civil servants, some knowledge of the general principles of law would be of great advantage, as well as the acquirement of such information on subjects of trade and finance as would lead them to just views of the effects of the system under which the island has been administered.

### *Education*

There are no means at present of insuring these qualifications in the candidates for public employment; and to aid the disposition already evinced by the natives to cultivate European attainments, some support from the government will still be required. It would be impracticable for individuals, even of the most respectable classes, to support the expenses attending the acquirement of a liberal education in Europe, and, if attainable, the advantages of affording to them the means of education in their own country are in many respects greater.

The benefits of the measure formerly adopted by government of sending young Cingalese to Europe, and maintaining them at the English universities, were not commensurate with the expense incurred, while the proficiency of several of the young men who have been educated in the seminaries formed in Ceylon by the christian societies, attest the superior advantages to be derived from local instruction, the expenses of which are inconsiderable.<sup>1</sup>

In the plan of a college, which was projected in 1823 by the American missionaries at Jaffna, it was estimated that 25 dollars, or 5*l.* sterling, per annum, would, upon their plan, sufficiently provide for the subsistence, clothing, and contingent expenses of a native student, and that the rudiments of education might be acquired even on more moderate terms.

The village schools which were established by the Dutch government had exclusively for their object the conversion of the natives to Protestant christianity; and in the district of Colombo the number of nominal Protestants who have been instructed in these schools, or in those of the missionary

<sup>1</sup> *Plan of a College for the Literary and Religious Instruction of Tamil and other Youth.* Colombo: Wesleyan Mission Press, 1823. C.O. 416, 6.

societies, considerably exceeds that of any other class of the population.<sup>a</sup>

The government schools have continued to be maintained by the British Government, but they are extremely defective and inefficient. They are placed under the superintendence of one of the colonial chaplains, *who receives a salary of 270*l.* per annum,*<sup>1</sup> as Principal of Schools. Another clergyman holds the office of head-master in the principal seminary at Colombo.

The number of government schools nominally maintained in the Cingalese provinces is ninety. There are but four remaining in the Malabar districts, and there are none in the Kandyan provinces. The schoolmasters are not required to understand the English language, of which many are wholly ignorant, and they are often extremely unfit for their situations. Nothing is taught in the schools but reading in the native languages, and writing in the native character; and as the control exercised is insufficient to secure the attendance either of the masters or of the scholars, many abuses prevail, and the government schools in several instances exist only in name; children being assembled occasionally for inspection, many of whom had received instruction in the schools of the missionaries, of which the government schoolmasters are alleged to be jealous.

The expense of the establishment of schools since 1806, when it was reduced, has amounted to about 2,000*l.* per annum. The schoolmasters, who receive a small stipend of 6*l.* 6*s.* per annum,<sup>2</sup> derive a further emolument from fees on the registry of native marriages, a duty which is assigned to them by the government, and is very negligently performed.

A similar establishment of government schools was formerly maintained in the northern districts, but the schoolmasters having become totally inefficient and neglectful of their duties, their allowances were withdrawn in 1806, and they continued their functions as registrars of native marriages, for which they

<sup>a</sup> District of Colombo

Protestants	83,756
Roman Catholics	38,155
Mahomedans	14,847
Bhoodists, &c.	78,602
	<hr/>
TOTAL	215,360

<sup>1</sup> An omission in P.R.

<sup>2</sup> Marginal note in W.R.

were remunerated by fees. The support of government, and some pecuniary assistance, was subsequently given to the religious societies who established Christian schools in the districts. To the labours of these societies in the Cingalese and Malabar provinces the natives are principally indebted for the opportunities of instruction afforded to them since the decline of the government schools.

It has been stated that the number of children nominally instructed in the public and private schools throughout the island amount to about 12,000 in a population of 900,000; and that the number of those who are taught the English language does not exceed 800, while the numbers returned under the age of puberty are about 250,000.

It would facilitate the reform of the government schools to place the establishment under the immediate direction of a commission, composed of the archdeacon and clergy of the island, the agents of government in the districts, and some of the principal civil and judicial functionaries at the seat of government. It would be the duty of those resident in the districts to inspect and superintend the schools in their respective divisions, and to report on their efficiency and management. The schoolmasters should be appointed on the recommendation of the commission, and should in all instances be required to possess a competent knowledge of English to enable them to give instruction in that language.

If the national system of instruction should be introduced into the government seminary at Colombo, it would hereafter afford the means of providing competent teachers for the country schools; and in the meantime some respectable teachers might be selected from the retired clerks in the public offices which may be reduced, or from other descendants of Europeans who are candidates for such employment.

As the English missionary societies have formed extensive establishments in various parts of Ceylon, it would be unnecessary to retain the government schools in situations where English instruction may already be afforded. The English missionaries have not very generally appreciated the importance of diffusing a knowledge of the English language through the medium of their schools, but I entertain no doubt that they will co-operate in this object.

There is a small English class in the central establishment of the Church Missionaries at Cotta,<sup>1</sup> near Colombo, and a larger one in the principal seminary of the American missionaries at Batticotta, near Jaffnapatam.<sup>2</sup> In both seminaries, but chiefly in the latter, the students have made some creditable proficiency in mathematics and in other branches of useful knowledge, affording the most satisfactory proofs of the capacity of the natives, and of their disposition to avail themselves of the opportunities of improvement afforded to them.

The American missionaries are fully impressed with the importance of rendering the English language the general medium of instruction, and of the inestimable value of this acquirement in itself to the people.

As the northern districts of the island are chiefly indebted to these missionaries for the progress of education, the benefits of which are already experienced, it is but just to recommend that they should receive all the encouragement from the government, to which their exertions and exemplary conduct have entitled them.

In aid of the object of establishing a college at Colombo, (an institution which is much desired by the principal native inhabitants throughout the island), I would recommend that the buildings and grounds on "*Slave Island*", near Colombo, forming the late botanical establishment of the Dutch government, should be appropriated to this object, and that an English professorship should be maintained by the government. This institution, if it should be effectually supported by the inhabitants, would give great encouragement to the elementary schools, and afford to native youths a means of qualifying themselves for different branches of the public service.

For more detailed information on the subject of education in Ceylon, reference may be made to the replies given by the colonial clergy and the English missionaries to the inquiries addressed to them, also to the communications of the American missionaries at Jaffnapatam, and further to the printed reports of the state of these institutions, which I visited in my progress through the island.

The education afforded by the native priesthood in their temples and colleges scarcely merits any notice. In the interior

<sup>1</sup> Now called Christian College.

<sup>2</sup> Now called Jaffna College.

the Bhoodist priests have evinced some jealousy of the Christian missionaries; but the people in general are desirous of instruction, in whatever way afforded to them, and are especially anxious to acquire the English language.

### *The Press, and diffusion of Knowledge*

In connection with the subject of education, it may not be unimportant that I should notice the great deficiency which at present exists in the means of diffusing information through the medium of the press.

Besides the government printing establishment at Colombo, which is on a very limited and imperfect scale, there is a small press maintained by each of the English missionary societies for the publication of religious books and tracts in the English and native languages, although they are occasionally employed in the publication of general information. The very limited operation of these presses has tended to check the progress of moral and intellectual improvement; and in those parts of the country where there is but little intercourse with Europeans the ignorance and prejudices of the people have been perpetuated, and have greatly tended to obstruct the improvement of the country and the amelioration of its institutions.

There is no existing law which prevents the establishment of printing-presses in Ceylon; but as the colonial government possesses and has exercised the power of banishing persons from the island, such a restriction must be considered virtually to exist.<sup>1</sup>

In a political point of view the unrestricted operation of the colonial press would have a direct tendency to promote good government in the island, and to diminish the influence of those classes who are interested in upholding the ignorant prejudices of the people, and who retain them in servile dependence on themselves.

### *Power of Banishment vested in the Government*

The power of banishing individuals without trial is otherwise incompatible with the interests of the country in the encourage-

<sup>1</sup> See the case of Garret, a printer, in a letter from the Deputy Secretary to Government, 22 September 1820; also Weekly Advertisement in C.G.G. (Marginal note in W.R.) [II, pp. 53-5.]

ment which it is so desirable to hold out to the settlement of Europeans.<sup>1</sup>

In recommending, therefore, that the Governor should not in future be allowed to exercise this power, except in cases where the tranquillity of the country might be endangered, I may be permitted to observe, that the relations and intercourse which would prevail between His Majesty's European and native subjects would constitute a more permanent bond of connexion with Great Britain than any which has hitherto subsisted in that remote dependency of the empire.

I have the honour to be, my Lord,

Your Lordship's most obedient humble servant,

W. M. G. Colebrooke

<sup>1</sup> II, p. 45.

## IV

### *Report of Lieutenant-Colonel Colebrooke upon the Revenues of Ceylon*



*To The Right Honourable Viscount Goderich, One of His Majesty's  
Principal Secretaries of State, &c., &c., &c.*

London, 31st January 1832

MY LORD,

The principal sources from which the public Revenue of Ceylon is derived are:

1. Land rents or assessments imposed on all lands cultivated in grain.
2. The monopoly of cinnamon.
3. The monopoly of salt.
4. The pearl fisheries.
5. Fish rents or duties levied on the coast fisheries.
6. Duties on the distillation and sale of spirits.
7. Sea customs or duties on the import or export trade of the island.
8. Port clearances and other harbour duties.
9. Land customs or tolls levied on the passage over bridges and roads.
10. Stamp duties and fees in the courts of justice.
11. Fines and forfeitures.
12. A capitation tax on certain districts.
13. Premium upon Bills drawn by the colonial government upon its agent in London.
14. There are some other collections too inconsiderable in amount to be of any importance to the revenue, consisting of a tax upon gaming-houses and on certain native ceremonies, a duty on auctions, licenses to dig for precious stones, and an annual tribute of wax, &c., from the "Weddas", an unsettled tribe inhabiting the wild districts of the interior.

The aggregate amount of these collections does not much exceed 1,000*l.*

There are also some small receipts from the rent of houses, the sale of cattle, and the profits of a steam-engine, which may be regarded as returns upon capital.

The gross aggregate revenue of Ceylon may be stated at somewhat more than 330,000*l.* per annum; but from the great expenses attending the collection or realization of some of the principal branches of it, and from the peculiar nature of the system under which it is collected, it would be difficult to state with accuracy the net revenue of the island.<sup>a</sup>

The internal revenue, consisting principally of the land rents, salt monopoly, spirit duties, and fish tax, amount to 92,722*l.* per annum;<sup>b</sup> and although the greater part of this revenue is

<sup>a</sup> ABSTRACT of the Gross Revenue of Ceylon, calculated upon the Average of Three Years, 1827, 1828, 1829.

1. Land Rents	£ 20,911
2. Cinnamon	138,343
3. Salt	27,781
4. Pearl Fishery	14,662
5. Fish Rents	7,888
6. Duties on Spirits	28,620
7. Sea Customs	63,667
8. Harbour Duties	3,155
9. Land Customs or Tolls	4,210
10. Stamps and Fees in Courts of Justice	12,898
11. Fines and Forfeitures	1,383
12. Capitation Tax	3,312
13. Premium on Bills	4,880
14. Miscellaneous	1,036

TOTAL £332,746

Miscellaneous:	
Gaming-houses	£ 446
Honorary Ceremonies	219
Auction Duty	232
Precious stones	78
Tribute from the Wedderatte	61

TOTAL £1,036

The premium on Government Bills is included, though it cannot be properly considered as a source of Colonial Revenue.

The Post-office Revenue is not included, as the expenses of that department considerably exceed the receipts.

<sup>b</sup>

	<i>Internal Revenue</i>	
Land Rents		£20,911
Salt		27,781
Spirit Duties		28,620
Fish Rents		7,888
Land Customs or Tolls		4,210
Capitation Tax		3,312
TOTAL		<u>£92,722</u>



collected by tax-farmers or licensed retailers, who enter into security to make their payments regularly by instalments, the charges of collection, including the establishments of the commissioner of revenue, and the "cutcheries" or collectors' offices, may be moderately estimated at more than 20,000*l.*, or 22 per cent.<sup>a</sup>

The cinnamon, if estimated to sell for 138,343*l.* per annum, is subject to a deduction of 42,300*l.*, or 30 per cent. for the establishment and charges of collection and sale; but if the sales could be sustained at an average of 150,000*l.* per annum, by excluding competition and maintaining the monopoly, the charges of collection and sale would still amount to 28 per cent.<sup>b</sup>

The customs and harbour duties, amounting to 66,822*l.*, are collected at an expense of seven per cent.

### Land Rents

I have before explained that the land rents in the maritime provinces have been levied under the regulations of the British

<sup>a</sup>		<i>Expense of the Revenue Departments</i>	
		£	
Commissioner of Revenue		4,235	
Collectors of the Maritime Districts		20,243	
Revenue Commissioner, Kandy		3,118	
Government Agents in the Kandyan Provinces		5,839	
Fixed and unfixed Contingencies		6,980	
	TOTAL	40,415	
Assume one-half for other duties performed by the above Departments		20,207	
Charge for collecting the Revenue		£20,208	

<sup>b</sup>		<i>Estimate of Cinnamon sold</i>			
lbs.	s. d.	£	s. d.		
90,000	- at - 7 2½	32,343	15	-	(first sort)
230,000	- at - 5 10½	67,562	10	-	(second do)
180,000	- at - 4 3½	38,437	10	-	(third do)
500,000	TOTAL	£138,343	15	-	

<i>Expenses of the Cinnamon Department</i>		£	s. d.
Fixed Establishment in Ceylon	-	4,196	2 -
Contingent Expenses	-	21,176	8 5
Freight from Ceylon to London	-	3,164	1 3
Insurance	-	2,987	10 -
Charges of Sale in London	-	10,776	5 6
TOTAL	-	£42,300	7 2

Government, which effected a change of the land tenures maintained by the Dutch; the object of the change having been to confer on the landholders a more valid title to the lands they held under various tenures, and to redeem, by assessment of a land rent, the services which they performed gratuitously for their lands.

In the Malabar districts of the island the service tenures having been previously abolished, the assessment had been fixed uniformly at one-tenth of the produce of all cultivated lands, but in the Cingalese districts the rates of assessment varied from one-tenth to one-half of the produce according to the tenures, which were extremely complex.<sup>1</sup>

To reduce and equalize these rates, and to assimilate the tenures of land, the landholders who were assessed at the higher rates were allowed, *by a letter from the deputy secretary to government, dated 24th Nov. 1813,*<sup>2</sup> to redeem by instalments such portions of the rent as exceeded one-tenth of the produce; a measure which has been attended with good effect.

The collection of the land rents has continued to be made in kind, and the right of collecting them is generally farmed to speculators; this mode of collection having been introduced when the island was under the government of Madras.

To encourage agriculture and to relieve the inhabitants from a variable assessment and from the vexatious interference of the farmers of the revenue, an attempt was made in 1812 to establish a quit rent, by agreement with the landholders, for a term of years; but after a trial of several years, the measure was finally abandoned, the collectors as well as the inhabitants being generally unfavourable to the change.<sup>3</sup>

From the condition of the country, it was found to be impracticable to fix any average rate which could be regularly paid for a series of years. The irregularity of the seasons often led to a total or partial failure of the crops, and the poverty of the landholders precluded them from making any provision

<sup>1</sup> II, pp. 227, 235. It is more likely that such Service Tenures, at least on the same scale as in the Sinhalese districts, did not exist in the Tamil districts.

<sup>2</sup> Marginal note in W.R. II, p. 286.

<sup>3</sup> C.O. 416, 2 A.1. See C. R. de Silva: *Ceylon under the British Occupation*, II, p. 379.

against years of scarcity. Although these obstacles and others are opposed to a permanent settlement, the landholders still complain of the interference of the farmers of the revenue; and where native officers of revenue are employed in collecting the tax, the system is not less vexatious.

From the Reports and Journals of the collectors, who are magistrates or justices of the peace, it appears that they have occasionally exercised the authority of dismissing headmen and of fining the landholders for neglecting the cultivation of their rice-fields.

I have already stated, that in the Kandyan provinces a similar assessment was imposed on the lands cultivated in grain, varying in the rate, but generally fixed at one-tenth of the gross produce. In the provinces which preserved their allegiance during the rebellion,<sup>a</sup> the rate on hereditary (parveny) lands was reduced to one-fourteenth, but on lands which were forfeited and restored, it was raised to one-fifth of the gross produce.

From the lands appertaining to the temples and chiefs, no revenue is derived by government, nor has any change been made in the tenures of service and contribution under which they have been held, except that the tenants are called upon with others to work on the roads.<sup>1</sup>

In the Kandyan as in the maritime provinces, grain has generally been received in payment of the land rents, but the collection has been made according to the ancient custom of the country, by the officers of the government.

In 1829 it was proposed, for the benefit of the landholders in the Kandyan provinces, that a settlement should be made with them for the payment of a fixed rent for a term of years.<sup>2</sup> This arrangement has been carried into effect by the revenue commissioner in the districts around Kandy, and it is proposed eventually to extend it to the other districts of the interior. The leases which were made with the native landholders for five years, and calculated on the average produce of the three preceding years, will generally terminate in the year 1832,

<sup>a</sup> Three Korles, Four Korles.

<sup>1</sup> Proclamation of 21 November 1818, 21-3. II, p. 236.

<sup>2</sup> C.O. 416, 20, G, 11 and 25. See also de Silva, *op. cit.*, II, p. 381.

when a registry of the lands will probably have been completed and the resources of the country more accurately ascertained. As the markets are not yet sufficiently established to admit generally of the payment of the land rents in money, provision has been made for the payment of them either in money or in grain, and also for the delivery of cinnamon or black lead, which the government has consented to receive as an equivalent, at fixed prices.

Hitherto, the grain collected has been stored by the government, and either sold or used for the subsistence of the troops, a practice both inconvenient and injurious; inconvenient from the necessity of establishing grain stores throughout the country, and of providing for the transport of grain; and injurious as depriving the landholders of the principal market of the interior in the supply of the troops.

In some districts where the markets have been available, chiefly those which possess the advantage of communication by water with the sea coast,<sup>1</sup> the landholders have disposed of their grain, and have paid a large portion of their rents in money.

A confident expectation has also been formed, that a large quantity of cinnamon will be collected by them for delivery, in acquittance of their rents, or for sale to government.

The settlement which has been made has relieved the cultivators in some degree from the interference of the native headmen, but it is liable to the objections which led to a failure of this measure in the maritime provinces.

In those districts accordingly, which are subject to drought, a provision has been necessarily made for remitting the rents when the crops fail. This tax, which is collected only on the grain crops throughout the island, and not upon other articles of colonial produce, is objectionable from its undue pressure on one branch of agriculture, and that of the first importance to encourage, also from the extensive establishments required for its collection, and from the vexatious interference of the revenue farmers and native headmen.

The gross revenue realized from the grain tax in all parts of Ceylon, amounts, upon the average of three years (1827-8-9), to 20,911*l.* per annum. From 1822 to 1827 it gradually declined from 34,765*l.* to 19,688*l.*, and in 1828 it was 20,623*l.*

<sup>1</sup> Marginal note in W.R.

*Under any arrangement for the collection of this tax the charges must be considerable, either in the establishments maintained for collecting, storing and transporting the grain, or in the profits of the speculators who farm the tax.*<sup>1</sup> Were I prepared to recommend the continuance of this tax, I should consider it just to propose, for the encouragement of the cultivators of grain, that the proclamation of 1830,<sup>a</sup> which exempts from tax the lands on which coffee and other colonial produce are raised, should be repealed, and that an equal assessment should be imposed on all cultivated lands throughout the country, whatever might be the produce raised upon them. Such a measure, however, would be attended with great difficulty and unpopularity in its application, and having failed on a former occasion, could not prudently be revived.

As experience has shown that a greater amount of revenue may be raised by indirect taxation, with less expense and with greater satisfaction to the inhabitants, and that *when property is minutely subdivided, and the people indigent, the collection of any direct tax from a great number of small proprietors or tenants is attended with greater expense and inconvenience than that of an equal amount by means of duties on the articles consumed by them,*<sup>2</sup> the measure adopted in the maritime provinces, of allowing a partial redemption of the land tax, may be advantageously extended, by affording to the landholders throughout the island the option of redeeming, at an equitable rate, by instalments, the whole amount of rents chargeable upon their lands. From their poverty, and the minute subdivision of the lands, the operation of this measure would, if adopted, be gradual; but some reduction of the collectors' establishments would in the meantime be practicable.

In regulating the instalments to be paid, it should be left optional with the landholders to discharge them in consecutive years, or in years when their crops may be most productive, in other seasons paying no higher rate than the ordinary tithe or other assessment imposed on their land. If the whole tax should be redeemable in ten yearly instalments, a long period would elapse before the final redemption would be

<sup>a</sup> Vide Proclamation dated 20 Dec. 1830. [II, 284.]

<sup>1</sup> Marginal note in W.R.

<sup>2</sup> Marginal note in W.R.

accomplished. *When the tax is one-tenth of the annual produce, the payment of one-fifth for ten years would be equivalent to twenty years' purchase of the tax. There are usually two crops annually, and allowing for five years of failure or deficient crops, the redemption of the tax might thus be effected in fifteen years.*<sup>1</sup> The stimulus that would be given to agricultural industry would increase the revenue during that period, and time would thus be gained for the realization of other branches of revenue, and especially of the customs, depending upon the improved resources of the country and the extension of its trade. By the option afforded of redeeming the land rents, the necessity would be obviated of making any general alteration in the complex tenures of the lands, to which the landholders tardily assent,<sup>2</sup> or in the various regulations under which the land revenue is now collected in different parts of the island. It would hold out a means of relief to the landholders where they are anxious for a change, whether subject to the vexatious interference of the farmers of the revenue, or to that of the officers of the government.

In collecting the land rents, a premium should be given in favour of money payments, estimated at the market price of produce; and as the government would cease to interfere in the corn trade when the rents were paid in currency, the advances required by the cultivators in kind might be discontinued. The suspension of these advances would not preclude the government from assisting the landholders in years of scarcity.

In support of the opinion, that the redemption of the land tax by instalments would lead to an augmentation of the revenue during the progress of the measure, it may be remarked, that the contributions from lands in the Colombo district in which the tax above one-tenth has been redeemed, are still as large in amount as when one-fifth or one-fourth of the produce was assessed upon them, and the increase in the customs' revenue has kept pace with the reduction of the assessments on the land.

The high rents levied in money on the landholders of

<sup>1</sup> Marginal note in W.R.

<sup>2</sup> The Revenue Commissioner was engaged in the year 1829 and 1830 in making detailed settlements with the individual landholders in the several Kandyan Districts under his supervision. (Marginal note in W.R.)

India,<sup>1</sup> while they have impoverished the people, have also imposed on them the necessity of finding a market for their grain set apart for the payment of their rents. The deficiency in the grain crops of Ceylon has been thus made up by importations from the Malabar coast, where the government assessments under the ryotwar settlement are generally one-third or one-half of the produce. The quantity of grain imported into Ceylon in 1828 amounted to 1,058,115 parras,<sup>a</sup> and the average quantity annually imported from 1816 to 1828 inclusive, was 1,251,680 parras, equal to 870,734 bushels, or 108,841 $\frac{3}{4}$  quarters,<sup>2</sup> consisting principally of paddy or rice; while the quantity imported annually by the Dutch was only 320,000 parras, or less than one-third of the quantity at present imported, the value of which has exceeded 150,000*l.* per annum of late years. In 1813, a year of scarcity, the rice imported was valued at 374,852*l.*

As in ordinary years the inhabitants of the towns are exclusively the consumers of imported grain, and as nine-tenths of the rural population are engaged in this branch of agriculture, their indigence under the present system of labour and contribution may be sufficiently inferred. The policy, therefore, of encouraging the application of capital to land by relieving it from those burthens will need no further illustration.

#### *Taxes on the Produce of the Cocoa-nut Tree*

As it is in contemplation to reimpose in 1832 a tax on cocoa-nut plantations as a part of the land tax, it may be proper to explain the grounds on which I conceive that the measure proposed should not take effect.<sup>b</sup> Although this tax is not in principle more objectionable than that imposed on rice lands, it was abandoned in 1797 by the government of Madras, under Lord Hobart<sup>3</sup> then administering the British

<sup>a</sup> 1 bushel = 1 $\frac{3}{4}$  parras.

<sup>b</sup> See Proclamation dated 20 Dec. 1830. [II, p. 284.]

<sup>1</sup> 'The Landholders on the Continent cultivate what they require for their subsistence and the payment of their rents which if not paid in money exposes them to ejection or to the deficiency being made up from the lands of other tenants.' (Marginal note in W.R.)

<sup>2</sup> Marginal note in W.R.

<sup>3</sup> Robert Hobart, 4th Earl of Buckinghamshire (1760-1816); Governor of Madras (1794-8); Secretary of State for War and Colonies (1801-4).

settlements in Ceylon, in consequence of the difficulty in regulating the assessment, and the great opposition made to it by the proprietors. The alternative was then, for the first time, adopted of raising an equivalent revenue indirectly on the produce of the cocoa-nut plantations, and this revenue has from time to time greatly increased.

Of the various products of the cocoa-nut tree, growing principally in the districts of Colombo and Galle, the nut contributes to the subsistence of the people, and finds a ready market in the neighbourhood of the towns. The oil expressed from it is also much used; *it is expressed from the fresh nut, and from the dried nut called Copperah.*<sup>1</sup> The coir, or fibrous husk of the nut, is manufactured into ropes and cables, and the sap, or "toddy", is either consumed as a beverage, or distilled into arrack, or boiled into a coarse sugar called "Jaggery".

These various products are generally used and consumed by the inhabitants, and are also exported in considerable quantities; the distillation of spirits, the preparation of oil, and the manufacture of rope, giving employment to great numbers of persons.

The various duties levied on them by the British Government amount, in the aggregate, to 35,573*l.* per annum,<sup>a</sup> while the present tax on rice lands (as I have already shown) does not yield a larger revenue than 21,000*l.*

In the proclamations for imposing a direct tax of one-tenth of the produce on lands planted chiefly in cocoa-nuts, it has been provided, that they should be exempt from the impost only in cases where the plantation does not contain more than ten acres, or where a hundred coffee, cotton, or Areca palm

<sup>a</sup> Schedule of Duties levied on the Produce of the Cocoa-nut Plantations. Average of three years, 1827-8-9.

Distillery of Arrack	£ 3,644
Retail of ditto	24,975
Export of ditto	3,136
Export of Coir	153
Export of Jaggery	162
Export of Copperas	1,539
Export of Cocoa Nuts	1,551
Export of ditto Oil	413

TOTAL

£35,573

<sup>1</sup> Marginal note in W.R.



trees have been planted.<sup>a</sup> The proprietors have strongly urged their claims to be relieved from it, and I have not hesitated strongly to recommend them on special grounds *in my letter to your Lordship, dated 25th August 1831.*<sup>1</sup>

The coffee plant growing near the sea coast is less productive than in the high lands of the interior, where it is more generally cultivated, and cotton is better adapted to the northern than to the southern districts, nor is there otherwise any adequate inducement to encourage the cultivation of this produce in preference to others. The inhabitants are generally aware of the nature and resources of their lands, and of the produce adapted to them, and they will naturally direct their attention to those objects which their own experience, or the example of intelligent cultivators, may convince them are the most productive of advantage.

By rendering the grain tax redeemable, encouragement will be given to the application of capital to the repairs and execution of works for irrigating the lands, and securing them from inundation.

The formation and repairs of embankments and water-courses, when undertaken by the government, will justly constitute a distinct charge upon the lands which may be fertilized by their works, and the rate should be imposed generally, and without reference to the nature of the produce.

From the expense of a work of this nature (the Kirime Canal) which was executed in the Tangalle district in 1825, I consider that from 1*l.* to 2*l.* per acre would generally be adequate, and that the repairs of several old works might probably be executed at a smaller expense.

Where the neglect of these works has obliged the inhabitants to abandon their lands, the labour of the people will, in general, be willingly rendered in restoring them. Such labour should, however, be duly remunerated, and the expenses charged upon the lands reclaimed. The construction of roads and bridges will still constitute a charge upon the districts, and also the repairs

<sup>a</sup> See Proclamations dated 22 Apr. 1823, 2 Mar. 1824, 20 Dec. 1830. [II, p. 284.]

<sup>1</sup> Marginal note in W.R. II, p. 285.

of them where the tolls may not be adequate to defray that expense. This charge should be assessed indiscriminately on all occupied lands in the district, whether tributary to the government, to the chiefs, or to the temples, and without any exception whatever arising from the nature of the produce or the tenure of the land, an option however being afforded to the landholders of giving their daily labour in discharge of the assessment at a regulated rate. To aid the construction of roads through the depopulated or thinly peopled districts, and especially the main road from Colombo to Trincomale, a reduced establishment of pioneers will still require to be maintained for some time as a charge upon the general revenue of the island.

I have before recommended that free grants should be made of all unreclaimed lands, but the claims of the native inhabitants to the resumption of their lands which have been rendered waste by the neglect of ancient works, ought to be equitably considered.

In general, it will be desirable to encourage them to re-occupy such lands, and their labour would be readily obtained on payment of wages, in the restoration of the works, whether undertaken by the government or by agreement with individuals. To promote the settlement of agriculturists possessing capital, it will be proper to provide, that where extensive grants may be made of forest or waste lands, including insulated portions of cultivated lands paying tithe to the government, the grantee may engage to collect the tax, and to pay a modus to government, by which the establishments may be reduced, or the annual tax-farmers excluded.

By the Regulation of 1822,<sup>a</sup> for the preservation of forest timber, and for imposing a tax on timber felled in either public or private grounds, it was enacted that such timber should only be cut under a license from the collector of the district, and should be liable to a duty of one-tenth of the value of forest trees, and of one-eighth of the value of Jackwood trees, which are usually planted in private grounds. The revenue derived from this source has not exceeded 810*l.* per annum. To promote the clearing of lands, the trade in timber, and the relief of the inhabitants from the effects of this restriction, I

<sup>a</sup> Regulation of Government, No. 2 of 1822. [11, p. 325.]

have recommended that the Regulation should be wholly repealed.

### *Cinnamon*

The revenue from cinnamon, which, as a monopoly, comprehends the whole profit arising from the collection, the cultivation and the sale of this article, is nominally large. Since the termination in 1823 of the contract with the East India Company for the supply of cinnamon, the gross revenue accruing from the government sales in London has varied from 52,409*l.* to 170,534*l.* per annum, from which the charges in Ceylon and London are to be deducted.

In estimating the probable increase of this revenue, reference has usually been made to the quantity of cinnamon which can be collected and exported by the government under the present system, and valued according to the average prices obtained for the quantities disposed of in London. The average quantity annually sold in the last seven years has been 457,800 pounds, and the average of the prices obtained for the different sorts has been 6*s.* 6*d.* per pound.

Assuming that 500,000 pounds of cinnamon could be regularly sold in each year, at prices the average of which would be 5*s.* per pound, the gross revenue would amount to 125,000*l.* per annum. Deducting the charges for the establishments maintained and other expenses incurred in Ceylon and London, amounting in the aggregate to 42,000*l.* per annum, the net revenue would be 83,000*l.* A reduction in the price of fine cinnamon, now sold at from 7*s.* to 8*s.* per pound, would probably extend the consumption and supersede the use of the coarser and cheaper kinds, which have been sold at 4*s.* 6*d.* per pound.<sup>a</sup>

It was the policy of the Dutch government to relieve itself from the collection of cinnamon in the forests, by giving encouragement to the planting of cinnamon, and by conferring grants of land and honorary distinctions on natives who formed plantations; but in the year 1802 several plantations in the southern districts were abandoned, from an erroneous calculation that those in the district of Colombo would afford an adequate supply. To remedy the effects of this mistake, the

<sup>a</sup> For details of this expenditure, see Estimate, p. 53. [p. 117 below.]

plantations in the Colombo district have since been much extended by the government; but a considerable quantity of cinnamon has continued to be collected in the forests, in the abandoned gardens, and in private grounds, where it grows luxuriantly. The duty of collecting it, and the labour of cultivating the gardens, and of cutting and peeling the cinnamon, are still compulsorily performed by a class of people (Chalias), who are annually assembled from the districts in which they reside. They are paid for their labour at rates varying from  $1\frac{1}{2}$ d. to  $5\frac{1}{4}$ d. per pound, according to the quality of the cinnamon gathered, and to the distance from which it is brought.

These rates<sup>a</sup> of payment were fixed by the colonial government in August 1829, and were to take effect from the 1st of January 1830.

Previous to that period the rates had been considerably lower; but as the cinnamon peelers are taken for several months from their homes, and from other profitable occupations, and are subject to much exposure in the forests, where they contract fevers, the service is still obnoxious to them, and often fatal. Desertions are accordingly very frequent. *According to the Returns, the number of Chalias (males) who are registered in the district of Colombo and Galle is 16,489, whose children are liable to the same service. They are landholders, fishermen, mechanics, weavers and labourers. In addition to the Chalias, other labourers are sometimes employed. The average number employed annually in the plantations and forests for 10 years, from 1820 to 1829, was 20,000, and the payments made to them under the former rates were about 12,000l. per annum, equivalent to 12s. for each labourer.*

*The average quantity of cinnamon required monthly in the season, from each man, has been forty pounds; but few men have earned more than 10s. 6d. per month.<sup>1</sup>*

<i>Rates of Payment to the Chalias or Cinnamon Peelers</i>		
If employed in the preserved plantations:		d.
For every pound of the 1st and 2nd sorts	-	$3\frac{1}{2}$
For - ditto - - 3rd sort	-	$1\frac{1}{2}$
If employed in the abandoned gardens & jungle in the Maritime provinces:		
For every pound of the 1st and 2nd sorts	-	$5\frac{1}{2}$
For - ditto - - 3rd sort	-	$1\frac{1}{2}$
If employed in the Kandyan provinces:		
For every pound of the 1st and 2nd sorts	-	$5\frac{1}{4}$
For - ditto - - 3rd sort	-	$1\frac{1}{8}$

<sup>1</sup> Marginal note in W.R.

In the Kandyan provinces this duty has also been assigned to a particular class of people, whose lands are exempt from taxation for the service they perform. In these provinces the Dutch regulations for protecting the monopoly of cinnamon have not been formally introduced; but in the maritime districts they are still maintained.

The planting of cinnamon by individuals is there prohibited, and landholders are prevented, under penalty of fine and imprisonment, from cutting down cinnamon plants on their own grounds. The Chalias or cinnamon peelers are authorized to enter the lands of private individuals for the purpose of cutting cinnamon; and they are accused of committing depredations on the property of the inhabitants, and of originating malicious prosecutions against those who restrain them. To remedy these complaints, the Chalias were authorized to remove the trees from private grounds to the government plantations, and certificates were granted to those proprietors whose lands had thus been cleared, which relieved them from future trespass. This measure has been imperfectly executed; and as the plant is found to thrive better when reared from seed, the labour of the Chalias has been unprofitably applied.

From the extent of the government plantations, the superintendence of them is attended with difficulty and expense, and precludes any attempt to improve the produce by careful culture of the plants, which are benefited by pruning, hoeing and watering.

In the interior, where the native government had abandoned the monopoly of cinnamon, the people appointed to collect it have formed plantations for their own convenience, by which means they cut and deliver the quantity they are required to furnish without resorting to the forests. One chief has also formed a plantation on speculation, and has sold the produce to government.

These plantations are likely to be extended, in consequence of the recent regulation which I have noticed, authorizing the delivery of cinnamon in payment of land rents. Several inhabitants have stated their willingness to form plantations in the maritime as well as in the Kandyan districts, if encouraged to do so; and there are many lands adapted to the growth of cinnamon which are not now under cultivation. In the high

lands called Chenas, which are cleared and cultivated only at intervals of several years, it has been observed that the plants which spring up where the jungle has been burned yield cinnamon of the finest quality.

In order to accomplish an entire change in the oppressive and injurious system under which the revenue from cinnamon has been raised, it will be desirable, in the first instance, that the cinnamon department be abolished, and that the superintendence of the plantations should be entrusted to the government agents of the districts in which they are situated.

The expense of this department in Ceylon is 25,372*l.* per annum, of which about 7,000*l.* is charged for superintendence, and about 13,000*l.* for the payment of the people who collect the cinnamon.<sup>a</sup>

The utility of this department appears to have ceased since the acquisition of the Kandyan territory, in which the collections were formerly made under a treaty with the kings of Kandy.

The re-occupation of the abandoned plantations by individuals should be generally encouraged and promoted, and cinnamon of fine quality should be received at a regulated price by the government from all persons who may tender it, and who should be freely allowed to cultivate the plant in their own grounds, and to collect the cinnamon in the forests.

The plantations in the Colombo district should also be subdivided into farms of convenient size, and on lease either to the native headmen of the cinnamon department, or to others who may engage to deliver the cinnamon to government. Until they are so disposed of, the government agents should be authorized to maintain a small establishment of voluntary labourers upon the plantations in their respective provinces.

By these arrangements, calculated to relieve the inhabitants from the oppressive operation of the present system, a large quantity of cinnamon may be collected with little expense to the government.

With a view to save the expense of freight and insurance, and the heavy charges attending the management and disposal of the cinnamon in London, it would be very desirable that the sales in the island should be renewed.

<sup>a</sup> See Estimate, p. 53. [p. 117 below.]

These sales were formerly checked by the high monopoly prices demanded by the government.

I entertain no doubt that English and foreign ships may be encouraged to resort to Ceylon for cargoes of cinnamon and other produce, which would greatly benefit the trade of the island, and augment the revenue from the customs.

In consequence of the removal of this trade from Ceylon, the Arabians and other Eastern merchants have resorted to Malabar for cinnamon, which they formerly exported from that island, and some bales have recently been exported from thence to Europe with advantage.

Large collections of wild cinnamon can be made in the forests of Malabar, but some plantations of the finer sorts have also been formed.

As the persons engaged in this trade obtain a ready market for their produce, they cannot be expected to desire an abolition of the Ceylon monopoly, which by reducing prices, would create a competition unfavourable to their own interests.

In order that the monopoly of a production growing in private grounds or in the forests may be effectually superseded, and that the government may be relieved from all direct concern in the trade, I would further recommend that the growers of cinnamon may be allowed the option either of selling to the government, or of freely disposing of their cinnamon for consumption in the island,<sup>a</sup> or for exportation from the ports of Colombo and Galle, and that an export duty be levied on it equivalent to the net profit of the government on its sales. By adopting one fixed rate of duty on the export of cinnamon, without reference to its quality, the collection of the inferior kinds would be discouraged, and a premium would thus be given in favour of the production of the finer sorts which are peculiar to Ceylon, and would therefore defeat the competition of other countries producing cinnamon.

It would be impossible to estimate with any accuracy the value of this trade, if opened to the public; but it may be affirmed, that independently of the injustice and severity of the existing regulations, and the great expense incurred by the government, the profit derived from the monopoly is in no

<sup>a</sup> The quantity allowed to be sold for consumption is limited to 12 lbs. per annum for each individual.

degree proportioned to the injury it has occasioned to the inhabitants, and generally to the resources of the country, on which other and important branches of revenue must depend.

The quantity of cinnamon annually exported from Ceylon by the Dutch, appears to have been raised from 180,000 lbs. to 920,000 lbs., which they procured at the rate of 5d. per lb., and sold at 11s. per lb. in Europe.

It is important to notice, that at a subsequent period the English shared this trade by exporting cinnamon from Malabar. In 1797, the year after the capture, the East India Company exported 1,340,674 lbs. of cinnamon from Ceylon to England, but under the contract which the government of Ceylon subsequently entered into with the East India Company, the quantity rapidly declined.

From the quantity of *cassia* or inferior cinnamon imported into England, at a price of from 1s. 6d. to 2s. per lb., it would appear to have been substituted for cinnamon which was sold for 6s. and 6s. 6d. by the East India Company, and the whole consumption of these commodities before the expiration of the contract, may be stated to have been from 800,000 to 900,000 lbs. per annum.

If by unrestricted sales in Ceylon 1,000,000 lbs. of fine cinnamon could be sold for 2s. 6d. per lb., and the Eastern markets regained, the government might realize a net revenue of 100,000*l.* by purchasing this commodity of the growers at 6d. per lb., and if the same produce should be exported by the growers, an export duty of 2s. per lb. would realize the same revenue; but as an equivalent revenue would partly be derived from the duties levied on goods imported in exchange for cinnamon, the export duty on the latter would not require to be fixed at so high a rate.

By restricting the exportation of cinnamon to the ports of Colombo and Galle, where there are efficient custom-house establishments, the revenue would be more effectually secured, and there are capacious government stores at both places where the cinnamon might be deposited for exportation, and where goods imported might be bonded, the port of Galle being well situated for an entrepôt trade.

In encouraging the cultivation of cinnamon, and in opening the trade in it, the various penalties of transportation, con-



fiscation of vessels, fine, imprisonment and hard labour, which have been enacted for the protection of this monopoly, should be expressly repealed.<sup>a</sup>

There is a sum of 1,562*l.* appearing to the credit of the public in the accounts of the revenue, as the proceeds of pepper sold in London, and a charge of 3,502*l.* for the annual purchase of this article in Ceylon, *a loss being sustained of 1,940*l.**<sup>1</sup>

Pepper was formerly cultivated in the island, but it has latterly been chiefly purchased from Malabar, although the cultivation of it has been encouraged. It is used for preserving the cargoes of cinnamon, by attracting moisture from the bales.

### Salt

The monopoly of salt was less a branch of revenue under the Dutch government than a means of obtaining cinnamon, which the Dutch were allowed by the kings of Kandy to collect in the Kandyan forests, in return for the privilege granted to the Kandyans, of supplying themselves with salt from the sea-coast.

Under the British Government this has been made a close monopoly, with a view solely to revenue, and the burthen has been considerably augmented. The collection of salt is made on the government account, partly by voluntary and partly by compulsory labour, and in some cases also by debtors who have sold their services for life to the owners of the salt-pans, in consideration of an advance of 25 or 30 rix dollars (1*l.* 17*s.* 6*d.*, or to 2*l.* 5*s.*). In all cases they receive wages at a fixed rate: the expenses have been variously estimated. The charge for collecting the salt spontaneously formed in the Tangalle district, does not exceed 1  $\frac{1}{8}$ *d.* per parrah (or about two-thirds of a bushel),<sup>b</sup> which with the cost of transport to the government stores at Tangalle, is raised to 4*d.*; and at Colombo the charge is 6  $\frac{1}{2}$ *d.* At Trincomale the charge is 11*d.*; and at Jaffna, 3*d.*

The profit of the government on the sale of salt, in the different districts, varies from 800 to 1,100 per cent. on the

<sup>a</sup> Regulations of Government, Nos. 2 & 3 of 1827. [II, p. 327.]

<sup>b</sup> 1 bushel is equal to 1  $\frac{1}{4}$  parrahs.

<sup>1</sup> The italicized words are an addition in P.R. 'Pepper purchased in Ceylon for Cinnamon Cargoes 3,502*l.* Pepper sold in London 1,562*l.* Loss 1,940*l.*' (Marginal note in W.R.)

cost of collecting it. The gross revenue derived from the sale of salt is 25,781*l.* per annum, while the amount of contingent expenses incurred on account of it exceeds 4,000*l.* per annum, and with the establishments constitute a charge of 20 or 25 per cent. on the gross revenue.

The effects of this monopoly are injurious to the people in several respects. The salt collected is often of very inferior quality, and when otherwise, it is liable to adulteration by the licensed retailers. The high monopoly price has checked consumption throughout the country, and also the use of salt in curing fish; it has also prevented the exportation of it to distant places, where a profitable trade might be carried on, especially to the Malay islands. In Bengal the trade has been further prevented by the monopoly of the East India Company.<sup>a</sup>

The prosecutions against persons for infringing the laws enacted for the protection of this monopoly have been numerous. In the years 1828 and 1829 there were not less than 304 cases; and the fines are often paid to informers by the government, owing to the poverty of the people who are convicted. From the number of these convictions, it is evident that the smuggling of salt is carried on to a great extent.<sup>b</sup>

The supply is always most abundant in seasons of drought and scarcity, which most frequently recur in the salt districts; and the temptation to the people to collect salt near their habitations, and to sell it at reduced prices, must operate strongly with them, as they can readily exchange it for corn in the interior of the country.

It would be highly expedient, without delay and before other measures can be adopted, to reduce considerably the monopoly price, and to permit the collection of salt by the people for exportation, and also for the curing and preservation of fish. I would also recommend that the engagements made

<sup>a</sup> The salt made in Bengal is of very inferior quality, and the charges of collection are nearly 5 per cent., according to the Parliamentary Returns. [25 per cent. (W.R.)]

<sup>b</sup>	Prosecutions	Convictions
1828	62	32
1829	242	182
	<hr/> 304	<hr/> 214

with the owners of private grounds, on which salt is collected, should not be enforced, if they should prefer to export their salt.

In providing for the consumption of the island, the supply of salt formed on public lands is more than adequate to meet any probable demands. The quantity of salt spontaneously formed in the "leways", or salt-pans, at Hambantotte, although sometimes dissolved by the rain before it can be collected, has in some seasons been adequate to the supply of the island for several years; in these seasons, however, the government only collect the quantity immediately required. The country around Hambantotte is thinly inhabited, and the people employed are assembled from distant places. The salt is gathered by manual labour into heaps, which are clayed over to protect them from the rain; and guards are stationed over the "leways", to prevent the people from collecting a further quantity for themselves. The wages of the labourers (6d. per day) should be increased, to induce them to serve voluntarily, or convicts should be employed.

The ultimate measures which I recommend to be adopted, are the liberation of the salt trade within the country, and the substitution of an excise duty for the present monopoly.

There are forty-eight government saltworks in the maritime provinces, and the expense of these establishments, added to the charges for transport of salt, unnecessarily augment the price to the consumer.

As it will be impossible to protect from depredation the extensive salt formations round the sea-coast without a great increase in the establishment, which would unavoidably be composed of a description of persons open to corruption and bribery, it would be a preferable mode to license the collection of salt for sale by all persons who may be willing to engage in the trade. *The revenue would then be directed partly from annual fees on the licenses for the retail of salt, and partly from the customs, augmented by the increase of trade from the export of salt and curing of fish.*<sup>1</sup> The inhabitants could collect and carry it for themselves much more cheaply. There would be less inducement for adulteration, and those who had taken out licenses would be interested in preventing the evasion of the duty by others,

<sup>1</sup> Marginal note in W.R.

and this would be further checked by rendering the duty moderate.

The removal of salt except for deposit in the government storehouses, should not be permitted till the duty is paid; and in the storehouses it might be deposited for exportation, excepting at Hambantotte, where it is formed into heaps near the sea shore. *Hambantotte is situated in the district of Mahagampattoo to the eastward between Galle and Trincomale.*<sup>1</sup>

The ruins of extensive tanks in the district now so thinly inhabited are indicative that at some former period the country was fertile and populous; the result probably of an extensive trade in the salt, which is finer in quality, and might be as cheaply exported as from any part of the Indian continent.

The re-establishment of this trade will be attended with great benefit; and I regret that the state of the colonial revenue does not enable me to recommend at present an entire remission of the duty on salt consumed in the island.

#### *Fish Rents*

The fish rents are a duty (generally of one-tenth) levied on all fish caught. This duty must originally have made a part of the general contribution to the state from all produce of whatever description which was not monopolized by the government. A tenth of all pearls collected was the ancient revenue from the pearl fishery, and a tenth of the produce of lands yielding salt. The duty on fish is collected by farmers of the revenue, the farm of each station on the coast being annually sold. From the perishable nature of the commodity, this mode of collection is extremely vexatious, the fishermen being unable to dispose of their fish or to cure it until the farmer has taken his share. In some places a small deduction is made for the native headmen, whose duty it is to call out the fishermen for public service, when required.

In 1820, a Regulation of government was passed for raising this revenue in the district of Colombo, by licensing the fishing boats on payment of an annual duty, and relieving the fishermen from their dependence on the revenue farmers.<sup>a</sup> The measure was in principle well calculated to effect this object,

<sup>a</sup> Regulation of Government, No. 21 of 1820. [II, p. 337.]

<sup>1</sup> Marginal note in W.R.

but it was subsequently abandoned in consequence of the poverty and dependence of the fishermen, and the influence of the headmen, who were interested in maintaining the former system.

The fishermen have complained to us of the restrictions to which they are still subject; and on account of their poverty, I would recommend that licenses for boats should be issued monthly instead of annually, so as to enable the fishermen to pay the duty from the produce of the fishery; and further to encourage the fisheries, a drawback equivalent to the whole duty should be allowed on salt fish exported.

The revenue from fish rents is estimated to produce 7,888*l.* per annum, and as it is raised on the subsistence of the people, it will be desirable to remit it altogether, when other and less objectionable taxes are sufficiently productive to enable the government to relinquish it. From the salt monopoly, and other restrictions in the island, the fishermen of the continent are enabled to come over and to carry on the fisheries of the northern coast of Ceylon, with greater advantage than the natives of the island.

### *Pearl Fishery*

The pearl fishery is a branch of revenue of too precarious a nature to be comprehended at present in any regular estimate of the annual supplies. The pearl banks, which are situated in the Gulf of Manar, and are superintended by the collector of the district as "supervisor", and by the master attendant of Colombo as "inspector", who proceeds to examine the banks when the south-west monsoon has abated. After an examination has been made of the oysters taken up from certain banks, it is decided whether a fishery shall take place in the ensuing months of February and March, before the commencement of the south-west monsoon. The growth of the pearl has not admitted of the banks being fished in consecutive years. The oysters have sometimes failed after inspection, the shells being found open (as in 1815), or they have suddenly disappeared from the banks. Between the years 1820 and 1827 the fisheries were suspended. As they have since been carried on with less interruption, it is probable that an interval may soon recur in which no revenue from this source will be derived.

The average amount of revenue from the pearl fishery, calculated on the occasional receipts during the last 32 years, is 14,662*l.* per annum.

There are two small vessels in the government service, one or other of which is stationed for the protection of the banks during the north-east monsoon when the weather is calm, and is also employed during the fishery. The boats of the speculators are allowed to fish on the appointed banks for a certain number of days, according to the terms of the contract.

*Although, from the experience of the present Master Attendant of Colombo as inspector of the banks, his occasional assistance might still be useful,*<sup>1</sup> the present arrangement does not provide for that constant attention to the condition of the banks which would mark the progress of the changes which gradually take place. I would recommend that an active and intelligent naval officer should be appointed to the sole duty of superintending the banks, and who should reside permanently at Aripo. A small establishment of boats and divers should be placed at his disposal for the protection and examination of the banks; and by constant examination of the pearls, he would acquire that experience and information which would enable the government to derive the utmost advantage from the fishery with the least expense.

From the perusal of the reports of the several inspectors during the last thirty years, it is apparent that the occasional inspection of the banks, although intelligently and zealously conducted, has alone been insufficient to secure these objects, and the adoption of the proposed arrangements may lead to a beneficial change in the management of the pearl fishery.

The pearl fishery has at former periods been a source of great prosperity to the district of Manar, which is now deserted and impoverished. It still attracts a large assemblage of speculators from the coast of India, and of labouring people who come over in search of employment.

From the fishery of 1829 the government realized a profit of 39,000*l.*; but the speculators to whom it was sold were considered to have sustained loss. It is thus a hazardous and precarious source of gain to the persons engaged in the fishery; and the benefit arising to the inhabitants of the district from

<sup>1</sup> Marginal note in W.R.

the market afforded for their produce, is more than counter-balanced by the inconvenience to which they are subject. When a fishery is announced, many of them are induced to remove with their families from the district to escape from the public services they are required to perform, and from the depredations committed on their property by Malabar people from the Continent.

The pearl fishery is either carried on by the government with its own establishment of boats, or by the sale to speculators of the privilege of fishing particular banks for a certain number of days. In either case, the inhabitants of the district are pressed, with their cattle, to collect materials, and to construct temporary buildings for the accommodation of the officers of government and the troops, and enclosures or kraals to contain the oysters when they are discharged from the boats. As they are detached from their trades or field labours in the season for the cultivation of the lands, the service is very unpopular; and instances have occurred where they have offered to pay the headman to procure their exemption.

The boats of the fishermen are also in requisition from this and the neighbouring districts. The divers generally come over from the continent of India, though some reside in Ceylon.

By the schedule of rates fixed by government in the year 1825, the established wages for labourers employed by government in the district of Manar is 3d. per day.<sup>a</sup>

Under the superintendence of a resident officer, the pearl banks might become a constant rather than an occasional source of revenue. When the oysters on a bank are found to be mature, a fishery might be carried on without delay if the season be favourable, by which means the loss of the pearls might sometimes be avoided. The renewal of small fisheries at intervals might render fewer preparations necessary, and make the speculation available to the inhabitants of Ceylon, who have latterly shown a disposition to engage in it.

All labourers required should be voluntarily hired in other districts, if not procurable at Manar, and the boats of the fishermen should not be pressed.

The constant residence of the superintendent at Aripo, where

Minute of Government, dated 16 Nov. 1825. [II, p. 306.]

there is a good house belonging to government, which might be appropriated to his use, might enable him to promote the settlement in the district of many of the people who come over from the continent during the pearl fisheries, and who, if lands were granted to them, might employ capital in repairing the ruined tanks. The inland navigation to Colombo would open a steady market for the surplus produce of the district, to which the recurrence of the pearl fishery would give a further stimulus. Besides the pearl fishery, other profitable branches of industry would be open to the inhabitants. The collection of choya root or madder, a production of the district, yielding a scarlet dye in much demand among the cloth manufacturers, was till lately monopolized by the government, but is now made an open trade, the revenue of it having declined from 2,000*l.* to 200*l.* per annum.

The government still retains its monopoly of the sea-shells called "chanks", which are used as ornaments by the Hindus. The chank fishery, which in 1816 produced a revenue of 6,700*l.*, has declined to 37*l.* per annum. As the divers from the coast can easily collect the chanks, and as they are also procured by digging for them in the Jaffna district, it has been difficult to protect the monopoly; and it would tend to promote the settlement on the coast of useful and industrious people were this restriction to be removed. The chank fishers are also accustomed to dive for the pearl oyster.

### *Elephants*

Elephants are caught and exported from the northern districts of Ceylon, but the government has not wholly relinquished the royal privilege of the former sovereigns, individuals being still debarred from having elephants in their possession except under a license of the Governor.<sup>a</sup>

The number of these animals which infest the country, and the depredations they commit on the property of the inhabitants, have rendered it necessary from time to time to destroy the herds, by calling out and arming the inhabitants of a district to drive them into kraals or enclosures formed with the trunks of trees.

<sup>a</sup> Regulation of Government, No. 2 of 1828. This Regulation has been disallowed. [II, p. 330.]



Latterly the government has kept an establishment of trained elephants for employment on the roads and public works. Certain classes of the inhabitants of the Kandyan provinces are required to catch and train elephants for the public services and for sale. Although the exportation of elephants was a source of profit to the Dutch government, the amount realized by government from the sale of elephants has not lately exceeded 61*l.* per annum, and the amount produced by the sale of tusks, 57*l.* per annum. As the expense of keeping elephants is great in proportion to the labour they can perform, it is not likely that they would be trained in any considerable number for use; but the removal of all restrictions would tend to encourage their exportation, and enable the government to purchase them on reasonable terms when required for the public service. *Elephants are chiefly employed by the governments in India and Ceylon; they are rarely kept by the inhabitants, on account of the great expense attending the care and subsistence of them.*<sup>1</sup>

As the elephant hunts, which are undertaken when the districts are much infested, are attended with some public expense and much inconvenience to the inhabitants, it would be desirable to substitute a small premium for the capture or destruction of the animals, by which the same object would be easily and progressively attained. Elephant shooting has latterly become a favourite sport in Ceylon, and many are annually destroyed by Europeans who engage in it.

#### *Delft Island*

The islands on the western coast of Ceylon are adapted to the breeding of horses, and a government stud has for several years been maintained on Delft Island. The speculation has been unsuccessful, either as a source of profit or as a means of introducing a serviceable breed of horses. As horses of superior quality and at moderate prices are imported from the continent of India, they can be readily purchased when required for the public service.

The government establishment might therefore be abolished, the property of government sold, and encouragement given to private speculators who may direct their attention to the means of introducing an improved breed of horses. The

<sup>1</sup> Marginal note in W.R.

amount which appears in the public accounts to be received from the sale of Delft horses, is 768*l.* per annum, but this is merely a nominal revenue, the commissariat department paying the Delft establishment a fixed price (2*l.* 5*s.*) for each colt supplied for the public service. The total number of horses supplied from Delft for the service of government in ten years from 1820 to 1829, was 253, while the expense of the establishment exceeds 1,000*l.* per annum, besides which there is a pension of 400*l.* per annum, charged upon the civil pension fund for a retired superintendent of Delft.<sup>a</sup>

### *Duties on Spirits*

An annual revenue of 28,620*l.* is derived from the duties on the distillation of arrack, and on the retail of it for consumption in the island.<sup>b</sup> The export duty on this spirit has greatly declined, in consequence of the excise duty of 440 per cent. imposed by the government of Madras in 1813 upon Ceylon arrack, which diminished the consumption of it on the continent of India. To effect a partial reduction of the export duty, and to augment the revenue, a Regulation was passed in 1820 for licensing in certain districts the distillation of arrack, and also the retail of arrack, and of toddy from which it is distilled.<sup>c</sup>

The provisions of this Regulation were extended in 1827 to the northern districts.<sup>d</sup> The inhabitants (especially the proprietors of cocoa-nut plantations) have complained of the restrictions on distillation, of the wholesale monopoly which the government has established at Colombo, and also of the high duties which are levied. By prohibiting the distillation of arrack in certain districts, and especially at a distance from the

a	Delft:				
	Fixed establishment	£	s.	d.	
	Fixed contingencies	757	8	-	} Average of three years, 1827-8-9
	Unfixed - -	294	13	10	
		39	0	-	
	Total, per annum	£1,091	1	10	

b	Distilling Arrack	£3,645
	Retail sale of d <sup>o</sup>	24,975
		<hr/> £28,620

<sup>c</sup> Regulation of Government, No. 22 of 1820. [II, p. 333.]

<sup>d</sup> Regulation of Government, No. 11 of 1827. [II, p. 335.]

markets for their gross produce, property in cocoa-nut plantations has been depreciated, and a check has been given to the planting of cocoa-nuts, from which so many resources are derived.

The restriction on the retail of toddy has also led to a vexatious interference of the licensed retailer with the proprietors, who are not engaged in distillation, toddy being also drawn for the manufacture of sugar, and the process requires that it should be completed before fermentation has commenced. The monopoly in the Colombo district has been established by a condition in the license of the retailers, that they should purchase arrack only from the government, and which, by the general regulations applicable to other parts of the island, they are authorized to purchase from licensed distillers.

While the object of raising a revenue on the consumption of spirits is generally to be approved, it is desirable to remove any restrictions which unduly affect the value of property and check the industry of the inhabitants.

With this view, I would recommend that the license to distil, under certain regulations, either from toddy or from rice, should be granted in all the districts, and that distillers should be licensed to sell their spirits to persons engaged in the retail trade at Colombo.

The owners of cocoa-nut plantations, who are engaged in the manufacture of sugar from toddy, should be relieved from all interferences of the licensed retailers, but subject to a penalty as at present, for retailing spirits themselves without a license.

The distillation of arrack from rice would tend to promote the cultivation in the interior parts of the island, which are less accessible to the general markets. A reduction in the custom duty on the exportation of arrack, which is estimated at 20 per cent. *ad valorem*, would encourage the exportation, which has greatly diminished since the imposition of the prohibitory duty at Madras. The amount of the duty now collected on arrack exported does not much exceed 3,000*l.* per annum, or about one-eighth part of the revenue raised by excise on the arrack consumed in the island.

The licenses granted for gaming-houses are objectionable as

conveying a public sanction for habits which are injurious to society, and the licenses for certain honorary ceremonies of the natives recognise the usages of caste, which it is an object to discountenance.

The privilege of collecting precious stones, and of gleaning pearls from the sands after a pearl fishery, are useless restrictions, which are easily evaded. The revenue derived from these licenses amounts to £783 per annum, and ought to be wholly relinquished.<sup>a</sup>

### Stamp Duties

Of the other branches of internal revenue, the stamp duties are the most considerable. Those imposed on petitions addressed to the Governor, and on judicial documents, are complained of by the inhabitants.

The collection of stamps and fees in the provincial and magistrates' courts amount to £9,155 per annum, and the stamps sold for general purposes, to £3,198.

There is an auction duty of 3 per cent. on moveable property, which yields £232 per annum; no auction duty being levied on the sale of immoveable property, on which there is a stamp duty of  $2\frac{1}{2}$  per cent.

The judicial fines and forfeitures produce £1,383, and the tolls on bridges, canals and ferries, £4,114 per annum.

The stamps on papers filed in the courts of justice should be discontinued, and an equivalent revenue raised by the imposition of an additional duty on the transfer of real and personal property. Of the stamps that would thus be repealed are those on petitions addressed to the Governor, the charge being 1s. 6d. on each petition. The native inhabitants are required to send with their petitions to the Governor an English translation, and from the ignorance of the translators they generally convey very imperfectly the sense of the original. It has also been remarked, that besides this charge *for stamps*,<sup>†</sup> a poor native

<sup>a</sup> Licenses for

Gaming-houses	£446
Honorary ceremonies	219
Precious stones	78
Pearl and sifting	40
	<hr/>
Total	£783
	<hr/>

<sup>†</sup> An omission in P.R.

in a distant part of the country may spend days in travelling and making applications for assistance of some translator, of whose integrity and qualifications he is incompetent to judge.

On these grounds, I found it to be necessary to recommend the natives by public advertisement to make their communications to me in their own language, and when properly translated they were always plain and intelligible.

It would tend to relieve the inconvenience now felt both by the government and the people, and also to promote the study of English, if persons properly qualified were, after due examination, to be appointed and sworn as translators, and authorized to take moderate fees for translating papers, to be regulated by their length, and the rates being fixed as at present by a schedule, and duly promulgated.

The retired clerks from public offices and others, when settled in the districts, might thus be usefully employed. The natives should in all instances be allowed to send their petitions or *olahs* direct to the Governor, to the courts, or the public offices, without translations, but subject to the established charge for the translators employed by the government.

### Capitation Taxes

Of the capitation taxes, the "ouliam" duty, levied on Moors and other inhabitants of the continent, was repealed in the year 1830.<sup>a</sup> The amount collected was inconsiderable, but as the tax had been imposed in redemption of the claim on their personal services, which were in some cases exacted, the effect was complained of as subjecting an industrious and respectable class of people to servile degradation. Being generally engaged in trade and manufactures, they have complained in some instances of having been employed in common labour on the roads, to which, though relieved from the tax specially imposed on them, they are still declared to be liable in common with other classes of the native inhabitants.<sup>b</sup>

A capitation tax of 1s. 6d. per annum is still levied in the northern districts, as a commutation for other personal taxes formerly levied, viz. a tax on toddy-drawers, a tax for post-

<sup>a</sup> Regulation of Government, No. 5 of 1830. [II, p. 288.]

<sup>b</sup> Last clause of Regulation of Government, No. 5 of 1830.

carriers, and a tax on the wearing of jewels and other native ornaments, which in the year 1800 was generally imposed throughout the country.<sup>a</sup> This tax, though not repealed, had ceased to be levied in the Cingalese districts, owing to its great unpopularity. The average amount of the commutation tax now collected in the Malabar districts is 3,312*l.* per annum.

This charge upon inhabitants of certain districts, from which those of other districts are exempt, is unjust and objectionable in principle, and as the jewel tax has not been levied on the Cingalese, the commutation paid by the Malabar inhabitants of the island should be repealed.<sup>b</sup>

### *Customs*

The revenue derived from the customs, if considered with reference to the expenses incurred in its collection, is larger in amount and less burthensome to the inhabitants than any branch of the internal revenue.

The external trade of Ceylon is regulated generally by the Acts of Parliament and by Orders of His Majesty in Council.<sup>c</sup>

The duties on the import and export of goods and produce, are levied under the authority of colonial regulations, which have been subjected from time to time to alteration.<sup>d</sup>

The Order in Council which excludes foreign ships from importing certain goods into Ceylon operates with peculiar severity on the island, as such a restriction is not imposed in the neighbouring ports of the Indian continent, under the government of the East India Company. French wines and goods are therefore imported into Ceylon from the coast of India, the produce of which country is exchanged for them; but if foreign ships were permitted to dispose of their cargoes in the ports of Ceylon, instead of carrying them to the coast of India, the trade of the island would be much benefited, and

<sup>a</sup> Proclamation dated 1 April 1800. [II, p. 297.]

<sup>b</sup> Vide Regulations of Government, No. 4 of 1825; 10 of 1825; 5 of 1828. [II, pp. 290-4.]

<sup>c</sup> Vide Proclamation, 14 March 1828, publishing the Act of Geo. 4, c. 114; and Government advertisement, 17 March 1828, publishing Orders in Council, dated St. James's 30 April 1827, and Windsor 16 July 1827. [See C.G.G. 22 March 1828 for Proclamation of 14 March 1828 and Government Advertisement of 17 March 1828.]

<sup>d</sup> The latest Regulation of Government is No. 7 of 1830. [II, p. 342.]

great facilities would be given for the disposal of cinnamon and other produce of the country in exchange.

At present the bills drawn by the colonial government against the proceeds of the cinnamon cargoes sent to London, are chiefly negotiated at Madras, in payment of cloth, rice and other supplies which are required in Ceylon.

Of the local regulations which affect the commerce of the island, those which relate to the assessment of the tax on lands cultivated in grain, and the monopolies of cinnamon and salt, are open to the greatest objections; and the power generally exercised by the local government in imposing taxes and regulating the custom duties, have been very unfavourable to commerce.

As the government monopolies were the principal resources of the Dutch East India Company, who engrossed the trade of the island, custom duties did not constitute a branch of their revenue; and when the trade was partially opened by the British Government, the duties imposed on the export of produce were not more than equivalent to the difference in the rate of the direct taxes levied in Ceylon and on the continent, where so large a portion of the gross produce of the soil is taken by the government. I have already noticed the effect of the land assessments in India upon the grain trade at Ceylon; and as the Malabar inhabitants prefer a species of rice which is there grown, the settlement of these people in the island as agriculturists would lead to the more general cultivation of grain, now largely imported.

The competition of countries to the eastward, from which many articles of Ceylon produce are obtained more cheaply, has been unfavourable to the trade of Ceylon; and in the year 1820, when the export trade had declined, the regulations were revised which had imposed the larger amount of duties on the export trade. These duties were reduced, and the import duties were proportionally augmented, a change which has been beneficial to the trade and revenue of the island.

The custom duties amount at present to 63,667*l.* per annum, of which 43,169*l.* are levied on goods imported, and 20,498*l.* on produce exported or carried coastways.

The principal trade of the island is carried on by native merchants with the continent of India, and consists in the importation of grain and cotton cloths, and of European com-

modities from Madras and Bombay, in exchange for which they export the produce of Ceylon, or remit the bills which are drawn on London by the local government upon the credit of cinnamon exported to England.

The difficulty of collecting produce, and the duties levied on the exportation of it, render the Government bills a preferable remittance to the continent, as they can readily be disposed of at a premium in Madras.

According to the returns for 1829, it appears that the export duties of that year amounted to 21,021*l.*, of which 3,482*l.* were levied on arrack, 3,047*l.* on other produce of the cocoa-nut tree, 7,192*l.* on tobacco, and 5,456*l.* on areka nuts.

The import duties in the same year amounted to 44,815*l.*, of which 17,042*l.* were levied on grain, and 17,146*l.* on cotton cloth, being together more than three-fourths of the whole amount.

The official value of the exports in 1829, subject to duty, was 59,927*l.*, and the duties equivalent to 35 per cent. of the amount.

The official value of the imports subject to duty was 310,969*l.*, and the duties equivalent to 14½ per cent. on the amount.

The produce exported in 1829 free of duty, was valued at 219,218*l.*; but of this, 180,110*l.* was the estimated gross value of government cinnamon consigned to England. The duty on areka nuts, which are exported for consumption on the continent of India, is estimated at 75 per cent. of the value; and as they are procured from the coast of Sumatra, although of inferior quality, the revenue has declined since 1825, from 10,329*l.* to 5,301*l.*

The export duties on cocoa-nuts, arrack, cocoa-nut oil, jaggery or cocoa-nut sugar, coir and palmyra rafters, have discouraged the exportation of the produce of the cocoa-nut and palmyra plantations, and the coastways duties have checked the coasting-trade.

### *Tobacco Duties*

The export duty on tobacco has been substituted for the profits (estimated at 10,000*l.* per annum) which the government formerly derived from a contract for the supply of this article to the Rajah of Travancore. The tobacco raised in the northern districts of Ceylon is chiefly consumed in that pro-



vince of Southern India, where it is preferred to the Malabar tobacco. The Rajah of Travancore retains a monopoly of the tobacco trade in his territories, and has derived from it, since 1808, the means of paying a subsidy to the government of Madras for the maintenance of a body of troops under a treaty then concluded.

The injurious effects of this monopoly on the interests of the inhabitants of the Jaffna district, induced the government of Ceylon, in 1812, to establish a countervailing monopoly; and the failure of this arrangement led, in 1824, to the substitution of an export duty on tobacco.<sup>a</sup>

Although the Jaffna tobacco is preferred in Travancore, the high monopoly price at which it is sold by the Rajah has encouraged the consumption of the Malabar tobacco grown in the East India Company's provinces, and as the subsidy paid by the Rajah has precluded him from relaxing the monopoly, it would be only just towards the most industrious inhabitants of Ceylon that they should be relieved from the effect of this ruinous restriction, by which the East India Company have unduly benefited. The tobacco of Ceylon was formerly carried to the Eastern or Malayan markets, and a drawback is allowed on its exportation, except to certain posts of India, but this trade has also declined.

The imports into Ceylon during the year 1829, were valued at 346,201*l.*, of which 39,290*l.* only was the value of goods imported from Great Britain.

The value of the cotton cloth and grain imported from India and elsewhere, was 246,592*l.*, a sum nearly equivalent to all the exports of that year, including the cinnamon valued at 180,110*l.*<sup>b</sup>

<sup>a</sup> Regulation of Government, No. 3 of 1824. [II, p. 340.]

<sup>b</sup> <i>Imports, 1829</i>		
Cotton cloths (Indian) valued at		£132,944
Grain ditto		95,111
		<hr/>
		228,055
Cotton cloths (English)		5,409
Grain from foreign states		13,128
		<hr/>
		£246,592
<i>Exports, 1829</i>		
Value of Exports, subject to duty		£59,927
ditto not subject to duty		39,108
Value of cinnamon sent to England		180,110
		<hr/>
Total value of Exports		£279,145

From this view of the external trade of the island, it will be apparent that, although the custom duties which are now imposed are regulated on a better principle than formerly, they are still levied in a great degree upon the produce of the island, and upon imported articles of the first necessity.

The improvement of the revenue, collected under the Regulation of 1820, having shown the effect of reducing the export duties, I can entertain no doubt that their progressive abolition would lead to a further augmentation of the trade and revenue of the island. The substitution of a moderate export duty upon cinnamon will constitute for a time an exception to this principle, as a means of superseding the effects of an injurious monopoly.

Until the revenue improves from a reform in the regulations of the island, which fetter the industry of the inhabitants, it would be impracticable to relinquish the duties now levied on grain imported, although it would be desirable eventually to repeal them.

The duty on cotton cloths of British manufacture is five per cent. *ad valorem*, and the duties on Indian cloths are fixed by tariff at a higher rate, *from 8 to 25 per cent.*<sup>1</sup> chiefly with the object of protecting some manufactures which were formerly carried on in Ceylon, but which have latterly declined. There is reason to believe, that, to evade these duties, smuggling to some extent has been carried on, for which there are great facilities in the northern districts of the island, and that some British manufactures, resembling those of India, are thus introduced into Ceylon by the native merchants as Indian cloths.

As the cloths of English and of Indian manufacture cannot be readily distinguished, it would be desirable to assimilate the duties, by imposing generally on all cotton cloths, whether of English or of Indian manufacture, the import duty of five per cent. *ad valorem*; and this reduction of the duties on Indian cloths should lead to a corresponding reduction of duty of the productions of Ceylon in the ports of the Indian continent, and to the abolition of the tobacco monopoly in Travancore. Coarse and fine cloths, of the description of those worn by the natives of Ceylon, have been imitated in England, and sent

<sup>1</sup> Marginal note in W.R.

direct to Ceylon, where they are readily disposed of; and I anticipate an increase rather than any diminution of this trade, and a proportional augmentation of the customs' revenue.

As the trade of Ceylon with the continent of India is that which affords the most profitable return upon capital from the frequency of the returns, it would be conducive to the welfare of both countries, and congenial to the habits of the people, who are naturally connected, that the duties and restrictions which fetter the intercourse between them should, as far as possible, be removed in the ports of the East India Company and in those of His Majesty, and that they should cease to be governed as rival possessions.

The tariff duties in Ceylon are considered to be generally higher than those which are levied *ad valorem*; and for the convenience of commerce, it would be desirable, that in the revision of them, they should not be subject to any increase without the previous sanction of His Majesty's Government.

#### *Harbour Duties*

The harbour duties levied in the several ports of Ceylon amount to 3,155*l.* per annum. This revenue is derived principally from the fees on port clearances, which are payable under the authority of the general Regulation of 1825 for the collection of the customs.<sup>a</sup>

These charges are not deemed excessive: as all vessels, however, were liable under that Regulation to pay them, if remaining at anchor 24 hours, they discouraged the resort of ships to the ports of Ceylon when requiring supplies only, and on these vessels they have accordingly been subsequently reduced.<sup>b</sup>

Encouragement was at one time given to the employment of vessels of European construction, but from the cheapness of the freight in native vessels called *Dhories*, they are generally employed during the north-east monsoon in the coasting trade with the ports of India, and are laid up during the south-west monsoon.

The trade of Ceylon would be eventually benefited by the substitution of a class of vessels which would navigate throughout

<sup>a</sup> Regulation of Government, No. 9 of 1825, clause 59. [II, p. 344.]

<sup>b</sup> Regulation of Government, No. 7 of 1830, clause 5. [II, p. 343.]

the year, and on which insurances might be effected; and it would tend to promote the construction of them, if the harbour duties were reduced on small vessels of European construction, and of a tonnage calculated for the coasting and intercolonial trade. Such vessels might navigate to Singapore, Mauritius, and the principal ports of India, with which there is now but little intercourse, and by their more general employment the government could more effectually control the smuggling which is carried on upon the coast. It would also be enabled to command tonnage when required for troops or freight, without incurring the expense of maintaining government vessels.

#### *Post-Office*

The receipts of the Post-office amount to 1,546*l.* per annum, but they cannot at present be estimated as revenue, as the fixed charges of the department are 3,106*l.* per annum; and from the rate of remuneration afforded to the native carriers, which is often inadequate, these charges can only be reduced by limiting the number of daily posts to different ports of the country, and the weight of the packages to be carried by them.

The postholders at the different stations have charge of the "resthouses", or buildings which are maintained for the accommodation of travellers whom they supply with provisions.

The correspondence on the public service constitutes the largest portion of the contents of the mails, and the public are, therefore, justly chargeable for a part of the expense. Some increase of revenues may be effected by introducing the regulations of the English post-office in respect to the privilege of franking.

#### *Assessment of Houses*

A local assessment on houses has been imposed in Colombo since the year 1820,<sup>a</sup> for repairing and lighting the streets of the town, and *a similar assessment has been imposed at Galle.*<sup>1</sup>

The total amount collected at Colombo from 1820 to 1829 was 6,540*l.*, of which 2,140*l.* have been lent out at interest with the object of accumulating a fund.

<sup>a</sup> Regulation of Government, No. 5 of 1820. [II, p. 345.]

<sup>1</sup> Marginal note in W.R.

From the poverty of the people, the collection of this tax has been made with considerable difficulty, and in all cases where rates may be imposed for similar objects, no more should be raised than is adequate to meet the probable demands. The amount when collected should be placed in the public treasury, and accounted for in the same manner as all other branches of the colonial revenue, which has not been done.

By a recent Regulation, four-fifths of the amount collected are to be applied to the repairs of the roads of the town and suburbs, and one-fifth is to be added to the fund accumulated, to be lent out at interest under the direction of a committee, and when the interest amounts to 1,200*l.* per annum, the tax is to cease.<sup>a</sup>

In accordance with the principle I have recommended to be pursued in regard to the assessment of local or general taxes, I recommend that the Regulations for imposing this rate in Colombo may be repealed, that the loans may be immediately called in and the amount paid into the treasury, and applied to the repairs of the streets; also, that the assessments to be made in future, may not exceed the sum actually required to defray the annual expense of these repairs, and to provide for an efficient town police.

From the inefficient state of the police at Colombo, I anticipate the necessity of augmenting the present charge for the maintenance of an establishment which will be better calculated to protect the persons and property of the inhabitants.

I have already explained, that the collection made by assessment is attended with great difficulty and much vexation to the people whose property is so much divided as it is in Ceylon.

After a careful consideration of the state of the colonial finances, and of the changes which are required for the relief of the island from the effects of a system which has checked the industry of the people and the prosperity of the settlement, I cannot hold out the present expectation of an increase of the general resources of the government, and with a view to the most indispensable and urgent reforms, my attention has been directed to the means of reducing the expense of the existing establishments.

<sup>a</sup> Regulation of Government, No. 8 of 1830. [II, p. 346.]

The measures recommended in this Report have a strict relation to others which have been proposed in my First Report, and they would require to be executed together.

The abolition of the system of compulsory services will give effect to the measures taken for the gradual redemption of the land tax, for promoting the settlement of the country, the liberation of the trade, and the free cultivation of cinnamon as a new and important branch of industry.

The establishment of the government on an enlarged basis will facilitate the reform of the laws and the institutions of the island, and lead to the removal of many prejudices which check the improvement and fetter the exertions of the people.

In submitting a schedule of the present and proposed establishments, I shall offer such further observations as may be called for in revising and regulating the departments, in controlling the revenue and expenditure, and in providing for the execution of the public works, which have been hitherto so irregularly carried on by means of the forced labour of the people.

Although the recommendations which relate to the abolition of the system of forced labour are contained in my First Report, and have no immediate reference to the subject of revenue, I am desirous of being distinctly understood as having in no degree intended to propose any commutation of that labour, either by additional assessments on the lands, or by personal or capitation taxes.

The system has been so irregularly maintained, and has been productive of so much injustice, that I cannot but recommend its entire abolition by an order of His Majesty in Council, whereby the regulations and orders now in force may be repealed, the inhabitants being allowed to give their voluntary labour in payment of any local rates which may hereafter be imposed on them for defraying the expenses of roads and other works by which their lands may be benefited.<sup>1</sup>

I would add, that any attempt to commute the various descriptions of forced labour or service to which the people are now liable, would be extremely difficult if not impracticable in its application, and objectionable from its interference with

<sup>1</sup> See Order-in-Council of 12 April 1832. C.G.G. 29 September 1832. See also p. 237 below.



	£	s.	d.	£	s.	d.
Brought Forward	3,709	4	-			
Eight aratchies, at 18 <i>l.</i> per annum each	144	-	-			
Gamerale of Mutwal	27	-	-			
Seventeen cangans, at 13 <i>l.</i> 10 <i>s.</i> per annum each	229	10	-			
One native medical attendant	18	-	-			
One ditto	13	10	-			
One shroff, or cashier	22	10	-			
One conicoply	18	-	-			
One Cingalese priest attached to the magistrate of Mahabadde to administer oath	7	4	-			
One Moor priest—ditto—ditto	7	4	-			
Total fixed Establishment of the Cinnamon Department				4,196	2	-

*Average of the Contingent Expenditure in Ceylon for Three Years, 1827, 1828 & 1829:*

Pay and allowances of six modliars and headmen of the Mahabadde	2,359	2	11
Ditto—of lascoryns and labourers in the preserved plantations	5,995	4	3
Travelling expenses—ditto—ditto—ditto	152	9	10
Value of salt issued to—ditto—ditto	43	14	-
Pay and allowances of the headmen of the peelers and native medical men attached to them	367	8	8
Travelling expenses paid to peelers	123	9	3
Salt issued to peelers	35	7	-
Tools and huts for the labourers	41	16	2
Iron and steel for tools	20	14	7
Three blacksmiths, and six assistants in making and repairing tools	66	-	4
Olahs to cover the huts of the labourers	29	-	8
Boats employed in bringing wood to construct the huts	9	7	1
Travelling expenses of the shroff sent to pay the peelers, &c.	19	1	4
Paid to the peelers for cinnamon delivered by them	6,015	2	10
carried forward	19,474	-	11



*Report of Colebrooke upon the Revenues*

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£ s. d.

	Brought Forward	19,474	-	11
Pay of a liene rale attending the sorting of cinnamon		15	18	3
Pay of a native superintendent and four sorters at Colombo		142	4	-
Carts and boats employed in bringing cinnamon to Colombo		112	14	2
Tolls and ferries for the above boats and carts		6	17	9
Batta to persons sent in charge of cinnamon from Galle to Colombo		8	7	1
Pay of native headmen in the Kandyan provinces, and value of cinnamon delivered by the peelers there		841	7	9
Pay of a native superintendent at Kandy		36	-	-
Pay of persons employed in sorting cinnamon cut by Kandyans		58	9	-
Coolies for packing, and boats for conveying cinnamon cut by Kandyans		82	19	6
Gunnies for bags imported from Calcutta		810	9	9
Boats and coolies employed in landing and sorting gunnies		3	12	11
Sewing gunny bags, embalng cinnamon, and marking bales		92	13	8
Coolies employed in loading bales of cinnamon and pepper		25	18	5
Boats employed in shipping cinnamon and pepper		44	6	8
Mats for stowing the cinnamon on board ship		20	-	9
Pepper purchased in Ceylon, or imported from the coast		3,502	-	-
Expenses of cinnamon oil distillery in Colombo		94	9	10
TOTAL ANNUAL EXPENDITURE IN CEYLON		£25,372	10	5

£ s. d.

*Estimated Expenditure in London:*

Freight of 500,000 lbs. of cinnamon from Colombo to London, at the rate of 4 <i>l.</i> 10 <i>s.</i> per ton of 800 lbs.	2,812	10	0
Freight of 125,000 lbs. of pepper from Colombo to London, at the rate of 4 <i>l.</i> 10 <i>s.</i> per ton of 1,600 lbs.	351	11	3
carried forward	28,536	11	8

	£	s.	d.
Brought Forward	28,536	11	8
Insurance upon cinnamon conveyed from Ceylon to England, to the value of 75,000 <i>l.</i>	2,987	10	-
Insurance against fire upon cinnamon in the warehouse in London, to the value of 75,000 <i>l.</i>	112	10	-
East India Company's charges one per cent. on the gross proceeds of cinnamon sold (say 500,000 lbs., producing 138,343 <i>l.</i> 15 <i>s.</i> )	1,383	8	9
Ditto—two per cent. on pepper sold (say 1,562 <i>l.</i> 10 <i>s.</i> )	31	5	-
Ditto—dock dues	87	11	3
Ditto—fees $\frac{1}{2}$ per cent.	172	18	7
Ditto—charge for making merchantable	285	17	6
Ditto—charge for shifting and drying pepper	46	1	3
Ditto—warehouse rent at $1\frac{1}{2}$ d. per bale per week (say 10,000 bales)	3,250	-	-
Ditto—home consumption duties on deficiencies	176	17	-
Brokerage at one per cent. on gross proceeds (138,343 <i>l.</i> 15 <i>s.</i> )	1,383	8	9
Printing and advertising	108	10	-
Brushing, sifting, picking, &c.	234	19	4
Sampling, &c., pepper	5	5	-
*Commission to the agent in London for the sale of cinnamon, at the rate of $2\frac{1}{2}$ per cent. upon the gross proceeds (say 138,343 <i>l.</i> 15 <i>s.</i> )	3,458	11	10
Ditto—on the sale of pepper at the same rate (say 1,562 <i>l.</i> 10 <i>s.</i> )	39	1	3
		<hr/>	
TOTAL CHARGE	£42,300	7	2

This Account has been compiled from the several Returns furnished in Ceylon to the Commissioners of Inquiry.

JOHN GREGORY

Colombo, 21st January 1831      Secretary to the Commission

\* The rate of percentage allowed to the agent has been reduced, since this Account was made out, to one per cent. on the net proceeds.

## V

### *Report of Charles H. Cameron Esq. upon the Judicial Establishments and Procedure in Ceylon<sup>1</sup>*

[31 January 1832]



#### *Special Objects of Judicial Establishments and Procedure in Ceylon*

THE condition of the native inhabitants of the Island of Ceylon imposes upon a government which has their improvement at heart, the necessity not only of providing cheap and accessible judicatures for the relief of those who have suffered injury, and the punishment of those who have inflicted it, but also of guarding with peculiar anxiety against the danger that the judicatures themselves should be employed as the means of perpetrating that injustice which it is the object of their institution to prevent.

It is obvious that the importance of a good system of judicature increases in proportion to the deficiency of those other restraints upon the bad passions of mankind, which pass under the general name of morality, and in Ceylon these restraints are deficient to such a degree, that each individual owes nearly all the security he enjoys to the protection of the law.

But if the protection of the law is to be granted at all to the great mass of the native population, it must be granted gratuitously, that is to say, the expense without which the intervention of judicial power cannot be obtained, must not be imposed upon any individual until it becomes apparent that he was not entitled to that intervention.

The smallest sums are of great importance to the natives of Ceylon, not only on account of their general poverty, but also on account of the high value of money; so that fees and stamps,

<sup>1</sup> C.O. 54, 122.

which from their small amount would seem to oppose scarcely any obstacle to the attainment of justice by the poor in England, must frequently operate as a complete denial of it in Ceylon.

At the same time, however, that the greatest facility must be afforded to every man who is really seeking redress, the utmost vigilance must be exerted to prevent legal proceedings from being perverted to purposes of vexation and oppression.

The disregard of an oath, and of truth in general among the natives is notorious; not less so is their readiness to gratify their malignant passions through the medium of vexatious litigation.

Before, therefore, any man is permitted to direct the process of a court of justice against another; before any man is permitted to cast upon another the burden of defending himself; before any party to a suit is permitted to cast upon his adversary any burden of proof, every possible means must be adopted to ascertain that he has probable grounds for doing so.

Those judicial establishments, and that scheme of procedure which I am about to recommend to your Lordship, have therefore two principal objects in view, and for the attainment of each of these objects two distinct sets of means seem to be essential.

The first object is—

- I. To render it as easy as possible for any man to enforce his rights through the medium of a court of justice. The two sets of means for its attainment are—
  - 1st. The establishment of a sufficient number of courts to which the suitor may apply with the least possible expense and delay.
  - 2d. Such a constitution of the courts as will insure, in the highest possible degree, correctness of decision.
- II. To render it as difficult as possible for any man to inflict injury upon another through the medium of such courts as have been indicated above. The two sets of means for its attainment are—
  - 1st. A rigorous investigation into the truth of every allegation upon which a court of justice is required to lend its aid to a suitor.
  - 2d. The infliction of punishment upon every suitor who wilfully attempts to mislead the court.

*Actual Judicial Establishments and Procedure*

Before I submit any recommendation to your Lordship, it will be proper to describe the judicial establishments and the forms of procedure now existing in Ceylon, so far at least as to enable you to judge of their defects with reference to what I have stated as the principal objects to be attained, and the means of attaining them.

For a more complete and detailed account, I take the liberty of referring your Lordship to the replies of the different judges to the questions which, for the most part, were addressed to them by my colleague,<sup>1</sup> and to the printed laws of the island.

*Judges of Original Jurisdiction, Number and Description of*

The judges having original and local jurisdiction are sufficiently numerous, or more than sufficiently numerous, for all the purposes of justice.

There are in the Maritime provinces seven<sup>a</sup> provincial judges, and twenty sitting magistrates.

In the Kandyan provinces, one judicial commissioner, one sitting magistrate, one judicial agent, and ten agents of government; and on this point, the only alteration I shall have to propose is, that the distinction between these functionaries should be abolished in name and substance, and their number more accurately adjusted to the quantity of business to be transacted.

*Education of Judges of Original Jurisdiction*

All the above-mentioned functionaries are at present gentlemen not only unconnected with the profession of the law, but whose education has been in no degree adapted to the

<sup>a</sup> Whoever is called upon to investigate the legislation of Ceylon will escape some perplexity, by knowing that the provincial courts were formed by changes (very extensive changes certainly), wrought in the Dutch landraads, or country courts.

The provincial courts and the landraads are indeed treated as distinct institutions in the Charter of 1810, the 14th section of which abolishes the former, and re-establishes the latter; and also in the Charter of 1811, which repeals that section of the Charter of 1810. But in the 31st section of the Charter of 1801, the landraad of Colombo is designated as the "provincial court commonly called the Landraad of Colombo"; and I can find no legislative act of any kind professing to create the provincial courts de plano.<sup>2</sup>

<sup>1</sup> See II, p. 10, for the questions.

<sup>2</sup> II, pp. 115, 158, 180, 205, 210, 216, 220. See also de Silva, op. cit., pp. 298, 305-9.

special purpose of qualifying them for the administration of justice, and who, by the usual course of promotion in the civil service, are practically acknowledged to be equally fit for the discharge of any other functions.

### *Pleading and Evidence*

The causes tried before the local judicatures all over the island are not reduced, by any rational and methodical system of pleading, to one or more disputed points of fact or law.

The court is generally obliged to give judgment without any previous separation of the matters really at issue, and the proofs applicable to them, from the confused mass of statement and evidence with which the passions and ignorance of the parties induce them to encumber the case; and as the judge does not sum up the evidence, nor give in general the reasons for his decision, all that the parties or the public, or even the judge himself, can know is, that he has given a decision in favour of A. and against B. But upon what state of facts the judgment has proceeded, or what points of law have been determined by it, can only be matter of vague conjecture.

This evil pervades all classes of suits; but it is aggravated to the highest pitch in those suits arising in the maritime provinces, for the correct decision of which the Legislature appears to have been most anxious to provide; viz. suits in which the value in dispute being above 15*l.*, an appeal lies to the minor, or to the high court of appeal. In such suits, the provincial judge is bound by law, provided a witness be competent, to receive and take down whatever he states, however irrelevant to the matter in dispute.

This was no doubt an expedient, but it is surely a very clumsy one, for insuring to an appellant party the benefit of any evidence which, in the opinion of the court of appeal, might be relevant to the issue. It does indeed attain this object, but at the same time it enables a party to waste the time of the court below, and to embarrass the points for its decision to any extent.

The proper course is, undoubtedly, to leave the question of admission or rejection in the first instance to the court of original jurisdiction, and to let its decision, upon that question itself,

be brought before the appellate court. This is what takes place in English procedure, by means of motions for a new trial and bills of exceptions.

*Dependance of Judges on the Governor*

The local judges are entirely dependant upon the Governor's pleasure for their continuance in office. Not only can the Governor displace them without inquiry for alleged misconduct, but he can, without any harsh exercise of authority and consequently without any responsibility to public opinion, remove them to some other department.

The mode, too, in which the provincial judges are to obtain legal advice in cases of doubt, is objectionable.

"The provincial judges are at liberty", says Mr. Justice Marshall, "whenever a point, not provided for by express regulation, presents itself, or a doubt arises as to the construction of the rules and regulations, or indeed in any other case of legal difficulty, to apply to the Advocate Fiscal, through the medium of Government, for instructions how they should proceed."<sup>1</sup>

The relation thus subsisting between the local judges and the executive government is incompatible with a proper degree of judicial independence; and one case came to our knowledge, in which a defendant who had, according to the practice, filed in a provincial court a petition of appeal to the minor court of appeal for the hearing of revenue cases, and who was desirous to amend his petition, as he was entitled to do, was informed, upon applying for that purpose to the provincial court, that the whole proceedings had been sent to the Governor.

In the Kandyan provinces, the control of the executive government over the local judges, is still more complete than in the Maritime provinces.

Your Lordship will find, in the plan which I shall have the honour to recommend, that all interference with or control over the local judges in the exercise of their judicial functions, is transferred to the appellate jurisdiction.

The power of suspending any judge, however, until His Majesty's pleasure can be known, is left to the Governor.

Hitherto I have been describing to your Lordship, at the

<sup>1</sup> Evidence of Mr Justice Marshall; C.O. 416, 17, F. 42, p. 34.

same time, the local courts both of the Maritime and of the Kandyan provinces; but in the details which follow, it will be necessary to treat of them separately. I shall take those of the Maritime provinces first.

#### MARITIME PROVINCES

The provincial judges and sitting magistrates are not assisted by any jury or assessors. The audience who frequent their courts consists of natives, with whom the judge does not associate, and whose good opinion is of little or no importance to him. There is no Bar in his court, there is no person present to whom, either officially or from motives of respect, he is called upon to sum up the evidence, and to state his view of the law applicable to the state of facts which the evidence establishes.

Setting aside, therefore, the apprehension of an appeal, of which I shall presently show the inefficacy, I may safely assert that every provincial judge or sitting magistrate who goes through the process necessary for arriving at a just conclusion upon the matters submitted to him, or indeed who bestows any painful attention upon them, does so from the sole motive of satisfying his own conscientious love of justice.

It was, I suppose, from a rational fear of the abuses which were likely to have place under such circumstances, that in the year 1816, a Regulation of Government was passed (No. 2, of that year), prohibiting provincial judges and sitting magistrates from trying and punishing perjury, prevarication or contempt, committed before themselves.<sup>1</sup>

This remedy was certainly very ill chosen so far as regards contempts; the local judges were thereby deprived of a power essential to the efficient performance of the judicial function, instead of being subjected to such an effectual responsibility as would have controlled the abusive exercise of that power. The Regulation No. 15, of 1820, recites in its preamble the evils to which this restriction gave rise, and restores the power which had thus been inadvertently taken away.<sup>2</sup>

#### *Stamps*

For every step which a suitor is permitted to take in these courts, and the same is true of all the courts in the island,

<sup>1</sup> II, p. 393.

<sup>2</sup> II, p. 394.



whether exercising original or appellate jurisdiction, except the supreme court,<sup>a</sup> he is obliged to pay, under the name of a stamp duty, a sum which, though it may be small and ineffectual for the beneficial purpose of raising a revenue, is large and powerful for the flagitious purpose of indiscriminately repressing litigation.<sup>1</sup>

*Suits in forma pauperis*

An exemption, however, from the payment of these duties may be obtained upon petition to the Governor to sue *in forma pauperis*. Such "petitions shall be presented to the court in which the suit is pending or to be instituted, or from which the appeal is made or to be made; and the poverty of the applicant must be proved to the court by his own affidavit and the affidavit of two other persons"; and the court is to "make inquiry and certify its opinion whether the applicant has apparently a good cause of action or defence".<sup>b</sup>

On this subject a Minute of Government, dated 15th October 1816, is a very instructive document, because it shows how large a class of persons in Ceylon is in a condition to avail itself of this charitable privilege, and at the same time how insignificant an object this large class and its interests have appeared in the eyes of the colonial government.

"The number of suits (says this Minute) admitted to be carried on *in forma pauperis* having become very great, and new applications being daily made, it has been deemed necessary that all depending petitions be transmitted to the courts to which they relate, and that such others as may hereafter be presented will be referred in like manner, to remain in deposit till further orders.

"Provincial judges and magistrates are requested to establish amongst these claims such order of priority and succession as may appear just, reporting the same for his Excellency's information, and also stating when, and in what proportion, the general business of the court will admit, without public inconvenience, of entertaining more pauper suits."

<sup>a</sup> There are fees of court payable by the suitors in the supreme court, which in general amount in the course of a suit to more than the stamps in the other courts.

<sup>b</sup> Rule and Order, 22 March 1824, p. 463. [II, p. 403.]

<sup>1</sup> II, pp. 116 and 396.

The community being thus divided into those who can afford to pay for justice and those who cannot, the inconvenience of the former class, as distinguished from that of the latter, is openly designated as the public inconvenience; and the poor are plainly told that the government will only distribute justice gratuitously at those seasons when the sale of it is slack. Those who cannot pay are plainly told that they have no right by law to the services of a court of justice, but that, by sufferance they may glean as much of them as if left after the true owners have taken all they have occasion for.

### *Applications for Delay*

No effectual means are adopted under the present system for ascertaining the truth of the grounds on which the parties make applications for delay. The ground of these applications is generally the alleged absence of witnesses; and to what an extent the practical evil resulting from this cause has been carried, will appear from the following extracts taken from the evidence of those who are most competent to speak upon the subject, viz. the proctors who practise at Colombo. The experience of these gentlemen is in general confined to the provincial court of Colombo; but on this point the preliminary observation of Mr Henry Staples should be kept in view.<sup>1</sup>

“I will now proceed to point out more fully the causes of this delay and the other defects that occur in its proceedings. I speak, however, only of the provincial court of Colombo, which, with all its defects, is by far superior to those of the other provinces, its officers and practitioners having more opportunities to observe and compare their proceedings with those of the supreme court and correct what is imperfect, while the latter have especially the benefit of practising before the high court of appeal, and a greater field open to them for improvement in their profession. Having been in different parts of the island, and having also had many opportunities of observing the proceedings of the other provincial courts in appealable cases, I have no doubt that considerably more reform is needed in those courts than in that of Colombo.”

<sup>1</sup> Evidence of Mr Henry Staples. Reply to Q.3 (W.R.) C.O. 416, 18, F. 61, p. 309.

Upon the subject of which I am treating, Mr Henry Staples thus expresses himself:<sup>1</sup>

“The next step is, by filing lists of the parties’ witnesses, to which no other names can be added, as in respect of written evidence, the case being fixed for hearing is postponed successively from time to time for the attendance of absent witnesses, the parties never being called upon or obliged of themselves to produce them. I have known cases postponed in this manner from one to nearly three years. A plaintiff is thus at liberty to annoy a defendant for years together by keeping a suit pending over him, and a defendant can on the other hand prevent the plaintiff from recovering a just demand while squandering away his substance before his creditors’ eyes; and this delay the defendant too often effects by giving in a long list of witnesses (most of whom are either fictitious, or the persons whose names appear, know nothing of the matter); and here let it be observed, that the provincial judges consider themselves obliged, by the 25th clause of the proclamation,<sup>2</sup> to examine every witness, if the parties insist upon it. This obligation on the part of the provincial judges, doubtless arose from a conviction by the framers of the proclamation, that the ignorance of the judges would probably make them reject evidence which ought to have been received, though the clause does not seem to imply it.

“The practice of preventing the witnesses from attending or subpoenas from being served upon them, is often resorted to for the purpose of delaying the case. Some rules might be laid down to prevent these abuses; and the best that occur to me are, that a party should be obliged to produce his witnesses or show good grounds, on affidavit, why they are not forthcoming, and that they are so material to his case that he cannot safely proceed to trial without them.”

Mr. Dricberg says, “I may say, that it is partly owing to this want of power in the provincial judge, that suits in the court here are delayed. He is bound to hear all the witnesses that a party calls, particularly when it is appealable, unless waived, although in his mind a point has been sufficiently proved by the witnesses already examined. If one witness is

<sup>1</sup> Evidence of Mr Henry Staples. Reply to Q.3 (W.R.) C.O. 416, 18, F. 61, p. 314.

<sup>2</sup> 22 January 1801. *A Collection of Legislative Acts of the Ceylon Government*, I, p. 26.

absent in a case, and the party at whose instance he was subpoenaed alleges that it is a material witness, the court postpones the decision of the suit until he is examined, without making any inquiry as to what facts are to be proved by him.”<sup>1</sup>

The provincial judge of Jaffna remarks on the same subject: “The proceedings certainly allow of being protracted by parties interested in such delay. The great cause of delay is, the non-attendance of witnesses on the day fixed for trial, and persons wishing to protract the proceedings will often purposely insert in the lists of their witnesses names of persons whom they know to be absent from the place, or induce the witnesses on their own or the opposite side to absent themselves. It is difficult, or indeed almost impossible, to discover and check this system of tricking, and cases are therefore often unnecessarily delayed by it.”<sup>2</sup>

Mr. Justice Marshall, in examining the plan of a circuit court for the trial of civil suits, says, “One rarely takes up the proceedings of any case from a provincial court, in which one postponement at least has not taken place (more commonly several) by desire of one or other of the parties, on account of the absence of material witnesses. This is a ground on which it is scarcely possible to resist the postponement of a trial, if it be true, and the truth of which it is not easy to ascertain. Let affidavits be required of the absence and even of the facts which would be proved by the absent witnesses, and this is going further than English practice would warrant; the necessary affidavits to any number and in any form which might be prescribed would never be wanting”.<sup>3</sup>

It is clear that a judge may cause as much mischief by granting delay upon the allegation of grounds which have no existence in fact, as by misdecision on matters of law, yet in the one case he does not feel himself under anything like the same degree of responsibility as in the other. As the appellate jurisdictions are now constituted, the granting or refusing of applications for delay never comes under their cognizance.

<sup>1</sup> Evidence of Mr Dricberg. Reply to Q.1 (marginal note in W.R.). C.O. 416, 18, F. 61, p. 149.

<sup>2</sup> Evidence of Brownrigg. Reply to Q.126 (marginal note in W.R.). C.O. 416, 13, F. 20, p. 103.

<sup>3</sup> Evidence of Mr Justice Marshall (marginal note in W.R.). C.O. 416, 17, F. 42, p. 274.

But even if the judge had the strongest motive for doing upon such applications what justice requires, the existing practice does not afford him the means. Mr. Staples, in the above extract from his evidence, recommends that the party applying should show by affidavit why his witnesses are not forthcoming, and that he cannot safely proceed to trial without them; but such affidavits, as Mr. Justice Marshall remarks, would never be wanting; and the only effectual remedy for this great abuse is, to apply to the assertions of the party respecting the absence and the materiality of his witnesses, that test which is found to be the most powerful detector of falsehood in other cases, viz. viva voce examination and cross-examination; and this is accordingly what I shall recommend in its proper place.

#### *Claims to Property taken in Execution*

Great difficulties appear to be thrown in the way of plaintiffs, even after the question between them and their adversaries has been determined, in consequence of fraudulent claims being set up to property taken in execution.

On this subject, Mr. H. Staples observes, "In no one instance is there so much delay experienced as in cases of execution, when a party, who, after a long lapse and considerable trouble has obtained a judgment, is unable to reap the fruits of it, by the opportunities which the practice of the court, the fiscal's regulation, and the defects of his department afford to a debtor, and to those who, from the nature of their office, are able to assist him in delaying to enforce the payment of his debt.

"The regulation obliged the fiscal to delay executing any writ against any property claimed by a third person, but he is to report every such claim to the court from whence the writ issues. It does not authorise him to inquire whether the claim be well or ill-founded, the nature of it, or to require the production of any deeds or other evidence for the information of the court.

"This part of the proceedings of the provincial court is attended with more mischief and abuse than any other. How often does it happen that a debtor causes some creature of his to enter a claim to property seized, without the latter having a shadow of title to it. The fiscal must of necessity report such claim, and the debtor thus gains his object of delaying the execution of the writ, on the return of which the claimant

is cited to appear and establish his title to the property. Perhaps he does not attend to this notice; if this be the case, the writ re-issues with instructions to carry it into effect without attending to such claim; but another claimant appears, and the same course is pursued till the plaintiff is often tired out, and forced into any arrangement that his debtor, the defendant, may have proposed. But claims in execution, whether well or ill-founded, if proceeded in, seldom take less than a year for their decision, for though the regulation enjoins that they be heard summarily, yet by the practice of the provincial court, the whole proceedings are conducted in the same manner, and through all the stages as in an ordinary suit, and the same postponements take place for the same causes as in other cases, without any difference or exception whatever, and the same expenses are incurred. I have known such claims to have taken upwards of two years before they were decided, in short, the same length of time as in any other case.”<sup>1</sup>

The evil here described is certainly a very grievous one, I do not, however, perceive that there is anything in the nature of a claim made by a third person to property taken in execution, which renders it proper to be decided in a more summary manner than a claim to property under any other circumstances. But the process of bringing the claimant before the court by a citation is unnecessarily circuitous. The claimant, giving notice to the fiscal to hold his hand, should come at once before the court like any other plaintiff, and then, like him, he will undergo, if my views should meet your Lordship’s approbation, such an examination as is best calculated to bring to light the real nature of his claim, and such punishment, should its falsehood be established, as is best calculated to prevent a repetition of such attempts.

#### *Negligent Execution of Process*

The process of the local courts appears to be executed in a very negligent manner. The evidence we possess on this subject also is derived from the proctors resident at Colombo, and it shows that there are two causes of negligence in executing the process of the local courts. First, that the fiscal, who is the executive officer of all courts in the maritime provinces, receives

<sup>1</sup> C.O. 416, 18, F. 61, pp. 317-19.

no remuneration for executing the process of the local courts; and secondly, that he is not practically liable to be punished by them for neglect of duty; I say practically, for though the law on the subject seems to be generally considered doubtful, I entirely agree with the opinion expressed in the evidence of Mr. Hillebrand, that every person is subject to the court of which he is an officer, in respect to his office.

Mr. Drieberg says, "The court has likewise no power to punish the fiscal, or the headmen acting under him, for their negligence in executing process, which is the main cause in consequence whereof witnesses cannot be easily brought before the court, and again the difficulty to bring before the court the server of the subpoena upon an absent witness who is to verify the service on oath before an attachment can be issued".<sup>1</sup>

Mr. Martensz says, "The fiscal, though personally responsible for the acts of his deputies, takes no part in the execution of the process of the provincial court, and indeed interferes very little with the execution of the process of that court, because he derives no sort of fee or emolument, while upon the writs of the supreme court he receives a fee of 5 per cent. up to 500 rix-dollars, and above that sum, 3 per cent. on the amount of the writs, besides other fees for serving every citation and order of that court; and I should therefore think that if some remuneration were allowed to him, or rather to the person who carries the writ into execution, as also for serving every other process of the provincial court, he might be stimulated to more activity in the execution of the process of that court likewise. It is a doubtful question whether the fiscal is liable to punishment by attachment or otherwise by the provincial court, for remissness in the execution of its process; and I should think that if this power were to be expressly given to that court, it will have another beneficial effect in the enforcement of its process, as the fiscal will then know that punctuality is the only means of eluding the punishment which will otherwise fall upon him."<sup>2</sup>

Mr. Hillebrand says, "But the reverse is the case with the process issued from the provincial court of Colombo, which

<sup>1</sup> Evidence of Mr Drieberg. Answer to Q.1 (marginal note in W.R.). C.O. 416, 18, F. 61, p. 149.

<sup>2</sup> Evidence of Mr Martensz. Answer to Q.7 (marginal note in W.R.). C.O. 416, 18, F. 61, p. 109.

is an additional cause of the delay of cases in that court, which very often waits in vain for the attendance of the several defendants and witnesses on the day and at the hour appointed for their appearance, owing to the non-service of the process on them in due time, if at all. This delay and irregularity is of more frequency, and very glaring, in respect to the process of execution, which is very seldom or never returned to the court on the day it is returnable, much less is the money, which is commanded to be levied by this process, regularly and punctually recovered and returned to the court, but on the contrary, it is delayed for many months, nay, even for years together, without carrying it into full execution.

“The reason of this striking difference, I think to be, first, because of the fiscal receives certain fees to execute the process of the superior court, and none for that of the provincial court, and therefore in one case he is active and diligent, and in the other remiss and indolent; and secondly, because he is aware that the supreme court is vested with the power of visiting him with fine and imprisonment for any neglect of his duty; and on the contrary, it is supposed by him, and by many others, that the provincial court has no such power vested in it, contrary, as I humbly believe, to all principle of law, at least contrary to the civil or Roman Dutch Laws, according to which every person is subject to the court of which he is an officer, in respect to his office, although he be not subject to the jurisdiction of such court by virtue of any right or privilege he may be entitled to; but the reason generally assigned by the fiscal when he is called upon to answer for the neglect of his duty is, that he had no control over the headmen, and therefore unable to force them to execute his orders; and although this plausible excuse may, in some degree, hold good with respect to the process that is to be executed by the headmen in the corles, still it is no answer or justification with regard to process, that is to be executed within the gravets, and respecting which he has very seldom, if ever, given a satisfactory answer, whenever he has been called upon to account for its delay; and yet he has never been visited by the court by any sort of duresse or amercement for reason above stated.”<sup>1</sup>

<sup>1</sup> Evidence of Mr H. Hillebrand. Reply to Q.7 (marginal note in W.R.). C.O. 416, 18, F. 61, p. 380.



These extracts will show your Lordship that, even if the decrees of the local judicatures were the result of the profoundest legal knowledge and the most diligent investigation, and if they could be obtained with the least possible delay and expense, the suitors would be still very far from deriving from them that protection which is the greatest blessing of good government.

### *Defects in Jurisdiction*

The principal defects in the civil jurisdiction allotted to the local courts, consists in the almost complete exemption of Europeans from it, and in the nature of the exception to the completeness of that exemption.

No provincial judge can try any cause in which a European is defendant, in which the value in dispute exceeds 7*l.* 10*s.*, though he can try cases between natives to any amount. My anxiety for the improvement of the natives of India does not render me blind to the marked distinctions which exist between them in their present moral condition and their European governors; and I think it highly important that such distinctions should not be neglected in constructing institutions for our Eastern possessions.

I would not, for example, trust a native with power over his countrymen in any case in which pecuniary considerations do not prevent the employment of a European. Their general contempt for the rights of inferiors, and the abominable spirit of caste, render them very unsafe depositaries of such a trust. But all men are equally entitled to protection from those who undertake to govern them; to protection from each other, as well as from external enemies; the lower too the moral condition of the people, the more do they need such protection; the more too is their government concerned, both in interest and duty, to afford it to them.

It must be remembered, that in Ceylon the provincial courts administer the same laws as the supreme court, so that there is not the same reason for this distinction between Europeans and natives as in Continental India; and the distinction does not here, as there, merely separate the causes of Europeans from those of natives, but it places on one side those causes of Europeans in which the value in dispute exceeds 7*l.* 10*s.*, and on the

other, those causes of Europeans in which the value in dispute falls short of 7*l.* 10*s.*, together with all the causes of natives, and leads therefore to the inevitable inference, that these last are of no more account in the eyes of the government than those trifling interests of Europeans (as they are generally though improperly considered) with which they are thus classed.

The truth is, that the administration of justice to natives is of far more importance than its administration to Europeans, because they are so much less disposed to do justice to each other voluntarily; and I know of no instrument so powerful for gradually inducing upon them habits of honesty and sincerity as a judicial establishment, by which fraud and falsehood may be exposed to the greatest possible risk of detection and punishment.

The civil jurisdiction of the sitting magistrates has the same limits with regard to Europeans, as that of the provincial judges, with the exception of the sitting magistrates of Mullativoe, Trincomale and Batticaloa, who can try civil causes in which a European is defendant, provided the value in dispute does not exceed 22*l.* 10*s.*

#### *Testamentary Jurisdiction*

The provincial courts have a testamentary jurisdiction (which is apparently considered to include the power of appointing guardians to minors) which they have exercised *de facto* since the year 1805.

The Regulation No. 5 of 1826, legalizes the past exercise of this jurisdiction, and provides for the future exercise of it by the provincial courts.<sup>1</sup>

This part of the business of the court appears to be conducted in a peculiarly negligent and unsatisfactory manner.

On this subject the evidence of Mr. Jumeaux, who practises as a proctor both in the supreme court and in the provincial court of Colombo, is very important.

“Should the provincial court of Colombo continue, I am of opinion that its testamentary and matrimonial jurisdiction, and the cases in them now pending, should be transferred to the supreme court without delay, for the evils in this class of cases are incalculable in the provincial court of Colombo; I dare

<sup>1</sup> II, p. 398.

say it is worse in the out-stations, owing to the distance they are from the supreme court. In this supreme court, one of the principal duties of the master in equity is to audit and check the accounts of the administrators and executors immediately under its control, by which means the interests of minors and others are protected, whilst in the provincial court of Colombo, executors and administrators have uncontrolled management of the property of minors and absentees.

The testamentary business of the court is shamefully conducted for want of a sufficient establishment to attend to it, as well as to the great press of other business that daily engages attention.

“No official administrator has ever been appointed to administer to intestate estates, and the proceedings of the court in its testamentary jurisdiction are loose and improperly conducted, and the provincial judge is really incapable of remedying the defects that exist in these particulars. It is the opinion of every one that the testamentary business throughout the island ought to be thrown into the supreme court, where every attention is paid to it, and every remedy known and given to the persons interested.”<sup>1</sup>

#### *Isabella Perera's Case*

A case came to my knowledge in consequence of a petition presented to Colonel Colebrooke and myself, which confirms the view taken on this subject by Messrs. Jumeaux and Henry Staples; and it illustrates in so striking a way how shamefully the interests of minors are neglected under the present system, and how great the necessity is for some reform in that system, that I think it right to bring it very concisely under your Lordship's notice.<sup>2</sup>

The petition presented to Colonel Colebrooke and myself, stated facts which seemed to us to call for some inquiry on our part, as being illustrative, if true, of the mode of proceeding in the provincial courts. We did accordingly inquire, and the following appeared to be the facts of the case.

Hettige Isabella Perera, a minor, who presented the petition, was the daughter of Hettige Justina Perera. Upon the death of the latter, administration was granted by the provincial court

<sup>1</sup> C.O. 416, 18, F. 61, p. 15.

<sup>2</sup> *Ibid.*, 17, F. 56.

of Colombo, and on the 22nd June 1819, the sum of 759r-ds. 7f. was paid into that court by the administrator, as the share of the minor. This sum was deposited in the cutcherry of Colombo, and out of it a sum of 750 r-ds. was lent, on interest, to one A. P. Dirksz, on the 28th July 1819. In May 1820, a sum of 50 r-ds. 7f. 2p., arising from interest on the sum so lent out, was paid to one Garetooregey Gabriel Perera, for the maintenance of the minor. On the 22d November 1820, A. P. Dirksz paid into court the sum borrowed, 750 r-ds., and 38 r-ds. 3f. for further interest, both which sums were deposited in the cutcherry of Colombo, and which making together, with the balance of 9r-ds. 7f. then in deposit, a total of 797r-ds. 10f.; remained unproductive in the cutcherry until the 24th September 1830, and where it might have remained unproductive until the minor attained her full age, as it seems to be no part of the duty of the judge, or of any officer of his court, to look after the interests of minors.

Some time previous to the 6th April 1830, the minor presented a petition to the Governor, stating that she was in a destitute condition, and praying that the money to which she was entitled might be made available for her support.

The petition was referred by the Governor to the provincial judge of Colombo, who reported that the court had offered the sum in question "to the petitioner, or any other person on her behalf, to take, on giving sufficient security, for the benefit of the minor".

On the 24th September 1830, the money was paid to Henry Augustus Marshall, Esq., who, at the request of the minor, had been appointed her guardian, on his giving the requisite security.

At the rate of interest which may be obtained in Ceylon, the fortune of this girl (for such a sum is really a considerable fortune to a native girl) would have been more than doubled, had it been the duty of any responsible person to see that it was properly employed.

The courts of the sitting magistrates have only criminal jurisdiction, and that sort of civil jurisdiction which is usually called ordinary civil jurisdiction; but the provincial courts have, I believe, every species of jurisdiction; it is said, indeed, that they have no equitable jurisdiction, but such an expression,

when used in reference to a country in which the Dutch Roman law prevails, has a meaning very different from that which it commonly conveys to the minds of those bred in a country like England, where a very large portion of rights is removed from the cognizance of courts of law.

All that the expression means, when applied to the provincial courts in Ceylon, is, I believe, that they cannot grant the two sorts of relief known to the Dutch Roman Law, "Restitutio in integrum", and "Judicial Relief"; that is to say, that they cannot relieve a party against such of his own acts as he, being legally competent to perform, has been induced to perform through fear, fraud, error, &c., nor can they relax the general rules laid down for regulating their own proceedings, upon the ground that such rules are productive of injustice in the particular case.

These are powers both incident to courts of law in England, though the latter is called their equitable jurisdiction, and which every court is fit to be entrusted with which is fit for the administration of justice at all.

### *Appellate Jurisdiction*

The proceedings of the local judges are very insufficiently controlled by appellate judicatures.

### *Minor Courts of Appeal*

There are four minor courts of appeal, one at Colombo, one at Jaffna, one at Trincomale, and one at Galle.

Their constitution is still more defective than that of the courts of original jurisdiction. The judges who preside in them, like those whose decisions they are appointed to correct, have no education adapted to their functions; they sit without jury or assessors, and their proceedings attract less attention than those of the courts of original jurisdiction. The minor court of appeal at Colombo may be taken as an example. The judges who sit in it are four in number, so that their responsibility would be quartered, were it not so small as to be practically indivisible. They are, the provincial judge, the sitting magistrate (two of the functionaries from whom the appeal lies), the commissioner of revenue, and the collector of customs,

all persons whose time ought to be fully occupied with other duties.

The Regulation of government, No. 5, of 1809, by which the minor courts of appeal were established, provides that they shall be competent to receive appeals from the decisions of all the provincial and other inferior courts within their respective jurisdictions in all civil cases whatever, under the amount appealable to the high court of appeal, that is to say, under 30*l.*<sup>1</sup>

If the constitution of the minor courts of appeal had been such as to insure in any degree correctness of decision, the absence of all limitation downwards of the right of appealing to them would have been highly commendable; for it is unquestionably in those causes which are usually called trifling, in those causes the correct decision of which is of most importance to the happiness of the people, that every motive *ab extra* which can stimulate the attention of the judge, and impress him with a sense of responsibility, should be brought to bear upon him.

Those who have legislated for Ceylon, however, have been of a different opinion. By Regulation No. 9 of 1814, the appeal from the provincial courts is taken away, when the value in dispute does not exceed 15*l.*, and the appeal from any other courts of inferior jurisdiction is taken away, when the value in dispute does not exceed 1*l.* 17*s.* 6*d.*, excepting in cases "wherein the title to or possession of landed property shall directly or indirectly be in question".<sup>2</sup>

The preamble of this latter Regulation is remarkable; and as my opinions are altogether wrong, if the doctrine assumed by it be right, I shall offer a few remarks upon it.

The preamble recites, that "it is found by experience that the right of appealing to the minor courts of appeal in cases of trifling value, serves only to encourage petty litigation".

That experience should show this, cannot indeed be matter of surprise to any one; but experience has never shown that all petty litigation is an evil, or that petty injustice, which is a most grievous evil, can be prevented or remedied by any other means. A suit for a sum under 1*l.* 17*s.* 6*d.* may indeed seem an object of contempt to an European judge. Considering any

<sup>1</sup> II, p. 389.

<sup>2</sup> II, p. 391.

individual case by itself, he would probably rather pay the amount claimed than be at the trouble of examining and deciding the question between the parties: but in the eyes of a native of Ceylon of the lower class, such a sum appears, and with great reason, an object of very high importance, an object, the unjust detention of which is calculated to excite in his mind the most violent animosity against the person who commits the wrong, and the government which fails to redress it.

Among all the duties incumbent on the British rulers in the East, it is impossible to name one more imperative than that of providing for the effectual decision by public authority of the disputes arising among the poorer classes, in other words, of providing for those classes the means of carrying on that petty litigation which this preamble so contemptuously stigmatizes. There is no benefit which a European government can confer upon its Asiatic subjects of the poorer class so valuable, and no means by which it can secure the permanence of its own dominion so honourably and effectually as this, and it is a benefit which none but an European government can confer. There is no way in which such part of the public property as the government might think fit to devote to eleemosynary purposes, can be so beneficially employed as in paying judicial establishments, by which the poor may obtain really gratuitous justice.

The misery and resentment of a poor man suffering under an act of injustice are most cruelly aggravated by the contempt with which the legislative and the judicial powers thus openly treat his misfortunes, and I can conceive no tie which will bind the lower people so strongly to their government, as a judicial establishment so contrived as that the very same attention and discrimination should be employed upon their causes as upon those of their affluent neighbours.

Your Lordship will find accordingly that the sort of appeal which I shall recommend will be extended to all cases, without reference to the value of the object in dispute.

### *High Court of Appeal*

The high court of appeal is better constituted than the minor courts of appeal, so far as regards competency for the

decision of legal questions, inasmuch as the two judges of the supreme court are members of it. The other members are the Governor, the chief secretary, and the commissioner of revenue, who, as far as regards any legitimate purposes of judicature, are superfluous, and whose time ought to be occupied with other duties.

This court is furnished by the 92nd section of the Charter of 1801,<sup>1</sup> with very ample powers for correcting the mistakes and abuses of the subordinate jurisdiction; but as it sits always at Colombo, its judgments must in general be founded upon such matters only as appear upon the records transmitted from the courts in which the suits have been originally decided, as the distance of most of these courts from Colombo must make the bringing of witnesses thither an operation so difficult and expensive as to be beyond the means of ordinary suitors.

When, therefore, I consider the general ignorance and poverty of the native suitors, and the general ignorance and dishonesty of their native legal advisers, together with the servility of both towards the Europeans in authority over them, it seems to me that the only mode of combining that unity which is everywhere essential to an appellate jurisdiction, considered as the ultimate expounder of the law, with that ubiquity which in Ceylon it must possess in order to be effectually accessible to the native suitors, and effectually to control the local judicatures, is to send one appeal court on circuit through the whole island to hear and determine appeals in causes of all kinds; and this is accordingly the measure which your Lordship will find recommended in its proper place.

By the 88th section of the Charter of 1801, the high court of appeal is declared to be "a court of civil jurisdiction for the hearing and determining appeals from all or any of the courts of justice established or which may be established within the said settlements and territories in the island of Ceylon, with their dependencies", except the supreme court. These words seem to hold out a promise of something like an uniform system of appellate jurisdiction. But, as by the 90th section of the same Charter, the sum or value appealed for must exceed 30*l.*; and as the sitting magistrates, who try the far greater number of civil causes, are not competent to try causes of that

<sup>1</sup> II, p. 197.



description, the benefit of this appeal is in fact confined to a small portion of the suitors in the provincial courts.

The returns which we possess do not enable me to ascertain accurately what the proportion is between the causes which may be carried up to the high court of appeal and those which cannot, that is to say, between the causes in which the value in dispute exceeds 30*l.*, and the causes in which it does not exceed that sum. But these returns exhibit for the years 1826, 1827, 1828, and half of 1829, the proportion between the causes in which the value in dispute exceeds 22*l.* 10*s.*, and the causes in which it does not exceed that sum, from which an approximate judgment may be formed of the proportion between the causes which are appealable to the high court, and the causes which are not. Taking the average of the three years and a half above mentioned, I find that the number of civil causes tried annually in the maritime provinces (I omit the few causes tried by the supreme court, which belong to an entirely different system of judicature), in which the value in dispute exceeds 22*l.* 10*s.*, is 683; while the number in which the value in dispute falls short of that sum, is 14,107, giving a proportion of not quite one to twenty. So that, even if the amount which renders a cause appealable were reduced to three-fourths of what it actually is, more than 19 out of 20 suitors would be excluded from the benefit of access to this, the only appellate jurisdiction deserving of the name.

The supervision of a competent public, and that of a competent appellate jurisdiction, are, I believe, the only means by which courts of original jurisdiction are rendered in any country fitting instruments of judicature. Your Lordship will not therefore suppose that I mean to cast any reflection upon the gentlemen who preside in the local courts of Ceylon, when I say, that it is contrary to all our experience of human nature that they should be able to find in the recesses of their own minds a sufficient motive for the exertion of that unremitting attention which is necessary for the investigation and decision of the matters which come before them, and of that imperturbable patience which can alone control the movements of indignation which the importunity, folly, impertinence and knavery of Indian suitors and Indian witnesses are calculated to excite.

In criminal cases there is no appeal from the courts of original jurisdiction; but the supreme court (which is itself a court of original jurisdiction, and, as such, will be presently described), exercises over these courts in criminal matters as much of superintendence as can be exercised by virtue of mandates in the nature of writs of mandamus, certiorari, procedendo and error.

Very soon after my arrival in Ceylon I had the honour to make a Report to your Lordship's predecessor, in conjunction with Colonel Colebrooke, on the dangerous uncertainty in which the right of the supreme court to issue writs of habeas corpus was involved, and on the encroachment which had been made on that right, supposing it legally vested in the court, by a Regulation of government, passed *ex post facto* by a former Lieutenant-Governor, which Regulation, notwithstanding the express orders of Lord Bathurst for its repeal, was still in force when I arrived in the island.

In consequence of that Report, Sir George Murray was pleased to recommend to His Majesty to pass an Order in Council, which has established the power of the court to issue the mandate.<sup>1</sup>

### *Supreme Court*

Among the courts having local jurisdiction must be reckoned the supreme court, though it has also, in respect of certain classes, jurisdiction over all the dominions which His Majesty had in Ceylon at the time of its establishment, that is to say, over all the maritime provinces, and its criminal jurisdiction and fiscal jurisdiction extend to all persons in those provinces.

In respect of its dignity, of the qualifications of its judges and the expense of its establishment, the supreme court ought to hold the first place among courts of local and original jurisdiction; but in respect that it transacts only a very trifling portion of the business, even in that narrow district to which its local jurisdiction is confined, and in respect that it is rather an excrescence upon the general system of judicature than a regular part of it, I have chosen to describe it last.

Its local jurisdiction extends no farther than the town fort

<sup>1</sup> II, p. 45.

and district of Colombo,<sup>a</sup> and consists of a civil, equitable and testamentary jurisdiction, and a jurisdiction over infants and lunatics.

But all these jurisdictions extend as regards Europeans and persons registered in the secretary's office as licensed to reside, over the whole of the maritime provinces.

There are words also in the charter which provide for their eventual extension, together with that of its criminal and matrimonial jurisdiction, still further; but those words have been held by the law officers of the Crown in England not to apply to the Kandyan provinces until they shall be annexed as dependencies to the Maritime provinces. The extension of the jurisdiction of the supreme court to Europeans, and the denial of it to natives beyond the limits of the town fort and district of Colombo, is an unfair and invidious advantage given to the former over the latter; for the judges of this court, two in number, are gentlemen regularly educated to their profession and devoting their lives to it, and there is not in Ceylon the same ground for this distinction between Europeans and natives as in Continental India.

There the English law is administered to Europeans, and the native laws to natives; but in the maritime provinces of Ceylon the Dutch Roman law is administered, with certain exceptions, to Europeans and natives indifferently.

This provision was intended no doubt to confer an advantage upon Europeans in respect to equitable jurisdiction, as well as in respect to the other jurisdictions enumerated; but in reality it imposes a disadvantage upon them as opposed to natives in that respect, for as no other court in the island had any equitable jurisdiction, a European has no remedy in equity against a native not residing at Colombo, but all natives have a remedy in equity against all Europeans.

Now, though in a very large sense it may be said that it is an advantage to a man that he should be compellable in all cases to act justly, it is certainly not that sort of advantage which Europeans have generally reserved as their own peculiar privilege in their Eastern dominions; and, in every point of

<sup>a</sup> The expression "district of Colombo" has a much more limited signification when used with relation to the supreme court than it has when used with relation to the provincial court of Colombo.

view, the want of a reciprocal power to sue a native in equity is a disadvantage to the European. What I have just said may seem inconsistent with the remarks I made upon the meaning of the expression, "Equitable Jurisdiction", in speaking of the provincial courts; but as the supreme court is empowered by the charter to exercise an equitable jurisdiction in point of form as nearly as may be according to the rules and proceedings of the High Court of Chancery in Great Britain, it has thus been enabled to escape from that absurd rule of evidence by which, according to the Dutch Roman law, the oath of the party is held decisive of the matter sworn to.

This is certainly a considerable advantage, but though, as far as I have been able to discover, it is the only one which results from the equitable jurisdiction conferred on the supreme court by the Charter, it does not seem from the wording of that instrument that it was contemplated by the framers of it.

The only jurisdiction of the supreme court remaining to be noticed is its matrimonial jurisdiction.

This is conferred by the 52d section of the Charter, together with the testamentary jurisdiction, and with the same limitations; but the 54th section provides, that it shall not extend to natives, and as it is only as regards natives that it had any local limits by the 52d section, it is not, or at least was not at the time the court was established, in any respect a local jurisdiction.<sup>1</sup>

The criminal jurisdiction of the supreme court is exercised on circuit, and at Colombo; and the trial by jury, as your Lordship is aware, was introduced at the suggestion of Sir Alexander Johnston by the Charter of 1810.<sup>2</sup> I attended nearly all the trials by jury which took place while I was in the island, and the impression on my mind is, that an institution in the nature of a jury is the best school in which the minds of the natives can be disciplined for the discharge of public duties. The juror performs his functions under the eye of an European judge, and of the European and Indian public, and in circumstances which almost exclude the possibility of bribery or intimidation.

In such a situation he has very little motive to do wrong, and he yet feels and learns to appreciate the consciousness of rectitude. The importance which he justly attaches to the office

<sup>1</sup> II, pp. 183 and 184.

<sup>2</sup> II, pp. 203 and 226.

renders it agreeable to him; and he not only pays great attention to the proceedings, but for the most part takes an active part in them.

No prisoner can be tried before the supreme court, but upon the prosecution of the advocate-fiscal, who therefore resembles rather the lord advocate of Scotland than the attorney-general of England; his place is supplied in case of necessity by the deputy advocate-fiscal, who is also master in equity. Both these officers are English barristers.

Those prisoners who are tried before the supreme court are entitled to the assistance of a proctor, paid by the government; a provision deserving of the highest commendation, and well calculated to make the government beloved and respected by its subjects.

The witnesses on both sides, in criminal cases before the supreme court, are also paid by government.<sup>a</sup> "By a circular letter (says Mr. Justice Marshall), from the Chief Secretary of government, dated 20th November 1823, all magistrates are moreover to ask every prisoner, at the time of committing him, if he has any witnesses; to indorse their names, if any, on the commitment; and to intimate to such prisoners that government will only allow batta (money for their subsistence during their attendance) to those witnesses whose names shall be given at that time. This limitation as to batta, which the great number of useless witnesses, almost always summoned by native prisoners, rendered very necessary,<sup>b</sup> by no means precludes their rights to summon as many as, on subsequent consideration, they may think advisable; accordingly, at a convenient time before the session, all the witnesses on both sides are subpoenaed by the Fiscal, and if any of them fail to attend without sufficient excuse, a warrant of attachment issues against them. All witnesses on the one side as well as on the other, except such as live within the four gravets of the Place where the session is held, and except those of the prisoner as above mentioned, whose names are not given at the time of his

<sup>a</sup> The Chief Justice in his evidence speaks of this payment as being made in the southern districts only. I have conversed with that gentleman on the subject since my return to England, and he states, that in practice the witnesses of prisoners in the northern district do not receive "batta", though he is not aware that this distinction has any foundation in law.

<sup>b</sup> Note by Mr. Justice Marshall—It is no uncommon thing for a prisoner to summon upwards of 100 witnesses, all perhaps ignorant of the matter.

commitment, are allowed batta by government from the day on which they leave their houses till the day of their discharge, and a reasonable time afterwards to allow of their return.

“This is paid by the fiscals of the several districts, abstracts being made of the witnesses and the sums paid to them respectively, which abstracts are signed by the witnesses, and serve as vouchers for the fiscals, for their repayment by government. The amount varies according to the rank of the witness, the lowest sum being six pice (or 2 and  $\frac{1}{4}$  pence), the highest one-rix-dollar (or 15. 6d.) per diem. Witnesses of the rank of mohandiram, or above it, are allowed travelling expenses for palanquin-bearers, boat-hire or bullock-carts, according to their degree or the mode of travelling which may be necessary.”<sup>1</sup>

This right of the prisoner to have the expenses of his witnesses paid appears to me to be, in some respects, too much restricted, and in other respects too little restricted.

Considering the interests of the witness, it seems to me that his claim to compensation has nothing to do with the propriety or impropriety of summoning him, and consequently, that the expenses of every witness who is summoned, and who attends *bona fide*, should be paid.

It follows that the restriction on the prisoner's right should not be in respect of the payment, but in respect of the summoning of his witnesses.

The prisoner should be compelled to lay before the magistrate reasonable grounds for summoning the witnesses he names. It surely does not follow, because a man has been accused of a crime, that he should be permitted to call away from their homes and their occupations a crowd of persons who know nothing about the matter in question, either at their own expense, or at that of the public. But on the other hand, a prisoner ought not to be deprived of the full benefit of a witness's testimony (and the full benefit of testimony cannot, in general, be had from a witness who knows that his expenses are not to be paid), because in the agitation which may come upon any man when he is taken before a magistrate on a criminal accusation, he omits to specify that witness.

I shall have to consider the question, as to the payment of the expenses of witnesses by the public, more fully and more

<sup>1</sup> C.O. 416, 17, F. 42, p. 99.

generally than is necessary in this place, when I come to lay my recommendations before your Lordship.

No appeal lies from the supreme court to the high court of appeal; but the judges of the supreme court are, *virtute officii*, judges of the high court of appeal.

The only appeal from the supreme court is to the King in Council; and it is confined to cases in which the value of the matter in dispute exceeds 500*l*.<sup>1</sup>

The following statement will enable your Lordship to compare the quantity of business done by the two judges of the supreme court (which is all that the existing regulations permit it to transact), with the quantity done by the other two judges resident at Colombo; namely, the provincial judge and the sitting magistrate.

Total number of Civil and Criminal cases tried  
in three years, 1826-27-28:

Provincial Court and Magistrates' Court at Colombo - - - - -	18,145
Supreme Court at Colombo and on the circuits - - - - -	529

I doubt whether such a waste of judicial power is exhibited in any other country in the world. Here are two judges sent from the English or Irish bar, invested with high rank, and remunerated by ample salaries, for the purpose of trying<sup>a</sup> 176 causes, civil and criminal, in the course of a year, as judges of the supreme court, and 38 appeals in the same period, as judges of the high court of appeal.

An extension of the jurisdiction of the supreme court has, I believe, been recommended by every judge that has ever sat in it; and if there were really any valid objection to such a measure, it would follow that the court ought to be abolished, or very greatly reduced. In the plan which I shall have the honour to recommend to your Lordship, I believe that ample occupation is provided for it.

<sup>a</sup> This is about the number usually tried at the York assizes by one judge in the course of a fortnight; but in instituting this comparison, it is proper to bear in mind, that the judge at York is occupied during the fortnight solely in the trial of causes, whereas the two judges of Colombo are occupied during the year, not only with the trials, but with the proceedings previous and subsequent to the trials.

<sup>1</sup> II, p. 189.

## KANDYAN PROVINCES

The local judicatures in the Kandyan Provinces do not differ in many essential particulars from those of the Maritime Provinces; they differ however in some, and they contain the rudiments of one institution, which, if improved and extended over the whole island, will, I think, produce the happiest effects.

The local judicatures consist of the judicial commissioner's court at Kandy, which is also a court of appeal; the sitting magistrate's court at Kandy; and the courts of the superior and inferior "agents of government" in the provinces.<sup>1</sup>

*Assessors*

The judicial commissioner and the agents of government must be assisted by at least two Kandyan assessors in all civil cases wherein land is the object in dispute, or wherein the value of the object in dispute exceeds 100 rix-dollars; and in all criminal cases, except those of "inferior description, such as common assaults, petty thefts, and breaches of the peace".

The presence of native assessors, who take an authoritative part in the proceedings, and thus constitute a legitimate organ for the tranquil and effectual expression of public opinion upon judicial matters, is the institution from the extension and improvement of which I venture to anticipate so much advantage.

The present assessors are selected from too small a class, and not from that class which is best adapted to the purpose.

In Kandy they are, by the 37th section of the Proclamation of 21st November 1818, "two or more chiefs, and in the provinces one or more dessaves of the province, and one or more mohottales or principal korals, so as there shall be at least two Kandyan assessors, or of two mohottales or korals where no dissave can attend."<sup>2</sup>

The persons here described are official persons of high rank, who cannot be regarded as fair representatives of the community; and they are so few in number, that the burthen of attendance would fall upon them with unreasonable severity, if they were called upon to assist, as I think for the interests of justice they ought to be, at the trial of all cases.

<sup>1</sup> II, pp. 239-42.<sup>2</sup> II, p. 237.



They are more in the nature of judges than jurors, or rather they unite the defects of both. They unite that official permanence, which renders a judge unfit to decide many sorts of questions without the check imposed by the presence of some recognized representatives of the public at large, together with that want of professional skill which makes a juror unfit to decide any question without the assistance and control of some more disciplined mind.

A great man in the Kandyan country, and I suppose in all semi-barbarous countries, is peculiarly unfit for any occupation which demands laborious attention or laborious preparation. It appears from Robert Knox's very curious and accurate account of the Kandyan country, that in his time (that is, in the latter part of the 17th century), it was the business of the inferior officers to instruct their superiors in the manner of performing their duties.

After describing the adigars, he adds, "To these there are many officers and sergeants belonging.

"If the adigar be ignorant in what belongs to his place and office, these men do instruct him what and how to do: the like is in all other places which the king bestows; if they know not what belongs to their places, there are inferior officers under them, that do teach and direct them how to act."<sup>1</sup>

Sir John Doyley also, in his Sketch of the Constitution of the Kandyan Kingdom, remarks, that "the chief officers being principally chosen from the noble families, it frequently happened that they were persons of inactivity and inability, and being inexperienced in the affairs of the province or department committed to their charge, were frequently guided, in judicial as well as other matters, by the provincial headman, or by those of their household."<sup>2</sup>

From several conversations I had with different chiefs at Kandy, it appeared to me that this ignorance was rather put forward by them as matter of boast, and that they considered the removal of it by study and reflection as a drudgery very unworthy of their condition.

I shall therefore recommend to your Lordship, that the

<sup>1</sup> Knox: *An Historical Relation of Ceylon*, Pt I, ch. V.

<sup>2</sup> J. Doyley: *Sketch of the Constitution of the Kandyan Kingdom*, p. 29.

assessors should be chosen from all the respectable classes indiscriminately.

When the majority of the assessors differs from the agent of government, the proceedings are transferred to the court of the judicial commissioner, instead of the cause being decided by the inferior court, subject to an appeal to the superior, at the option of the losing party. In like manner, when the majority of the assessors differs from the judicial commissioner, the proceedings are transferred to the "Collective Board" (the first commissioner, the judicial commissioner, and the revenue commissioner), who report upon the case to the Governor, who decides.

I think that in all cases the losing party should have every facility for appealing from the decision of the tribunals having original jurisdiction, and that a difference of opinion between the judge and the assessors may form a very reasonable motive in the mind of the party for such a proceeding; but I cannot see the expediency of forcing a cause, by the mere operation of law, into the superior court, when the losing party might possibly be convinced that the reasons on which the opinion against him is founded, are really those which ought to determine the question.

### *Stamps*

As in the courts of the maritime provinces, so in the Kandyan courts, the suitors cannot take a single step without paying for a stamp, and this burthen was avowedly imposed not for the legitimate purpose of raising a revenue, but for the monstrous purpose of rendering the courts of justice inaccessible.

The preamble of the Proclamation of the 25th March 1824, recites, that "Litigation and law-suits have increased in the Kandyan provinces to an extent productive of public inconvenience and vexation to individuals, by parties being called on to defend themselves against claims often unjust and frivolous, and many others being called away from their own business as witnesses; and that it is therefore necessary to devise a means of abating this litigious spirit."<sup>1</sup>

The increase of litigation and law-suits is here stated as the substantive evil for which a remedy is to be sought, and the

<sup>1</sup> II, p. 395.

circumstances, that parties are called on to defend themselves against claims often unjust and frivolous, is merely added by way of aggravation; accordingly, penalties are inflicted, not upon those who institute unjust and frivolous suits, but upon those who institute suits of any kind.

It is the more remarkable that the plan of punishing the guilty only, instead of the guilty and the innocent together, for the crime of abusing the authority of courts of justice, did not occur to those who framed the above-cited Proclamation, because that plan had occurred to those who framed the Proclamation of 1818, which is the foundation of the present system of Kandyan judicature. The 46th section of that Proclamation runs thus: "In civil cases, the losing party may be, by the second commissioner or agent of government, discretionarily ordered to pay a sum to government of one-twentieth part of the value of the object in dispute, not exceeding in any case rix-dollars 50."<sup>1</sup> And it certainly contains, though in a rude and imperfect condition, the true principle which alone can justify the imposition of any expense upon litigating parties.

The fine ought not to be fixed at the twentieth part of the value of the object in dispute, but to be adjusted according to the delinquency of the party and his ability to pay; neither is the sort of delinquency in question capable of being committed only by the losing party, though undoubtedly it is much more frequently committed by that party. But the party who gains the cause is sometimes deserving of punishment for the vexatious, oppressive or unfair means by which he endeavours to maintain his just rights; and among the natives of India in particular, it is by no means uncommon to find fraud and perjury, and all the case arts by which injury is inflicted through the forms of law, employed in supporting a just or in resisting an unjust demand.

### *Jurisdiction*

Within its local limits, the court of the judicial commissioner has jurisdiction over all classes of persons except military persons (which exception I shall presently notice more at length), and within those limits it has power to try all sorts

<sup>1</sup> II, p. 241.

of civil causes, and also all sorts of crimes; but sentences which award corporal punishment exceeding 100 lashes, imprisonment with or without chains, or labour exceeding four months, or fine exceeding 50 rix-dollars, cannot be carried into execution until they have been referred to the Governor, through the Board of Commissioners, and confirmed by him. And in cases of treason, murder or homicide, the court cannot pass sentence, but merely reports its opinion on the prisoner's guilt, and the punishment to be inflicted, through the Board, to the Governor for his decision.

The late judicial commissioner, in his answers to the questions addressed to him by Colonel Colebrooke, states that the jurisdiction of his court does not extend to "charges of murder when any British subject may be defendant, who might be tried by the laws in force for the trial of offences committed by British subjects in foreign parts, such British subjects being liable only to be tried by virtue of such law".

This opinion seems to be founded upon the Proclamation of 2d March 1815.<sup>1</sup>

The first section of the ninth article of that Proclamation points out a mode of proceeding on charges of murder (which being pronounced illegal by the law officers of the Crown in England, was afterwards repealed), with a proviso, that "as to such charges of murder wherein any British subject may be defendant, who might be tried for the same by the laws of the United Kingdom of Great Britain and Ireland, in force for the trial of offences committed by British subjects in foreign parts, no such British subjects shall be tried on any charge of murder alleged to have been perpetrated in the Kandyan provinces, otherwise than by virtue of such laws of the United Kingdom".

But the Proclamation of the 21st November 1818, which, as a provisional arrangement, received the approbation of the Prince Regent's Government, provides by section 51, for the administration of justice to foreigners, under which term natives of Great Britain and Ireland seem to be included, and directs that in cases of treason, murder and homicide, they "shall be subject to the same jurisdiction now (i.e. by that Proclamation) provided for Kandyans".<sup>2</sup>

I apprehend therefore that the court of the judicial com-

<sup>1</sup> II, p. 229.

<sup>2</sup> II. p. 242.

missioner has now the same jurisdiction in cases of murder over British subjects who are within the statute 33 Hen. 8, c. 23, as over any other persons.

In the Maritime provinces all persons, military as well as civil, are amenable to the civil<sup>a</sup> courts of criminal jurisdiction; but in the Kandyan provinces military persons can only be tried by court-martial for offences not of a military nature, though I think it cannot be questioned that there is now such a form of the King's civil judicature subsisting in those provinces as would have ousted the jurisdiction of courts-martial over offences not of a military nature, had not a special exemption being made in constituting the civil judicatures, of persons liable to military discipline.

By the second section of the ninth article of the Proclamation, dated 2d March 1815, which announced the convention entered into by Sir Robert Brownrigg and the Kandyan chiefs, it is provided, that commissioned or non-commissioned military officers, soldiers or followers of the army, usually held amenable to military discipline, shall in all civil and criminal cases, wherein they may be defendants, be liable to the laws, regulations and customs of war, reserving to the Governor and Commander-in-chief, in all cases falling under this ninth article, an unlimited right of review over every proceeding, civil or military, had by virtue thereof, and reserving also full power to make such particular provisions conformably to the general spirit of the said article, as may be found necessary to carry its principle into full effect.<sup>1</sup>

In a despatch, dated the 13th October 1815, Lord Bathurst wrote thus to Sir Robert Brownrigg on this subject: "In order to prevent any uncertainty, as to the liability of military persons in the Kandyan country to remain subject to martial law, I am to acquaint you, that although His Royal Highness the Prince Regent has generally approved the convention by which that territory has become annexed to His Majesty's dominions, His Royal Highness has declined adopting the pre-existing laws and courts of Kandy, as forms of the King's civil judicature, until more detailed information shall have

<sup>a</sup> The word civil is here used in contradistinction to military.

<sup>1</sup> II, p. 229.

been obtained as to the nature of the laws, and the changes which it may be expedient to introduce in their administration"; and in a Proclamation, dated 31st May 1816, which embodies the despatch just quoted, Sir Robert Brownrigg confirms, as follows, the provisions on this subject contained in the Proclamation of the 2d March 1815: "Fourthly; concerning the second section of the said ninth provisional article, that the same, being in substance conformable to the provisions of the Mutiny Act and Articles of War, as applicable to the present state and condition of the Kandyan country, will, until His Majesty shall otherwise provide, remain in force and extend to 'all persons who are commissioned or in the pay of His Majesty as officers, or who are listed or in pay as soldiers'."<sup>1</sup>

After the insurrection of 1818, Sir Robert Brownrigg made new and general provisions for the administration of justice in the Kandyan provinces, by a Proclamation, dated 21st November of that year.<sup>2</sup>

The 51st section of that Proclamation is as follows: "The people of the low country and foreigners coming into the Kandyan provinces, shall continue subject to the civil and criminal jurisdiction of the agents of government alone, with such extension as his Excellency may, by special additional instructions, vest in such agents, and under the limitation as to execution of sentences in criminal cases hereinbefore provided, as to Kandyans, in the 42nd clause, until reference to the Governor through the Board of Commissioners, excepting in cases of treason, murder and homicide, in which such persons shall be subject to the same jurisdiction now provided for Kandyans, and that the same line shall be pursued in cases wherein a Kandyan moorman shall be defendant."

The word "*continue*" implies, of course, that no persons were to be subject to the jurisdiction of the agents of government by force of this section, who were not so before; and the instructions issued to the British judicial functionaries on the same day and on the same subject, in pursuance of the powers reserved in this section, are headed, "Additional Instructions, in respect to jurisdiction over natives of the maritime provinces or other native foreigners or Europeans not in His Majesty's or the Honourable Company's military service."

<sup>1</sup> II, p. 405.

<sup>2</sup> II, p. 242.

The result is, that military persons are not held amenable to the civil courts for any offences whatever.

### *Appellate Jurisdiction*

The proceedings of the local judges in the Kandyan provinces are still more insufficiently controlled by appellate judicatures than those in the Maritime provinces.

I have already noticed the way in which causes are carried up from an inferior to a superior tribunal, without any decision taking place in the former; but there is also in civil cases a formal appeal.

From the courts of the agents of government to that of the judicial commissioner, in cases wherein land is the object in dispute, or personal property exceeding 150 rix-dollars in value; and

From the court of the judicial commissioner to the Governor, in cases of the same description.

So that all cases which may be carried up by appeal from the courts of the agents of government to the court of the judicial commissioner, may be further carried up from that court to the Governor.

The Governor is thus the judge of appeal in the last resort from all the local courts, and the principle of unity, considering the Kandyan provinces as distinct from the Maritime, is preserved; and so far the system is good. But there is no sufficient reason why the causes which arise in the provinces should be carried through two stages of appeal, and the Governor is in no respect the proper officer to exercise the appellate function.

He does not hold any court of appeal, but refers the papers sent up to him from the judicial commissioner's court to the deputy-secretary or the master in equity, who prepares them for his consideration, and then, without any discussion, and generally without any assignment of reasons, the Governor gives his directions for affirming, reversing or altering the decree of the court below.

Sir Edward Barnes, in a despatch addressed to Lord Bathurst, on the 4th January 1827, has stated, that "without some person to prepare these cases for submission to him, it would be impossible for him to find time to go over the volu-

minous proceedings";<sup>1</sup> so that the Governor is obliged to depend, for the grounds upon which he forms his opinion, upon an irresponsible person who peruses the papers in private, and without any communication with the parties or their agents. The privacy of this tribunal is the more objectionable, because the Governor has declared, that he possesses an equitable jurisdiction, and an equitable jurisdiction, where there are no positive rules of equity, means an unlimited discretionary power over the law.

This power is declared to be vested in the Governor by a letter from the Deputy Secretary to Government to the Board of Commissioners at Kandy, dated 10th July 1829, of which the following is an extract:

"In reference to the case of Nilegoodegedera Kalu Ettina *versus* Kapoogedere Menika, one of those now sent, I am directed by the Governor to request that you will acquaint the judicial commissioner that he is bound to decide in all cases strictly according to the *law*, the equity of the case resting, his Excellency conceives, solely with himself."

There is no appeal in criminal cases; but by the 42nd section of the Proclamation of 21st November 1818, it is provided, that "in criminal cases no sentence, either by the second commissioner or the agents of Government shall be carried into effect, if it awards corporal punishment exceeding 100 lashes, imprisonment with or without chains or labour exceeding four months, or fine exceeding 50 rix-dollars, unless after reference to the Governor through the Board of Commissioners, which will report on the case and sentence, and after his Excellency's confirmation of such sentence;" and by the 44th section, "in all cases of treason, murder or homicide, the trial shall be before the courts of the resident or of the second commissioner and his Kandyan assessors, whose opinion as to the guilt of the defendant, and the sentence to be passed on any one convicted, is to be reported through the Board of Commissioners, with their opinion also, to his Excellency the Governor, for his determination".<sup>2</sup>

#### *Public Prosecutor*

In the Kandyan provinces there is no public prosecutor; or rather the functions of the public prosecutor are united with

<sup>1</sup> C.O. 54, 97, No. 1.

<sup>2</sup> II, pp. 240-1.



those of the judicial commissioner, the chief criminal judge. The observations which, in conjunction with Colonel Colebrooke, I had the honour to make to your Lordship's predecessor in office upon the trial of Wilbawe Mudianse for high treason, in a despatch dated 23rd November 1830,<sup>1</sup> and the measure which your Lordship was pleased to adopt in consequence of that despatch, assure me that any further strictures upon this incongruous combination of duties are quite unnecessary.

#### *Power of enforcing Labour by Punishment*

I have now described to your Lordship, as far as I think it necessary for the purposes of this Report, all that can be properly called the judicial establishments both of the Maritime and Kandyan provinces. But the system of forced labour which as your Lordship is aware, obtains in Ceylon, makes it necessary that a power of punishing those who refuse to work should reside somewhere. The power of punishing of course supposes the power of investigating the facts which authorize the punishment; and the functionaries in whom these powers reside must be considered as in that respect judicial.

#### MARITIME PROVINCES

These functionaries are, in the maritime provinces, "every head of a department, or other person superintending the execution of any public service".

The powers they exercise are, I presume, an inheritance transmitted from the native government through the Portuguese and Dutch to the British. The first legislative notice I find of them is a government Advertisement of the 28th April 1802, of which the following is an extract "This is to give notice, that nothing contained in our Proclamation of the 13th February last, or any other law or order of government now existing, takes away, or is meant to take away, the right which every head of a department, or other person superintending the execution of any public service, has and necessarily must have to inflict reasonable and moderate correction immediately on the persons employed under him, when they disobey or neglect

<sup>1</sup> C.O. 54, 121.

his orders, such punishment, however, by no means exceeding 25 strokes with a rattan."<sup>1</sup>

The import of the general words by which this government Advertisement describes the persons subject to this power, has been narrowed by the construction adopted by the supreme court, in a case wherein the defendant justified under it an assault and battery of the plaintiff. The chief justice said, "The case appears in evidence to be, that the defendant, holding the office he describes (deputy commissary-general), did beat the plaintiff, by giving him seven or eight strokes with a horsewhip, the plaintiff being naked, and that he was in consequence bleeding.

"It appears further, by a letter of the defendant given in evidence, that he was persuaded of his right to inflict the punishment by force of the Advertisement in question.

"To look therefore to the true meaning of the Advertisement is the only duty remaining for the court, in deciding whether the plaintiff be entitled to any damages.

"It is the misfortune of this country that the compelled service of many of its inhabitants is required for carrying on the purposes of government; there is always also a proportion of the population whose misdeeds have subjected them to be kept at hard labour by sentence of courts or magistrates; to persons thus obliged to work, either from state necessity or their own offences, labour must of course be unpalatable; and not having the stimulus of wages or any other reward for the execution of their task, they would, unless impelled by fear of punishment, be disobedient or negligent; and, admitting the justice of thus exacting the labour, the justice of enforcing that labour must be apparent; and upon this ground the advertisement seems to rest with perfect propriety: it speaks of coolies and other workmen, and its republication in July 1816 by government, is stated to be in consequence of the insubordination of convicts.

"But a peon is a person receiving wages, holding a situation, dismissal from which is of itself a severe punishment, and to induce a man to retain which, no dread of punishment appears to be at all necessary.

"If the Advertisement be extended to a peon, where is it

<sup>1</sup> II, p. 305.

to stop? Is every head of a department invested with power to punish corporally all the persons of his department who may in his opinion be disobedient or negligent? Is the chief secretary to have this power over the deputy, or is the chief justice to exercise it over the registrar? Yet these are heads of departments superintending the execution of public services. I put these absurd and monstrous consequences of the construction contended for, in order to show how utterly impossible it is to believe that it could have been in the contemplation of government.

“I take this upon the broad principle, I do not narrow the case by saying that even this Advertisement does not justify punishing with a *horsewhip* when it prescribes a *rattan*; but I say that in this instance, it is no justification of any punishment whatever, nor in any case but those of compelled services, which being of course reluctantly given, and required without any chance of reward, can only be enforced by the terror of punishment.

“I believe the defendant to have acted in a persuasion that he was right; it is necessary to show him and others that he was wrong, and at the same time not to press too strongly upon a mistake in conduct: on the other hand, it being a pauper suit, he is not subjected to pay any costs to the plaintiff: to meet the justice of the case, and give a reasonable compensation to the plaintiff, as well for his suffering as his subsequent loss, the court awards 100 rix-dollars damages to be paid by the defendant. No costs.”

I do not know whether the provincial courts would consider themselves bound by the construction here put by the chief justice upon the government Advertisement; and it is to be observed, that in this case the Governor thought proper to authorize the defendant to charge the government in his accounts with the amount of the damages awarded against him and the costs of his defence, but the decision of the supreme court seems to rest the power in question upon its proper foundation.

Whether the general description of the persons who are to exercise these powers includes the native headmen who may be “superintending the execution of any public service”, is a point on which I cannot express myself decidedly.

The document which suggests this doubt, taking the body of it and the marginal abstract together, and considering the mode of its publication, in company with legislative instruments, affords, independently of its ambiguity, a curious specimen of confusion between a general legislative enactment and a judgment upon an individual offender. It runs thus:

“*Minute*

“By his Excellency the Governor

“It having been brought to the knowledge of government that Christian Peris Vidahn Arachy, of Pallepato, in the Salpity Corle, has presumed, under colour of his official authority, to inflict corporal punishment on one Anjegay James, an inhabitant of the same place; and the Vidahn Arachy having, on an inquiry into the case by the Honourable R. Boyd, Esq, alleged in his defence that he was empowered to inflict corporal punishment by virtue of the government Advertisements published at Trincomale, under date the 28th April 1802, his Excellency deems it his duty, whether such plea be an error or a pretence, to obviate the dangerous influence of such a precedent by directing, and it is hereby directed, that the said Christian Peris be forthwith dismissed from the employ of government.

“And it is further ordered, that this Minute be translated into Cingalese, and printed, and that a sufficient number of copies thereof be distributed through the office of the commissioner of revenue, for the information of the several cutcherries.

“By order of his Excellency the Governor.

(signed) “Jas. Sutherland,  
Dep. Sec. Jud. Dep.”.

“King’s House, Colombo,  
18th December 1816.”

And I think that, considering it as a law, no great ingenuity would be required to decide upon plausible reasons that any particular case was within or not within its operation.

#### KANDYAN PROVINCES

In the Kandyan provinces, by the 48th and 49th sections of the Proclamation of 21st November 1818, a power is given, or I should rather say confirmed to the adigars, dissaves, chiefs, mohottales, liennerales and korales, to punish disobedience of

orders with various degrees of fine, imprisonment and corporal punishment; "provided that the several persons on whom the above power is exercised shall be duly and lawfully subject to the orders of such adigar, dissave, chief, mohottale, lienne-rale or korale, and that no such power shall be exercised on persons holding office, or on persons of the low country, foreigners, or on moormen of the Kandyan provinces."

By the 33d section of the same Proclamation, "his Excellency empowers and directs that the Board of Commissioners in Kandy collectively, or in their several departments, and the agents of government in the provinces, shall punish all disobedience and neglect by suspension or dismissal from office, fine or imprisonment, as particular cases may require and deserve".<sup>1</sup>

Your Lordship will observe, that no power of inflicting corporal punishment is here conferred upon any British functionary, but the Board of Commissioners in Kandy nevertheless exercise such power, and, as I apprehend, exercise it legally.

The power of the ancient sovereigns of Kandy resides in the British Governor, limited only by the responsibility for its reasonable exercise, which he owes to His Majesty.

By the 8th section of the above-mentioned Proclamation, "the general executive and judicial authority in the Kandyan provinces is delegated by his Excellency to the Board of Commissioners"; and it is, I presume, under this general delegation of authority that the Board inflicts corporal punishment for disobedience of orders.

Although in treating of judicial establishments and procedure, I have been inevitably led to the mention of the system of forced labour, yet the recommendation I shall have to make to your Lordship on this subject does not belong to this Report, for it will not be any modification of those functions of the existing tribunals which I have just described, but the entire abolition of the system which has rendered those functions necessary.

#### RECOMMENDATIONS

I have now given your Lordship such an account of the judicial establishments and procedure actually existing in

<sup>1</sup> II, pp. 238 and 241.

Ceylon, as will, I think, enable you to judge how far they fulfil their legitimate objects, and how far the reforms which I am about to suggest are really called for. I shall now lay my suggestions before your Lordship in the form of a series of recommendations, and I shall subjoin to each recommendation, or, in some cases, to several taken together, the reasons which explain and justify them.

The recommendations themselves are expressed in general terms, the details being reserved for a charter, which, if your Lordship shall approve the principles of the recommendations, will repeal the charters now in force, and establish the supreme court upon a new plan, and an ordinance which will repeal the regulations of government, and other legislative instruments, under which the local courts now perform their functions, and create an uniform system of local judicatures throughout the island.

#### *Recommendation 1*

1. I recommend that, so far as regards the judicial establishment and the procedure according to which its functions are performed, complete uniformity should be introduced throughout the whole island.

*Reasons for Recommendation 1.* It would be superfluous to enter into a discussion of the arguments in favour of establishing an uniform system of judicature throughout a territory which is subject to one and the same government. But it is proper on this occasion to remark, that the argument which is sometimes successfully urged against such a measure, has no application to Ceylon.

The argument I allude to is founded upon the attachment which mankind in general, and the oriental races in particular, feel for systems which have been long established amongst them, and which are commonly connected with their religious opinions.

This argument, I say, has no application to the case of Ceylon; for the courts of justice in that island, and the forms of their procedure are, without exception, the creations of the British Government, and have not in the eyes of the natives anything of the sanctity of religion or of antiquity.

A fairer field than the island of Ceylon can never be presented to a legislator for the establishment of a system of judicature and procedure, of which the sole end is the attainment of cheap and expeditious justice.

*Recommendation 2*

2. I recommend that every court of original jurisdiction throughout the island shall have exclusive jurisdiction<sup>a</sup> over all causes, civil and criminal, and all questions of whatsoever kind, in which the intervention of judicial authority is necessary, which arise within the limits of its district, except only causes or questions in which the party against whom the proceeding is instituted is a court of justice, or a person acting in the matter complained of under the authority of a court of justice, and except such criminal causes as by the 19th recommendation are to be tried by a judge of the supreme court on circuit.

*Reasons for Recommendation 2.* The usual practice of dividing judicial business among judicial functionaries, according to its nature as civil or criminal, legal or equitable, &c. appears to me in all respects much less expedient than the division of it into integral portions according to districts.

*1st.* A greater number of functionaries is necessary in the former plan, for the portions into which judicial business must be divided, if the nature of the business be taken for the principle of the division, are never equal, consequently a local judge to whom one of the smaller portions is allotted, will not have enough to do, supposing that the larger portions are not too large for one judge. Thus in the actual circumstances of Ceylon, the provincial judges in general transact much less business than the sitting magistrate, so that if the latter are not overburthened, the former have not sufficient occupation.

*2d.* A greater number of suits must be instituted, a greater quantity of judicial machinery must be put in action, in order to attain the same end, and frequently one portion of the machinery must be employed only to impede the operation or to destroy the results of another portion.

<sup>a</sup> In the Ordinance by which this recommendation will, if approved by your Lordship, be carried into effect, it will be necessary to provide for the rare case of a judge of original jurisdiction being himself a party to a suit, which, under the general words of the recommendation, would be triable by himself.

3d. As it is not possible to mark out the boundaries of contiguous subjects of judicature, as precisely as the boundaries of contiguous districts, many more, and much more complicated questions of jurisdiction arise under the former plan, by which the time and money of the suitors are fruitlessly consumed.

This reason applies with the greatest possible force in a country like Ceylon, where the general ignorance of the natives prevents them from understanding technical distinctions, and where there are no practitioners, except in the capital, capable of directing one who is searching for a judicial remedy to which court he should apply, if the choice is made to depend upon such distinctions.

Though I propose to carry the principle of uniting the various judicial functions in one court to an extent which I believe is unexampled, yet the principle itself is no novelty in Ceylon; and I rejoice that I have it in my power to fortify my theoretical view of its merits by the opinion of Mr. Justice Marshall on its practical operation.

That learned judge, in speaking of the union of criminal and civil jurisdiction in the person of the sitting magistrate, expresses himself thus:

“Indeed, I am inclined to think that the union of the two jurisdictions in the same person, supposing him to possess diligence and a good understanding, is very beneficial to the natives, by referring them in all their little grievances of whatever description to the same arbitrator.”

“Another very material advantage derived from this combination of authority, arises out of the difficulty which so frequently presents itself of deciding whether the wrong complained of should be treated as a civil injury or a criminal offence; if the complainant mistakes his course, and applies to the wrong side of the court for redress, he is transferred to the other side, and his case may be heard at once, instead of his being driven to seek another tribunal.”<sup>1</sup>

At first sight, the principle of the division of labour seems opposed to the plan which I recommend, but that principle applies only to cases in which practical skill is the object to be attained. Whenever theoretical knowledge is required, an

<sup>1</sup> C.O. 416, 17, F. 42, p. 14.



acquaintance with all the branches of a subject is essential to the complete understanding of any one. It is universally admitted that an equity judge or barrister is made much more competent to the peculiar business of his court by an acquaintance with the common law.

The object of the first exception in this recommendation is to prevent the collision of co-ordinate judicial authorities.

Thus, if a mandate, in the nature of a writ of habeas corpus, issue from a court of original jurisdiction, and it appear upon the return that the prisoner is in custody under the authority of a co-ordinate court, the prisoner must be remanded without any examination into the legality of the commitment. The legality of the commitment can only be examined by means of a mandate from a superior court, under the 14th and 18th recommendations.

The reason for the second exception will be found under the 19th recommendation.

### *Recommendation 3*

3. I recommend that each court of original jurisdiction shall consist of one judge and three assessors.

That the assessors shall be chosen as the jurymen<sup>a</sup> now are in the maritime provinces.

That the same individuals shall sit as assessors for one day, and for one day only at a time, unless the judge, for special reasons to be assigned by him in open court, shall otherwise direct, or unless the assessors require time to consider of their verdict, in which case new assessors shall be impanelled.<sup>b</sup>

That when the parties have concluded their pleadings, evidence and arguments, the judge shall sum up the evidence, and state his opinion of the law to the assessors.

Who shall thereupon give such verdict as any two of them can agree upon.

<sup>a</sup> I do not mean to pledge myself not to suggest any alteration in the mode of choosing the jury, but I have chosen to express my recommendation respecting assessors by reference to the mode of choosing jurymen, because I thus make it evident, without embarrassing your Lordship with minute details, that the recommendation involves no invincible practical difficulty.

<sup>b</sup> It will sometimes happen, by the adjournment of cases which have been partly tried, that the trial will not take place before the same assessors. This is a defect; but I perceive no remedy which will not be productive of greater inconvenience.

Which verdict shall be immediately recorded by the registrar, but shall not prevent the judge from giving a contrary decision, if he thinks fit.

That excepting so far as regards the binding effect of their verdict, the assessors shall have all the privileges of a jury.

*Reasons for Recommendation 3.* A jury, considered as the organ of a judicial decision, is an institution which it would be very difficult to defend. But considered as a portion of the public placed in an official station, which secures to it the respect of the judge, armed with power to interrogate the judge and the witnesses, and thus to acquire a complete knowledge of the cause, compelled by penalties to be present in court, and compelled to attend to the proceedings by the necessity of pronouncing a public opinion upon them, it is invaluable.

It is invaluable, I think, everywhere; but in our Indian possessions, it is, when coupled with the effective appeal which I shall hereafter recommend, the only check and the only stimulus which can be applied to a judge placed in a situation remote from a European public, and necessarily almost insensible to the opinion of the native public, with whom he does not associate.

In England, as the verdict of the jury is binding, it has been found necessary in civil cases to neutralize the effect of it by withdrawing the law as much as possible from their consideration and by granting new trials as often as the court thinks the verdict wrong. It seems to me, however, that when a judge, checked by the presence of a jury, differs from a jury, the presumption is very much in favour of the opinion entertained by the judge, and, therefore, that his opinion ought to govern the decision, subject to correction by the appellate jurisdiction.

A new trial is certainly a very cumbrous, inconvenient and costly mode of correcting an erroneous decision upon the evidence which has actually been received. Such a proceeding seems to be only applicable to the case in which material evidence can be produced after the trial which, without any default of the parties, was not produced at the trial, and even in that case there is no expediency in recommencing the examination of the whole case *de novo*, and thus putting the parties to the risk, by the death of witnesses or the destruction

of documents, of losing all the benefit of the evidence which has already been adduced.

I observe that in the Third Report of the Commissioners appointed to inquire in the Practice and Proceedings of the Superior Courts of Common Law, those very learned persons have proposed to obviate this last inconvenience, by providing that the rule *nisi* for a new trial shall express on what particular ground the new trial is applied for, and that the party in whose favour the new trial is granted shall always be precluded upon such trial from entering into any other part of the case but that upon which the rule *nisi* was obtained, unless he should be authorized to do so by the special permission of the court, to be expressed in the rule absolute.

“This last regulation”, the Commissioners observe, “would tend materially, in many cases, to diminish the expense of a second trial, and to make its operation more just and equal between the parties. It would also”, they further observe, “materially diminish the number of motions for new trials, it being well known that such motions are often made upon grounds little connected with the real justice of the case, but which serve as pretexts for obtaining a second trial upon the general merits of the action.”<sup>a</sup>

But this improvement will leave untouched the other objections to the practice of correcting erroneous verdicts by granting new trials, all which will be obviated by placing the power of deciding in the judge, and leaving his decision to be corrected, as justice may require, by the appellate court.

I do not deny that in criminal cases, where the verdict of a jury, according to English law, is binding in substance as well as in name, much benefit has resulted to the administration of justice; but I am of opinion, that verdicts against the direction of the judge have, in general, been verdicts against law, and however desirable it may be a bad law should not be executed, it is still more desirable that a bad law should not exist. The amendment therefore of the law is the true remedy in such cases, not the organization of a tribunal to obstruct its execution.

I trust your Lordship will not for a moment suppose that I am obtruding my opinion upon the reforms which may be

<sup>a</sup> Third Rep., p. 40.

expedient in English procedure; my only object is to give satisfactory reasons why, in recommending for Ceylon an institution in the nature of a jury for the trial of civil causes, I do not propose to imitate indiscriminately the English form of that institution, and, in doing so, I am naturally anxious to avail myself of such high authority as that of the authors of the Report above quoted. That high authority is with me when I denounce the evil; it is not against me when I suggest the remedy; for it is obvious that there may be abundant reasons why those incidents of the trial by jury which I have proposed to alter or omit, could not be removed in this country without producing greater inconvenience, and consequently it cannot be inferred from the reverential moderation with which the Commissioners have touched the institutions of their native country, that they would have stopped at the same point, if they had been recommending measures for a people who have no attachment for the forms of judicial procedure existing among them.

#### *Recommendation 4*

4. I recommend that the pleadings shall consist of an oral altercation between the parties in open court, and that a minute thereof shall be made by the officer of the court under the direction of the judge.

#### *Recommendation 5*

5. I recommend that at the time of pleading each party shall state the names of the witnesses whom he intends to produce at the trial, and the matters which he expects them respectively to prove, and shall describe the documents which he intends to produce at the trial, and that a minute thereof shall be made by the office of the court, under the direction of the judge.

#### *Recommendation 6*

6. I recommend that each party shall be subject to cross-examination by his adversary as to the statements made by him in pleading, and as to those relating to evidence, and that each party, if he desires it, shall be assisted by an advocate or proctor, who may examine him in chief, and cross-examine his adversary as to their respective statements.

Recommendation 7

7. I recommend that no common subpoena or *subpoena duces tecum* shall issue to any witness at the suit of any party, unless the judge shall be satisfied by the *viva voce* examination of the party, that the person against whom the subpoena is moved for is a material witness in the cause, and that the documents to be mentioned in the *subpoena duces tecum* are material evidence in the cause.

Recommendation 8

8. I recommend that no motion which, according to the present practice, is grantable by the court upon affidavit, shall be granted, unless the court be satisfied by the *viva voce* examination of the person upon whose affidavit the motion would, according to the present practice, be made, that the grounds of the motion are true.

Recommendation 9

9. I recommend, that when any person, not a party to the suit, shall be examined *viva voce* under the 8th recommendation, he shall be examined upon oath, and that when any party to the suit shall be examined *viva voce* under the 6th, 7th or 8th recommendations, he shall not be examined upon oath, but shall be liable to punishment under the 11th recommendation.

Recommendation 10

10. I recommend, that all *viva voce* examinations shall take place in open court, except that if the judge shall be satisfied by the *viva voce* examination in open court of the proctor of a party with or without the *viva voce* examination of other witnesses in open court, that such party is unable to attend the court, and that irreparable consequences are likely to result from delay, he may permit such party to be examined by commission, and that if the judge shall be satisfied by the *viva voce* examination of a party with or without the *viva voce* examination of other witnesses in open court, that a witness is unable to attend the court, he may permit such witness to be examined by commission.

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*Recommendation 11*

11. I recommend, that at the termination of the suit, the judge, taking and recording the opinion of the assessors, shall punish by fine or imprisonment, or both, any party to the suit who in his, the judge's, opinion, whatever may be the opinion of the assessors, shall have been guilty of an attempt to pervert or obstruct the course of justice.

*Recommendation 12*

12. I recommend the total abolition of all stamps upon legal proceedings, and of all fees of court.

*Recommendation 13*

13. I recommend, that the expenses of the witnesses on both sides in all cases shall be paid by the public.

*Reasons for Recommendations 4, 5, 6, 7, 8, 9, 10, 11, 12 & 13.* The connection between these eight [*sic*] recommendations may not at first sight appear quite obvious; but I have found it convenient, in order to avoid repetitions, to state together the reasons which appear to me to justify them.

I shall begin by remarking, that the general ignorance and mendacity of the natives, and the want of any competent legal practitioners, except in the capital, render it necessary for the ends of justice, that in Ceylon a great deal of legal business, which in more highly civilized countries is usually transacted by the parties, their counsel and attorneys in private, should be transacted in open court, with the assistance and under the superintendence of the European judge.

The moral and intellectual condition of the natives is such, that the European magistrate who is to distribute justice among them, can only do so effectually by the exercise of something like a paternal authority; he must allow the parties themselves to come and relate their own story to him; he must be counsel for both parties, that is, he must be counsel for each so far as each appears to have truth and justice on his side; he must assist them in putting their statements into that form which will show whether there is really any question between them requiring for its decision the examination of witnesses or

documents, or a more deliberate consideration of the law applicable to their case, and which will also show at any future time precisely what it was which, upon that occasion, *transivit in rem judicatam*.

In England no judicial operation is performed upon the raw material of a suit until it has undergone a very elaborate process of dressing, after which it is presented to the consideration of the judge in the pleadings or in the speeches of counsel, stripped of irrelevant matter, and reduced to one or more distinct questions of law or fact, to which questions only arguments and evidence are to be applied.

Whatever may be thought of the merits of this system in England, where there is a large body of professional men whose skill and knowledge is scarcely inferior to that of the judges themselves, and where the evils arising from secrecy are much diminished by moral restraints, it is totally inapplicable to that state of society in which the Europeans in Ceylon are called upon to exercise the judicial function.

Such is the total disregard of veracity among the natives, that not only are the true statements of the opposite party denied in pleading, in the hope that his proofs may fail; not only are false statements made for the purpose of delay, without the intention of supporting them by evidence, but, according to the universal opinion of Europeans and the admission of many natives, such statements are habitually made with the deliberate purpose of imposing them upon the court for truth, by means of forged documents and perjured testimony.

A consultation, then, between a native suitor and his native legal adviser, has not in general for its object the presenting his case, such as it really is, in the most favourable point of view which the rules of law permit. It is too often a conspiracy to commit every species of crime which may conduce to the object the party has in view; and this, too, whether that object itself be just or iniquitous.

It may not be possible to prevent such conspiracies from taking place; but it is certainly possible to prevent in a great degree the evil effects of them, by bringing the whole suit, from the beginning to end, before the European judge and the public, by never suffering the authority of the court to be used for any purpose whatever, until the party who invokes it has been

personally examined in open court, and has thus satisfied the judge that the grounds of his application are true and sufficient.

Under the present system, the pleadings are in writing, and are prepared in secret by the parties and their respective advisers. No measures are taken to ascertain whether the parties believe themselves the allegations they make. No punishment is inflicted upon a party who makes an allegation knowing it to be false. The pleadings are as deficient, too, in precision and regularity as they are in veracity. It even appears that the system which I am recommending to your Lordship has sometimes been already adopted in practice from absolute necessity. Mr. Driberg, a proctor of the provincial court of Colombo, states, that "the proceedings in this court are so simple and void of formalities, that the poor natives get the pleadings drawn by private persons, sometimes by the clerks and volunteers in the office of the court, or by whomsoever they can get it done cheaper or gratis, which sometimes are so unintelligible, that the judge on the day of hearing, not being able to comprehend them, takes down the verbal statement of both parties, and then enters into evidence, to do which, he adds, requires much time and patience, as it is difficult to get from a native a direct answer to any question".<sup>1</sup>

I do not at all doubt the correctness of the latter part of this statement; but I think that the end to be attained by oral pleading is well worth the time and patience required, provided the parties are made aware that any attempt to embarrass or mislead the court will meet with certain punishment.

The parties endeavour to deceive the court now without scruple, because whether they are successful or not in the attempt, they are sure of impunity.

It is to be observed that Mr. Driberg is here speaking of the provincial court of Colombo, where such suitors as can afford it, may obtain the assistance of European proctors, an advantage from which the suitors in the other provincial courts are debarred.

Since integrity and knowledge, then, are to be found only in the judge, the pleading, if it is to be of any use at all, must take place in his presence. The parties must be examined by him, and cross-examined by each other. The judge must

<sup>1</sup> C.O. 416, 18, F. 61, p. 151.



assist the parties with his advice in putting their statements into regular form. It appears by the year-books, that when the pleadings in England were oral, the English judges used to do so; and on such applications as are made by motion, the granting or refusing which is in the discretion of the court, they are still in the habit of suggesting to the parties that course by which his object may be best attained consistently with the interests of justice.

The advantages of precision, and of adherence to forms in pleading, are very great; and the neglect of them has brought cheap and summary modes of proceeding into disrepute. But those modes of proceeding are by no means incompatible with adherence to forms, provided only the judge be learned and practised, and the forms palpably and directly pointed towards the real end in view.

By means of oral pleading, all that time and money will be saved to the suitors which they now waste in preparing to prove or disprove matters which there is no real ground for contesting, and which an examination of each party by an impartial judge, and by his adversary, would show that there is no real ground for contesting.

By means of the seventh recommendation, subornation of perjury and forgery of documentary evidence, crimes of which the frequency strikes every European with horror, will be rendered comparatively difficult. By that part of it which regards subpoenas, that monstrously abusive practice, now so common, of summoning a multitude of immaterial witnesses for the purpose of afterwards moving for delay on the ground of their absence, will be in a great degree, if not entirely, prevented. As regards the interest of the witnesses, too, the abusive exercise of that power which must be granted to every man of compelling other men to leave their own business, and repair with any documents in their possession to a court of justice, must, if this regulation be adopted be of very rare occurrence.

The advantage of *viva voce* examination and cross-examination, as a mode of ascertaining facts over the mode by affidavit, is, I believe, universally admitted; and I shall only remark, that in the East the difference between the two, in respect of their probative force and their tendency to prevent perjury,

is far greater than in Europe; because, from the defect of moral principle among the Indian races, the frequency of perjury depends almost entirely upon the chance of escaping detection.

In England, however, where actions arising in all parts of the country are brought in the courts at Westminster, all the facts of which the proof is necessary to justify the court in lending its authority to a suitor, except only those which are proved at the trial, are proved by affidavit, because the advantage of having them provided by *viva voce* evidence would be overbalanced by the inconvenience the parties would suffer if they were obliged to come to Westminster every time that it may be necessary in the course of a suit to make an application to the court. But whenever the whole suit is conducted at the same place where the trial is had, this argument in favour of affidavit evidence has no application.

It is indeed one of the great advantages resulting from the system of local judicatures that, except in the rare cases of sickness or unavoidable absence, every person on whose testimony the court is obliged to rely from the beginning to the end of the suit, may, without overbalancing inconvenience, be made to undergo personal examination by the judge and the opposing party.

To guard against falsehood, prevarication, and every sort of attempt to pervert the course of justice, I have proposed to invest the judge with the power of imposing fines at the termination of the cause; and, at the same time, I have recommended the abolition of all fees of court and stamps upon legal proceedings.

These are in reality fines which fall indiscriminately (always in the first instance, and sometimes ultimately) upon the honest and dishonest suitor, upon the oppressor and his victim. Even under the present system, where it works as one must suppose its inventors intended it to do, such fines are really paid, although not *eo nomine*, by the party who is found to be in the wrong. They consist of the fees and stamps upon his own proceedings, and those upon the proceedings of his adversary, which he is made to reimburse under the name of costs. The question, therefore, which the judge will have to decide, *viz.* who is to be fined, will be no other in substance than the question which he now has to decide, *viz.* who is to pay costs;

but the fines, instead of operating, as they now do, to deter those who are seeking to protect their rights by legal proceedings, will operate only to deter those who use such means for purposes of fraud and oppression.

It is very important to remark too, that when fines upon the misuse of legal proceedings are disguised under the name of costs, they no longer bear the appearance of a punishment; they are not apportioned, as they ought to be, to the wealth and the delinquency of the party fined, and they do not bring upon him any of that obloquy which ought to be attached to his conduct.

With regard to any portion of revenue which may be lost by the alteration I suggest, it can be that portion only which constitutes a tax upon oppressed innocence, and I apprehend that no legislator would ever have thought of proposing such a tax, if its iniquity had not been concealed from his view by being mixed up with the general mass of taxes upon law proceedings, from which it is, by the proposed plan, distinctly separable.

Moreover, inasmuch as the fines to be imposed by the court will be regulated in amount by the delinquency of the party on whom they fall and his pecuniary ability, the revenue derived from this source may very possibly not be diminished at all. Any future reduction of it can only take place by the diminution of that species of crime which consists in the abuse of legal proceedings, an effect which would amply compensate the government and the community for the pecuniary loss.

To call the abuse of legal proceedings a crime, seems almost like an innovation in language, yet in the primitive days of jurisprudence there are traces of punishment denounced against such conduct. Such was the fine *pro falso clamore* in our own ancient system. But in latter times it seems to have been thought impossible to separate the abuse of legal proceedings from the legitimate use of them, and the fine has been imposed not *pro falso clamore*, but simply *pro clamore*. The suitor has been visited with a pecuniary mulct for telling his story to the tribunal appointed to redress his grievances, and at the same time stamps and fees of court have been defended upon the alleged ground that they discourage vexatious litigation, whereas in truth they discourage litigation in general, when the

party desirous to litigate is poor, and where the party is rich, they encourage vexatious litigation by rendering a law-suit a more efficient instrument of oppression.

The object to be aimed at is, that the services of the tribunals should be afforded gratuitously to those who ask them *bona fide*, but that those who ask such services *mala fide* should not only not receive them gratuitously, but should be made to pay a heavy penalty for the abusive exercise of an essential privilege.

If the attainment of this object, or a reasonable approach to it, were impossible, it would not follow that the indiscriminate infliction of fees and stamps is defensible, but in reality there is no impossibility in deciding when the proceedings are terminated, whether any party has availed himself of the services of the court honestly or fraudulently, provided at every step those means be adopted which are admitted in other cases to furnish an effective criterion; consequently there is no good reason why any man should be punished for suing or defending himself honestly, or why any man who sues or defends himself dishonestly, should escape with impunity. As vexatious legal proceedings are one of the most common modes by which the natives of Ceylon seek to gratify their malignant passions, the practical application of these principles in that country is of the utmost importance, and this must be my apology to your Lordship for the length of the present discussion.

The reasons why I have preferred the imposition of fines at the termination of the cause to the administration of an oath, and the consequent penalties of perjury, in the case of the examination of a party to the suit, are as follows:

The parties to the suit being before the court from the beginning to the end of the proceedings, and having the opportunity of offering all the evidence and arguments which can throw light upon their own statements, the matter of defence for a party to the suit suspected of endeavouring to mislead the court is not, as the matter of defence for a witness accused of perjury often is, extraneous to the suit; the judge, therefore, at the termination of the proceedings, is in a condition safely to exercise his discretion in fining the party, as he in fact now exercises it in deciding the matter of costs, without the delay

and inconvenience of a separate trial upon the incidental question. But even if this were not so, I should be very unwilling to recommend the administration of an oath in Ceylon in any new case. The oaths administered to the votaries of the various religions prevailing in that island, are for the most part accompanied by minute and superstitious ceremonies, the effect of which is to keep out of view the great moral duty of veracity. The anger of the gods is supposed to light, not upon the man who falsely swears away the life or property or reputation of his neighbour, but upon the man who swears falsely after he has stepped over part of his own dress, or tasted the water of the sacred river. In most cases, too, the oath is administered not by an officer of the court but by a priest. When the witness is a Bhoodist, it is administered in the temple after the evidence has been given in court, and it is not to be doubted that by a little management in the ceremony, false testimony may be procured without loading the conscience of the witness with the guilt of perjury.

Keeping constantly in view the principle, that just litigation is to be encouraged, and unjust litigation discouraged, I have recommended that the expenses of witnesses in all cases shall be paid out of the fund created by the fines.

It is certainly the duty and the interest of government (in the East, it is most emphatically so) to provide for the complete administration of justice at the public expense; and I know of no reason why an honest suitor should be made to pay the expenses of those witnesses who are to prove his case, any more than to pay the salary of the judge who is to hear it, except it be true that the waste or misuse of the services of a judge by the suitors can be restrained, and that the waste or misuse of the services of witnesses cannot. It is unquestionably true, that under the actual circumstances of Ceylon, this waste and misuse of the services of witnesses is carried to an enormous extent. Your Lordship has already seen, upon the testimony of Mr. Justice Marshall, that in the criminal proceedings before the supreme court, the prisoners whose witnesses are paid by the public, frequently summon upwards of 100, who know nothing whatever of the matter in question; but this glaring abuse, inasmuch as no attempt is made to check it, furnishes no argument against the provision recom-

mended in the 13th recommendation, when coupled with the securities recommended in the 7th recommendation.

When it is considered that, under the present system, the provincial judges are not entrusted even with the power of rejecting irrelevant evidence in appealable cases, it may be thought that too much power and discretion is given in my plan to the judges of original jurisdiction; but if I have increased the power and discretion of the local judges, I have increased their responsibility in a still greater degree by the regulations regarding assessors, which I have had the honour to submit to your Lordship, and by the regulations regarding appellate jurisdiction, which I am about to recommend. I have substituted the restraint imposed by the sense of responsibility, which adapts itself to the circumstances of each particular case, for the restraint imposed by inflexible rules, by which the progress of every case towards a just decision is obstructed, and that of many cases stopped entirely, in order that the remainder may be protected from judicial malversation.

It may also be supposed that when the whole suit is thus brought in its rude state before the judge, so much time will be consumed in performing those operations in court which are now performed without any judicial superintendence, that a greater number of functionaries will become necessary to transact the increased business.

It must be remembered, however, that when the legal adviser of the party draws the pleadings and prepares the evidence to support them in secret consultation with his client, it is by no means his interest to present the case to the court in such a form as will facilitate a speedy adjudication upon the merits, but rather to present it in such a shape as will increase to the greatest possible amount the burthen of proof resting upon the opposite party, and thereby to waste the time of the judge in superfluous investigations. I believe, therefore though upon this point it is impossible to speak with perfect confidence, that the time which the court will have to bestow upon a suit will, on an average, be less under the proposed plan than it now is.

But however that be, the prevention of injustice, and of those crimes by which in Ceylon injustice is perpetrated through the forms of law, is an object of such extreme importance, that

I should earnestly recommend the plan under consideration to your Lordship, though some sacrifice of time and of public expense might be necessary for its accomplishment.

Even in this country the evils of which I am speaking are not unfelt. The Commissioners for inquiry into the Practice and Proceedings of the Superior Courts of Common Law have pointed out their existence, and have suggested remedies for them. But in Ceylon, where crimes of so deep a die as perjury and forgery are as common as the more venial arts of chicanery are in European countries, the intests of morality imperiously require the total reform of a system which affords scope and temptation to the commission of such enormities, and I sincerely believe that a court of justice well constituted, and taking the legal affairs of the people completely under its supervision and protection, would be a more efficient instrument for the eradication of their prevailing vices than any other which a European government can apply to that most essential purpose.

It must not be forgotten, too, that a native of low caste has no chance of obtaining redress against his superiors but through the medium of Europeans. The English judge, under the present system, may indeed take care that justice is done to him when his case has been proved in court; but who will advise him as to all the steps he must take before he reaches that point? Suppose a Rhodiah, a man accounted so vile that his countrymen will not endure that he should serve them as a slave; suppose such a degraded creature to have received something which even his broken spirit can feel as an injury, to say that the courts, as they are now constituted, are open to such a man, is no better than a most cruel mockery.

I do not indeed hope that any institution which human ingenuity can devise will remedy the inequalities which the pernicious system of caste has added to those existing by nature between man and man; but I cannot doubt that the spectacle of a European judge listening in public with attention and kindness to the complaints of the degraded races, and instructing them in their legal rights, and the means of enforcing them, would gradually eradicate the absurd and hateful prejudices by which the common feelings of human nature are prevented from springing up in the breasts of our Indian fellow-subjects.

I trust I shall be pardoned for making in this place a remark which has often pressed itself upon me. That the peculiar circumstances of Ceylon, both physical and moral, seem to point it out to the British Government as the fittest spot in our Eastern dominions in which to plant the germ of European civilization, whence we may not unreasonably hope that it will hereafter spread over the whole of those vast territories.

*Recommendation 14*

14. I recommend that an appellate jurisdiction of the most comprehensive kind over all the courts of original jurisdiction in all parts of the island shall be vested in a circuit court of appeal, which shall consist of one judge of the supreme court and three assessors, which assessors shall be chosen in the same way and shall perform the same functions as the assessors in the courts of original jurisdiction.

*Recommendation 15*

15. I recommend that the supreme court shall consist of three judges, a chief justice and two puisne judges, who shall however never sit together, except for the decision of such points of law as any of them may have thought it necessary to reserve in deciding the cases submitted to them on their circuits, under the 18th and 19th recommendations.

*Recommendation 16*

16. I recommend that, for the purpose of the appellate jurisdiction mentioned in the 14th recommendation, the whole island shall be divided into three circuits, which shall be called the Northern, Eastern and Southern Circuits, Colombo being the central point where the three circuits meet.

*Recommendation 17*

17. I recommend that a judge of the supreme court shall go on circuit twice every year, but so as that there shall be always one judge of that court remaining at Colombo, and shall remain at such places in his circuit and for so long a period at each place as may be necessary for the purposes of justice.



*Recommendation 18*

18. I recommend that such judge shall hear in the circuit court of appeal all applications for redress against all decisions, whether interlocutory or final, of the courts of original jurisdiction, and shall, according to what the justice of the case may require, try the cause over again wholly or in part, or re-hear the arguments of the parties upon points of law, and shall do generally whatever may be necessary for the attainment of substantial justice.

*Reasons for Recommendations 14, 15, 16, 17 and 18.* In the plan which is sketched in the above recommendations, I have endeavoured to unite the advantages and to obviate the disadvantages of the two different modes which have been devised for bringing justice within the reach of the suitors; I mean the mode by itinerant and the mode by local judicatures.

The expediency of local judicatures, always ready to receive the complaints of the people, cannot be disputed, provided, first, that the opinion of a public whom the judge respects, can be brought to bear upon him; for unless this can be done, his court is an open court only in name, and all the evils of secret judicature may be expected.

Secondly, that there be some means of preserving the unity of the law, which cannot fail to be impaired by the decisions of a number of independent judges, even though they should be animated solely by that public spirit which is kept alive by the substantial publicity of the tribunals.

The latter purpose might perhaps be attained at the cheapest rate by means of an appellate tribunal resident at Colombo, to which the records of cases tried by the courts of original jurisdiction might be transmitted by the post, but such a tribunal could not be effectual, even for this purpose, unless a much greater degree of method regulated the proceedings of the local courts than is now the case; and it would be almost powerless for the still more important purpose of impressing upon the local judge the consciousness of unremitting supervision, and upon the suitors in this court the assurance that their just complaints will be attended to and redressed.

This will, I hope, be accomplished as completely as the state of society in Ceylon will permit, by the recommendations

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respecting assessors, and by sending the appellate judge periodically to the places where the causes were originally tried, and thus giving the parties and their witnesses the same cheap and easy access to him as they had to the judge of original jurisdiction.

*Recommendation 19*

19. I recommend that the judges of the supreme court on their circuits shall continue to try in the Maritime provinces such crimes as they now try, and with a jury constituted as the jurors now are, and shall try the same crimes in the Kandyan provinces with a jury constituted in the same manner.

*Reasons for Recommendation 19.* I shall not trouble your Lordship with any other reasons for this recommendation than the good effects already produced in the Maritime provinces by the institution of juries, the attachment of the natives to it, and the propriety of distinguishing the trial of the graver crimes by some more solemn and impressive proceeding than is used in other cases.

*Recommendation 20*

20. I recommend that the powers and duties of the advocate-fiscal and deputy advocate-fiscal shall be exercised in the Kandyan provinces, so far as regards procedure, as they now are in the Maritime provinces.

*Recommendation 21*

21. I recommend that the judges of the supreme court shall have no original jurisdiction, except that specified in the 19th recommendation.

*Reasons for Recommendation 21.* When an itinerant court exercises an original jurisdiction, all the proceedings preliminary to the trial must either be carried on, as in England, at the capital where such court has its permanent station, or there must be resident in each district an officer exercising many most important functions both ministerial and judicial.

The former plan is, I believe, universally admitted to be impracticable in Ceylon.

The latter is sanctioned by the very high authority of the

chief justice, as will be seen in his draft of a charter, where he recommends that the magistrates who are, as he proposes, to have criminal jurisdiction over "all inferior offences, breaches of the peace and disorders against the police", and civil jurisdiction over causes, in which the amount in dispute does not exceed 25*l.*, shall superintend the proceedings preliminary to the trial of those causes in which a greater amount is in dispute, and which are to be tried by the supreme court on circuit.

<sup>a</sup>My objection to this arrangement is, that the common division of causes into those of large and those of small amount, on which it is founded, is both unreasonable and invidious. A magistrate who is competent to try the one sort is competent to try the other, the division is therefore unreasonable; and as causes of large amount are generally the causes of the rich, and causes of small amount are generally the causes of the poor, it is invidious to refer the latter to a tribunal which is stigmatized as unfit to try the former.

The chief justice's plan might indeed be extended to all cases without reference to the value in dispute; but if there are to be found local functionaries of talents and respectability which render them competent to adjudicate all the questions which arise in the process of preparing a trial or hearing. I think it is clearly expedient that they should also have the power of deciding the cause in the first instance, and that the functions of the metropolitan judge should be confined to those of an appellate judicature, it being always understood that I speak of an appellate judicature, from appealing to which there is nothing to deter the suitor but the fear of being fined if his appeal turns out to be vexatious.

I think this is clearly expedient, because it saves time whenever the parties are satisfied that the cause has been fairly tried by the local judge, and because in all cases it obviates the irreparable evil which may be occasioned by the death of witnesses, or the loss or destruction of written proofs between the period at which the cause is ripe for trial, and the arrival of the metropolitan judge in the district where it arose.

<sup>a</sup> This objection does not apply to the decision of criminal causes according to the gravity or levity of the accusation; the correct decision of the former being really more important to the public welfare than that of the latter. On this account, and in consideration of the predilection which exists, I have preserved it by Recommendation 19.

My reason for recommending that the original civil jurisdiction now exercised by the supreme court in the district of Colombo shall be abolished, is that I apprehend that the appellate jurisdiction of the whole island, and the general superintendence which, by recommendations 22 and 23, I propose that this court should exercise, in addition to that exercised by way of appeal upon the motion of a party, will be amply sufficient to occupy the time of all its judges.

*Recommendation 22*

22. I recommend that the judges of the supreme court, whether at Colombo or on circuit, shall receive applications in writing from the judges of the original jurisdiction for advice upon all matters of law and practice, and shall return answers in writing thereto.

*Recommendation 23*

23. I recommend that each judge of the supreme court, whether at Colombo or on circuit, shall hear motions for mandates in the nature of writs of habeas corpus, mandamus and prohibition, and shall do thereupon what justice may require.

*Recommendation 24*

24. I recommend that no judge or court shall hear motions for injunctions to prevent a party from seeking or pursuing his remedy in any other court.

*Reasons for Recommendation 24.* The reason of this negative recommendation is, that, according to my plan, every matter which would be sufficient to authorize the judge to grant an injunction to prevent a party from suing, for example, in a court of original jurisdiction, will be sufficient, when brought before such court of original jurisdiction, to authorize the court to give a judgment having the same effect as an injunction not to sue. The principle on which the recommendation rests, is, that every court of original jurisdiction should have, by law, the power of doing justice in every case, and consequently that, so long as the proceedings of such a court are free from error or

malversation, there should be no power in any other court to thwart or control them, either directly by interference with the court, or indirectly by interference with the suitor.

*Recommendation 25*

25. I recommend that the judges of the supreme court shall look over the records of the courts of original jurisdiction, and in any case they shall observe that the law has been laid down differently, or that the practice has varied in the different courts of original jurisdiction, shall take a note thereof, and shall consult together thereupon, and shall draw up a draft of such a declaratory law as the case may seem to them to require, and submit the same to the Governor, who shall thereupon pass, with the usual legislative forms, such law as the case may seem to him and to those who may partake with him in the legislative function, to require, without prejudice however to the right of the Governor, and such persons so partaking with him in the legislative function, to legislate upon these, as upon all other subjects, without such recommendation.

The expense of the actual judicial establishments, described in the first part of this Report, is 36,245*l.*;<sup>a</sup> and I cannot undertake to say that justice can be effectually administered to 800,000 people at a much cheaper rate; but I can pledge myself that the sum required for that purpose, if my views should meet your Lordship's approbation, will not exceed the amount of the present expenditure.

The mode of educating the gentlemen who are to fill the judicial situations is a subject which cannot be separated from that of educating the civil servants in general, and which therefore cannot conveniently have a place here.

<sup>a</sup> Annual Expense of the present Judicial Establishment of Ceylon.

	£	s.	d.
Supreme Court - - -	13,030	18	-
Provincial Courts - - -	8,987	11	6
Magistrates Courts - - -	6,008	15	6
Judicial Commissioner, Kandy - - -	2,443	14	-
Magistrate, Kandy - - -	345	-	-
Judicial Agent, Kurunegalle - - -	272	14	-
Half of the fixed Establishment of agents of government	2,919	10	-
Contingencies fixed - - -	538	7	2
Contingencies unfixed - - -	826	6	6
Circuits of the Supreme Court - - -	872	4	3
Total per Annum -	£36,245	-	11

I have written the greater part of a Report upon the Laws of Ceylon, as distinguished from the rules of procedure; but that particular portion of them which regulates the labour extorted by force from the natives, appears to me of so much greater immediate importance than any other, that I propose to lay my opinions upon it before your Lordship as soon as possible.

I have touched upon the subject in this Report (it obtrudes itself at every step upon an inquirer into the condition of Ceylon), but its connection with judicial establishments and procedure is not of a nature to have justified me in entering into those details which, from their own importance, are deserving of your Lordships most attentive consideration.

London, 31st January 1832.

C. H. CAMERON

*To the Right Hon. Viscount Goderich, &c., &c., &c.*

## VI

*Report of Lieutenant-Colonel Colebrooke<sup>1</sup>  
upon the Compulsory Services  
to which the Natives of Ceylon are Subject*



*The Right Hon'ble Viscount Goderich, One of His Majesty's Principal  
Secretaries of State, &c., &c., &c.*

London, 16th March 1832

MY LORD,

In my General Report dated the 24th December 1831, I alluded to the case of certain Native Inhabitants of Ceylon who in the month of April 1829 had made open resistance to the authorities when ordered to proceed to Kandy to perform public labour and which had led to the punishment of the offenders.<sup>2</sup>

From the importance attaching to this case and from the illustration it affords of the practical effects of the system of forced labor to which the Natives of Ceylon are subject it becomes my duty to bring the correspondence and proceedings specially under the notice of your Lordship and to enter generally into some details which are necessary to shew the disposition of the people and the hardships to which they are exposed.

When I arrived in Ceylon in the month of April 1829 my attention was immediately drawn to the system of forced services required of the Chalias or Cinnamon Peelers who were then assembled in Colombo to be sent into the Jungles to cut Cinnamon. In the course of this Inquiry it was stated to me that the Inhabitants of Walapane, a Kandyan Province, had

<sup>1</sup> Dispatches from the Secretary of State, 1832, C.G.A. 4/17, p. 153. C.O. 54, 145. See also Ceylon Literary Register, III (New Series), pp. 207-15, 269-76, 451-61.

<sup>2</sup> See p. 55 n. above.

recently resisted the orders of Government to work, and that Troops had been sent into the Province. Also that the refractory people had been tried at Kandy and had been flogged and imprisoned.

The Complaints of the Chalias I investigated at the time and on proceeding to Kandy in September 1829 I made enquiries into the other transactions.

From the evidence of Mr. Downing, the Judicial Commissioner for the Kandyan Provinces, it appeared that about a hundred Labourers were required in March or April 1829 for public work in Kandy to be furnished from the District of Walapane and to insure having this number always at work it was arranged by the Revenue Commissioner that the Landholders of the Province were to be formed into two divisions or reliefs. The people refused to obey this Order and some who came up to Kandy refused to work. Six of the ringleaders were made prisoners and tried before the Board of Commissioners by order of the Governor. They were sentenced and one of them was ordered out for immediate corporal punishment. There was a disposition evinced on the part of the body of labourers to effect a rescue but this was prevented. A part of the main guard was brought up by the Commanding Officer and some Troops were afterwards ordered to the Province by the Governor to enforce the orders for attendance of the people and to repress any attempt at resistance.

The reason assigned by the people for refusing to come up was that the work was out of their province and contrary to the ancient usages of their country. They also objected to the duty from being required to attend in two divisions relieved every fifteen days so that each division was several days going and coming during which time they received no subsistence; on working days they received only a seer<sup>a</sup> of rice per day.

From the Minutes of the Board's proceedings<sup>b</sup> it appears that on the trial of the man who refused to work they found him guilty of "disobedience of the orders of Government" and sentenced him to receive thirty lashes on his back and to be imprisoned in the Gaol of Kandy and put to hard labor for two months.

<sup>a</sup> A seer is equal to 2/3ds of an English Quart measure.

<sup>b</sup> Board's Proceedings, 27th April 1829. [C.G.A. 21/130.]



When the prisoner had received sixteen lashes the people came forward in a body and consented to work. The prisoner was in consequence taken down and sent to Gaol to undergo his punishment of labor and the people were ordered to commence work the next morning.

In the following week four Headmen were tried for disobedience of orders in refusing to work and inciting the people to resistance in their own and in another province.<sup>a</sup>

They were also found guilty by the Board of disobedience of orders but acquitted of having taken any prominent part and they were sentenced to imprisonment and hard labor for one month.

The Board of Commissioners recorded that after a conference with the Governor and having received His Excellency's direction thereto it was announced to the Headmen and people of Walapane in Kandy that the whole of the province would be exempted from the Grain Tax and that they (the Landholders) would be divided into four "Mooras" (reliefs) and the arrangement was announced to the people through the Dissawe in terms to prevent any idea being entertained by them that this concession was made at their demand.

In the month of August following it was represented by the Government Agent in Walapane<sup>b</sup> that some of the people had again refused to repair to Kandy for this work and in his opinion the service appeared to have fallen heavily upon them.

In January 1830 according to the usual practice application<sup>c</sup> was made to the Governor for leave of absence for the people to finish the cultivation of their lands and it was then directed that they should be employed on the roads within their own district on which they were accordingly worked.

From the records it further appears that these labourers had been required to level ground round a mansion or "pavilion" which was erecting [sic] in Kandy for the residence of the Governor, that they were drawn from a province situated about 25 miles from Kandy—that under the regulations by which the

<sup>a</sup> Board's Proceedings, 4th & 5th May 1829. [C.G.A. 21/130.]

<sup>b</sup> Letter dated 4th August 1829. [Board's Proceedings, 11 August. C.G.A. 21/130.]

<sup>c</sup> Letter dated 2d January 1830. [Board's Proceedings, 26 January. C.G.A. 21/131.]

Government claims the labor of the Kandyan Landholders the owners of two hundred *pangwas* or shares of land were relieved from the Grain Tax and employed at Kandy in gangs of 100 men who received a seer of rice on working days valued at about one halfpenny in the province or three halfpence in Kandy, that they were thus worked for several months and that the amount of the Grain Tax thus remitted amounted to £166. 5. 6.

From other enquiries it appeared that at the same period voluntary labourers could readily have been obtained at Kandy. The Superintendent of the Botanical Garden at Kandy stated in evidence<sup>a</sup> that he was allowed to employ 56 labourers whom he hired voluntarily at the rate of sixpence a day—that he experienced no difficulty in hiring them at this rate and that he never had met with any difficulty excepting once in the season of cultivation of rice (March and April) that he could readily have procured 200 labourers at that rate and that there were several instances of his labourers being called on for Government work who had found substitutes for the sake of retaining the pay of sixpence per day.

Serjeant James Davidson a Settler in Kandy also states in evidence<sup>b</sup> that he employed 30 native labourers that they were owners of land and willing to work from 9 to 11 hours a day for sixpence a day—for higher wages they were not unwilling to work at all times and to leave their own occupations—that the people of all castes were disposed to work and although preferring agricultural labour as more honourable, they engaged in other work even against their prejudices when he set them the example and generally that he had met with no prejudice which they were not induced to abandon. In 1829 application was made to me for work by some discharged Caffres of the Ceylon Regiment then out of employment and these men declared that they could not afford to labor for sixpence a day as the Kandyans were able to do from possessing lands for the subsistence of their families.

The public labour exacted from the natives of Ceylon has been very generally complained of by them and numerous petitions were addressed to me on my arrival and subsequently to myself and my colleague.

<sup>a</sup> Evidence of Mr. McKae, 25th September 1829.

<sup>b</sup> Evidence of James Davidson, 7th August 1830.

The pressure of this labour on the Kandyans who were employed on the roads induced the Revenue Commissioner in 1829 when effecting a settlement of the land rents in certain provinces to bring the subject to the notice of the Governor through the Board at Kandy.<sup>a</sup>

In 1821 when Sir Edward Barnes was Lieutenant Governor he made the following Report to Earl Bathurst:

“A carriage road is now open between this place, (Kandy) and Colombo by Kornegalle altho’ in a stupendous undertaking of this kind it cannot be expected that it should be completed in all its points but it will be every day becoming more perfect.

“Although this is not the direct line between Colombo and Kandy I was induced to pay more attention to it on account of the aid which might be derived from the great population of the Seven Korles and also of the resources which the fertility of that province afforded to the supply of Kandy.”<sup>b</sup>

For the improvement of this line of road a tunnel was cut with great labour through a hill near Kandy and an iron bridge was procured from England to be thrown over the Mahavilleganga River.

Another road to Kandy was projected by Sir Edward Barnes to be carried through the province of “Four Korles” which adhered to the British Government through the Kandyan Rebellion.

As the people of this province had been employed for several years without payment in making this road, in opening the passes over the hills and in cutting and dragging timber for the bridges, the following statements were made in 1829 by Mr. Turnour the Revenue Commissioner:

“The value of the produce of the lands of the people employed on the Roads (in the Four Korles) amounts to £5300. The road party are exempt from work for four months in the year. For the eight months they are employed, if they were paid at the rate of voluntary labor which may be reckoned at sixpence per day the cost would be £2400, nearly half the value of the produce of their lands. From the remainder they have to subsist themselves during the four months that they are

<sup>a</sup> See Proceedings of the Board, 20th October 1829. [C.G.A. 21/130.]

<sup>b</sup> Dispatch No. 87, 19 July 1821. [C.G.A. 5/10.]

exempted from the roads and during which period they are required to occupy themselves in cultivating their lands to supply themselves with the means of recommencing the road service.

“This oppressive system the Revenue Commissioner is satisfied would not have been enforced for a period of ten years if Government had been aware to the fullest extent of its rigorous severity.

“The Revenue Commissioner has to state that in almost every province the inhabitants have represented to him the hardship of being obliged to erect and keep in repair rest-houses, tappal stations and buildings attached to Agents’ residences without receiving any remuneration. The Agents continue to exact these services because they found that the inhabitants had been required to perform them by their predecessors.”

Many of the road labourers are stated to have been old men and boys not above 7 years old and the number ordinarily employed in this province alone was 400 labourers but the number had been increased in 1827 to 800 besides a division of the Corps of Pioneers.

In consequence of these discussions the number was reduced in 1829 to 400 labourers daily and in 1830 to 200 daily for the road through the Four Korles and the Governor having stated his views in opening the roads recorded the following observations:

“The Government had to look to the proportion of working people to be found in a population of 33,000 (after deducting a reasonable number for the other services) to open the two roads already sanctioned and a general call was made upon the district during the periods of their services not being required for agricultural purposes and His Excellency was sanguine enough to expect the work would be accomplished in a year. All experience however has proved how very fallacious all calculations are as to native labor. Suffice it to say, that on His Excellency’s return to the Island in the beginning of 1824 he was much surprised and disappointed to find that the road through the Four Korles was not even opened for carriages though the Road to Kandy by Kornegalle (a distance of eighty three miles) was practicable for carriages the year after it was commenced. But little aid from the Pioneer Corps had certainly been given to the Four Korles as it was considered an

object of great importance to open the communication by the Seven Korles with both Kandy and Colombo. As the people however of the Four Korles had been working for some time and there was still a very great deal to be accomplished and consequently but little prospect of a speedy termination of their labors His Excellency limited the number of the people to be called out to four hundred and threw all the disposable force of Pioneers into that district.

With respect to that number being increased in 1827 to 800 it was found that no gravel would stand the washes in the hills, and that great labor was required after each of the two rainy seasons to repair the roads running over the hills, and that nothing could prevent a great and constant call upon the people for this purpose but stoning *alias* macadamizing the hill roads.

The upper division of 400 men has been dismissed (1829) and the work of the lower division has been retarded by the extraordinary flood in June last year which carried away the Warakapoly Bridge besides several other smaller bridges.

At the time the number of labourers was increased from four to eight hundred the people had a remission of the Grain Tax<sup>a</sup> in the principal harvest.

Taking into consideration the period allowed the people for their cultivation and the number of absentees at other times the average number throughout the year has been as nearly as possible 400 men daily and a considerable proportion of them old men and boys.”<sup>b</sup>

As to the effects of this mode of obtaining labor for public works the Government Agent in the Four Korles has stated in his evidence—“that the road service is felt by the people as oppressive that it interferes with their occupations, retards every little project of improvement and limits their industry to cultivating only what is requisite to satisfy their actual wants, that it deters people from settling in the province and that to many of the Headmen the road service is a source of considerable emolument in conniving at the absence of those who can pay for the indulgence and which from the difficulty of getting evidence to prove it, the Agent finds it out of his power to check.”<sup>c</sup>

<sup>a</sup> Note. There are two harvests in the year.

<sup>b</sup> Letter of the Depy. Secretary to Government, 28 Dec. 1829.

<sup>c</sup> Evidence of Lieut. Taylor, Government Agent for the Four Korles. [C.O. 416, 2.]

In a conference which I held with several of the principal chiefs at Kandy in 1830 the following representations were made by them:

“That the late King of Kandy employed the Temple people in making the Lake in Kandy, which he did on the plea that the construction of tanks was a work of piety.”

“That the Temple people in common with others labor on the roads in erecting Bungalows and in any other work required by Government. That the Kandyan people are not paid for their work upon the roads nor do their lands benefit from the roads except when passing directly through them—that besides the roads are never finished and the people would rather be at the labor of erecting a shed over the road from Colombo to Kandy than be subject to the constant recurrence of the repairs necessary after the rains. The cutting and carrying of timber for the bridges is also a severe labor falling on the Kandyan people. That the rents they pay in a year are as large as the contributions to the late Government in ten years besides the services they perform which are also heavier than those formerly exacted.

\* \* \*

“Under the Kandyan Government when the people were employed on public works, they were allowed to return to their homes some time before the Cingalese New Year which falls in April and is a festival which they usually celebrate with their families but this indulgence is not allowed to them under the British Government and they are worked through the whole month of April. There are two intervals allowed them in the year for the cultivation of their grounds, and it sometimes happens that they are not released from Government work till the season of sowing is passed. The leave is not granted at any fixed periods and their lands have sometimes been left uncultivated or partially so.

\* \* \*

“The people are called on to serve in *Panguas*,<sup>a</sup> and if a man has a separate *pangua* he must serve for it, if called on throughout

<sup>a</sup> Note. The Rice lands are divided into shares or *Panguas*.

the year. Such persons if they can get time cultivate *Chenas* (commons) and grow *Coracan* &c. (dry grains) for their subsistence, but if they cannot get time they employ themselves as they can in day labor in the lands or houses of the Chiefs, Headmen, and others. Their wives do the same, employing themselves in pounding paddy, and in some cases the labor of the wife subsists the husband.

\* \* \*

“It is their practice when relieved from work daily to go to the neighbouring towns to earn their meals.

\* \* \*

“If they do not attend the Government work regularly at the stated hours they are flogged by the Korale (a native overseer) under whose superintendance they work. They are kept out thus for different periods, sometimes for several months at a distance of 20 miles from their homes and are obliged to reside in houses in the neighborhood of their work, or to make sheds for themselves.”

\* \* \*

“The people in general undergo many injuries. The tenants of Temple lands, Dessavonies, and Ratta Wassame are all subject to road service, and if the people should, owing to some accident fail to attend to their services the headmen and the people are fined, and if a headman should thus be fined he returns to his village and in order to reimburse himself the amount of the fine, he takes a bullock or some other part of the property of the people under him on the plea that the Headman had suffered, owing to the neglect of the people.”

The people thus pressed for the road service and prevented from cultivating their lands cannot therefore augment their resources or relieve themselves from their poverty.

\* \* \*

“They have become poor and in debt to others—a fact that may be proved by reference to the Chiefs and people in all parts of the country.”

“The people being subject to pay tax ought to be paid for the labor they perform on the roads, and they should have time to cultivate their lands.”

\* \* \*

“Inquiry should be made from the people themselves as we (the Chiefs) are exempted and have no direct interest in the question.”

\* \* \*

“It is true that many countries are under the dominion of the British Government but the King may still be desirous of knowing the means of securing the attachment of his Kandyan subjects. The people are well aware since the arrival of the Commissioners of Inquiry that the King concerns himself about their interests.”<sup>a</sup>

Of the numerous representations addressed to us by the people who were employed on public works, the following may be noticed:<sup>b</sup>

No. 397 “Five persons complain that since the establishment of the British Government they are obliged to pay a tax in respect of their lands and to perform some of the former services in addition to dragging and conveying timber, making roads &c.”

No. 417 “198 persons state that for the last ten years they have been obliged to perform public work—that they pay to Government one tenth of the produce of their lands—that they are continually employed gratuitously at road making—that some of them are pressed for a week—that on such days they begin to work early in the morning and discontinue from 10 to 12 in the forenoon, during which intermission they serve others for their food, not being able to buy it for money. They pray that the Commissioners will obtain for them a daily pay from Government when employed on such services.”

On referring to the Agents of Government in the Districts

<sup>a</sup> See Minutes of Conferences with Kandyan Chiefs and Priests at Kandy—20th to 26th Augt. 1830.

<sup>b</sup> See Petitions No. 374, 376, 431, 446, 462, 465, 693. [C.O. 416, 31.]



the abuses to which the system is liable have been generally admitted, but the opinions of the agents have varied.

From the Province of Matale it is stated that "the Kandyan system has been virtually overturned by the Proclamation of 21st November, 1818, which imposed a fixed tax as an equivalent to Government for most services and imposts, yet left by the 30th clause a power by which the services of the people have been employed by Government, in a much greater degree than by native sovereigns with few exceptions, and then the direct taxes were much less. In this Province the Ratta<sup>a</sup> people have been often employed in services they would not have been called on to perform under the Kandyan Kings, in building and repairing rest houses, court house, offices, granaries, tappal (post) stations, cutting and dragging timber, driving and watching elephants. These and minor services have been gratuitous as well as road and bridge service, and often without regard to former customs or classes."

"It is now ordered that no gratuitous services shall be required unless road and bridge services."

"The authority of the Headmen is liable to abuse in the collection of tithes—in calling out the people for Rajakaria (Government labor) and in supplying provisions according to the 26th Section of the Proclamation of 21st November, 1818.<sup>1</sup>

"If a few men are required for Government work, the Headmen warn many, excluding their own friends. Those who are rich or cannot attend, give presents or bribes, and thus the labor falls heavy on a few. Supplying provisions gives opportunity for severe exactions, the people are seldom paid and ten times the quantity required such as oil, salt, rice, &c., is collected and no part returned to those from whom it is raised.

"Under the present system there is no way of checking such practices, for with the terrors of Rajakaria (Government work) and summary punishment, no one would complain publicly and successfully. It is well known however that Headmen do exempt people from Government service and employ them in their own, but the people do not venture to complain.

<sup>a</sup> People tributary to the Government who are of high caste.

<sup>1</sup> II, p. 237.

“The provincial Headmen *in confidence* have not screened these abuses, and would willingly adopt a system that would remove them.”<sup>a</sup>

In other parts of the Country the people have also represented their grievances. In the petitions of the *Chalias* or Cinnamon Peelers who are paid according to certain established rates for their labor, they represent that they are liable to be sent into the forests away from their homes and occupations for long periods, that they have been employed not only in collecting Cinnamon but in felling and dragging timber in the forests. That many who were employed in the forests have been taken ill with fevers and had died.<sup>b</sup>

It is also stated by them “that they are suffering under greater poverty and distress than those of any other caste and pass their days in the same service upon the salary itself without any freedom from labor”.<sup>c</sup>

“That under the Dutch East India Company they had lands assigned to them (accommodessans) which were resumed by the first British Governor who exempted them from forced services (Rajakaria) and paid them for voluntary labor, that the Headmen separated the people into classes which are employed in clearing Cinnamon Gardens and in cutting and peeling cinnamon.”<sup>d</sup>

“When not employed in Government work they serve the District Headmen in carrying their baggage, cultivating their lands, &c.”<sup>e</sup>

Encouragement was given by the Dutch to the Native Headmen to form Plantations. Each Cinnamon peeler had a portion granted to him with directions to preserve the Cinnamon trees and to pay to the Company 5 Pingoos of Cinnamon (weighing each 55 pounds) receiving 12 parras of rice in payment.<sup>f</sup> Besides these plantations the Headmen cultivated Cinnamon and delivered the produce at the same rate, a system which they preferred.

The abandonment of the Plantations in the Southern

<sup>a</sup> Evidence of Capt. Forbes, Government Agent for Matale.

<sup>b</sup> Petitions Nos. 286, 287.

<sup>c</sup> No. 288.

<sup>d</sup> No. 530. [C.O. 416, 5, B. 3.]

<sup>e</sup> See also Evidence of Raja Pakse—Head Modeliar of the Cinnamon Department.

<sup>f</sup> 275 lbs. Cinnamon for 12 parras of rice valued at 3s. per parrah. The price therefore paid for Cinnamon was 1¼d. per lb. nearly.

Districts and the extension of those near Colombo have led to the employment of these people at a distance from their homes.

It is stated that "many of the people from the Korles (districts) serve as substitutes for the Chalias, who are brought from a distance and work voluntarily for the wages given by the Department (six pence a day)—that in the Dutch time many persons registered themselves as Chalias to avoid other services and to obtain certain privileges which have since been taken away from them while the service has been hereditarily enforced."<sup>a</sup>

Of the other classes it is stated that the Lascoryns are bound to work in various ways for six shillings a month, that they frequently employ substitutes and pay them higher than the Government rates, according to the nature of the work, that when called out to dig canals they have to pay twice the Government wages for a substitute.

In elucidation of the effect of the system introduced by the British Government in the Maritime provinces it is observed "that in the Dutch time they received no pay but they held lands for which they rendered services. When an estate was granted to a man he was called out to serve for it but the English Government changed the system, and call out every man without reference to the land he may hold."

The employment of the people in laborious services appears to have induced many to quit the country. In a petition<sup>b</sup> from Putlam it is stated that "nearly a hundred families of weavers had removed to avoid being pressed for Government service in cutting Canals making roads, carrying salt, felling trees &c." and the Collector of Manar has stated that the inhabitants of that thinly peopled district often remove their families when a pearl fishery is expected, to avoid being pressed.

In a petition<sup>c</sup> from Putlam signed by 296 persons in October 1829 they stated that besides the taxes and duties which had been imposed on them by the British Government which they enumerate—they were liable to perform public labor to which many were unequal.<sup>d</sup> That cultivators were taken from their

<sup>a</sup> Evidence of Johannes Corea Modeliar. [C.O. 416, 4, A. 15.]

<sup>b</sup> Petitions Nos. 303 and 428.

<sup>c</sup> Petition 428.

<sup>d</sup> Tax on Grain, Tax on Timber, Duty on Fish, Duty on Cocoa-Nuts, Monopoly of Salt.

fields sometimes at the season for sowing or when requiring watching and watering.

That Fishermen were taken before they could salt and dry their fish,—that Traders, Shopkeepers and Weavers were also taken from their occupations and subject to great losses and injury.

It is stated by the Collector that the work on which the people are compulsorily employed is in deepening a canal and in carrying salt for Government for which they are paid about 4½d a day.

In June 1829, sixty four persons represented from Matura that the work they were required to perform was very hard, that they were not paid, and were liable to be flogged.

At Galle the Moormen complained that they were pressed by the Headmen and worked without pay or even the subsistence allowed to criminal prisoners, that they were subject to corporal punishment and reduced to poverty and distress, by being taken from their occupations. Similar representations were made from other quarters.

That the inhabitants are not unwilling to contribute to the execution of useful works is apparent from various communications.

In a Petition<sup>a</sup> from the Landholders of the Manar District it is stated “that the want of rain had prevented them from cultivating their lands during the last six years and had obliged many to sell their lands and to emigrate for subsistence into the Kandyan Provinces; that if Government has pity on the district it can supply their fields with water by repairing the Great Tank called Tekium (*Giant's Tank*). The fields would then yield two crops a year and to provide for the expence the inhabitants would pay a fair additional tax on their rice fields.”

Having referred to various persons who are settled in different parts of the country the following explanations have been afforded by them.

Mr. Winter a Settler at Caltura who is engaged in agriculture and in the manufacture of rope, and the Distillation of Arrack represents “that he has 79 Mechanics and laborers in his employ, all voluntarily hired, the laborers receiving

<sup>a</sup> Petition No. 693.

from 4d. to 6d. a day and the Mechanics from 6d. to 1s. and 1s. 6d. a day". He says "the whole of these are obtained in the neighborhood. I have found no difficulty in procuring laborers except when the cultivation of their fields required their attendance. At this time some have remained away a few days.

"If the Collector gives orders to the Headmen not to interfere with the Coolies (Laborers) of an individual which he has done in my case there is no difficulty in obtaining Laborers in the district with whom he does not interfere, exclusive of the Chalias, which caste is numerous here, and if they could be employed without the liability of being called away the number of laborers procurable would be very great."

"I did at one time employ ten of these at lower wages than the ordinary Coolies but from the continued change by some of them being ordered to Government employ, I discharged them. Should I however succeed in my Sugar Cane, I intend taking more again, as in the cultivation of this, they cannot be taken away."<sup>a</sup>

Mr. Winter adds that the laborers he thus hired are exclusive of about 600 people who are employed in the distillation of Arrack which he rectifies, and in the preparation of Coir rope yarn.

From the statements of the European Missionaries it also appears that voluntary laborers have been readily obtained by them in erecting their buildings.

At Cotta in the Colombo district it is stated that from eighty to a hundred workmen were employed, and there was no difficulty in procuring them. The Mechanics were paid 9d. and the laborers 6d. a day.<sup>b</sup>

At Badagam in the Galle District it is stated that "a hundred voluntary laborers were employed daily from the village—they worked for more than ten hours a day for 4½d. Many more persons than were employed came daily to offer their services till the harvest commenced.

"Excepting in the seasons of preparing land for seed, and of harvest, there is no difficulty in obtaining laborers."<sup>c</sup>

<sup>a</sup> See letter of Mr. Winter dated Cultura, 21st June 1830. Also see Regulation No. 4 of 1829. [II, p. 279.]

<sup>b</sup> Letter of Mr. Lambrick—8th October 1830.

<sup>c</sup> See letters of Mr. Trimmell, 21st June and 8th July 1830.

“The people are willing to labor but they want encouragement.”

From Galle it is stated that “the daily wages of laborers has undergone no change in this district for the last fourteen years, it has uniformly been three fanams ( $4\frac{1}{2}$ d.) per day. I have not on any occasion found it difficult to obtain voluntary laborers at this rate. They are to be had in abundance in this district.”<sup>a</sup>

From Jaffnapatam it is stated “that from fifty to eighty persons had been variously employed, who worked voluntarily from nine to ten hours daily—Mechanics receiving from 6d. to 9d. a day and laborers from 2d. to 4d. a day, subsisting themselves from the land.

“With some exceptions no difficulty is found in obtaining the services of the people for at least eight months in the year. They are not merely willing to labor but very desirous of obtaining employment. The number of good Mechanics and laborers depends much upon the regular demand. The practice of obtaining labor by compulsion greatly tends to increase the difficulty of hiring voluntary laborers.”<sup>b</sup>

It has been remarked<sup>c</sup> in the Galle District that the power which the Headmen have over the people and the oppressive exercise of that power is a source of great distress and discouragement to them. The natives are often obliged when called on to labor in the service of the Government without any remuneration, and it is in the power of the Headmen to appoint whom they please to do the required work, excepting those classes who have special exemption. They ascertain who are the persons under them to whom it would be at that time most inconvenient to be employed in the required service in order that they may receive a fee from them to appoint some other person in their stead.<sup>d</sup>

Those who are not Lascoryns are liable to be called on by the Headmen at any time and to any place within the District to labor gratuitously for the Government.

<sup>a</sup> See letter of Mr. McKenny dated Galle, 8th July 1830.

<sup>b</sup> See the letter of Messrs. Meigs, Poor and the other American Missionaries, Jaffna, 20th September 1830.

<sup>c</sup> See letter of Mr. Trimnell 8th July 1830.

<sup>d</sup> Note. An instance is stated of a Cook who was ordered to work in the woods near Galle and who was excused by application of his employer to the Modeliar. The man was entitled to 3d. a day being a Lascoryn which exempts him from gratuitous labor.

In regard to the Chalias the Superintendent of the Cinnamon Department has observed that "their services are not willingly rendered as a man coming from Galle and Matura would prefer to earn as much without quitting his neighborhood, that they are very active industrious and intelligent people, being continually employed as Fishermen, Cultivators or Traders when not serving the Government—that they are liable to corporal punishment at his discretion but that it is seldom inflicted and does not exceed 25 lashes excepting in cases of desertion when they have received advances of pay; that in 1823 a great number were punished for neglect of work".<sup>a</sup>

Mr. Walker, an Assistant in the Cinnamon Department, has stated that "the Chalias object to employment in the interior as it removes them far from their homes, and that numbers had died from the unhealthiness of the climate; that many people of other castes are now employed in the Cinnamon Gardens and many more would come forward if they did not apprehend being registered and compelled to work as Chalias".<sup>b</sup>

This feeling has been occasioned by the enforcement of the Dutch regulations of 1753 by which the descendants of persons so registered are bound to the same service.

Mr. Walker has added that besides the abandoned plantations there are many private gardens which the inhabitants were encouraged by the Dutch Government to plant in Cinnamon, and which are now rendered almost useless to the proprietors by the regulations which prohibit them from cutting the plants or clearing the ground and that if they were allowed to collect and deliver Cinnamon at a higher rate than is now paid to the Chalias, many would find their account in doing so, and persons would employ themselves in going about the country to collect it.<sup>c</sup>

The Moormen thus employ themselves in collecting Coffee which they obtain by bartering cloths and other merchandise with the cultivators.

Were this system introduced the expence attending the cultivation and care of the plantations and the superintendence of laborers and peelers would be saved.

Many parts of the process of preparing the Cinnamon is

<sup>a</sup> Evidence of Mr. Walbeoff.

<sup>b</sup> Evidence of Mr. Walker.

<sup>c</sup> Ibid.

performed by the wives and children of the Chalias who attend them in the gardens and this would be done by the families of proprietors who collected it on their own grounds.<sup>a</sup>

If the Government grounds should ultimately be cultivated by individuals on this tenure, the only public establishment required would be for receiving and sorting the Cinnamon.

Mr. Anstruther who, as Collector of Colombo,<sup>b</sup> superintended the execution of the roads, canals and other works in that district has stated his opinion, that it would be more expedient to employ the voluntary labor of the inhabitants than to bring workmen from a distance, that in all ordinary cases volunteers can be had by offering sufficient wages and that it is of the utmost importance that such should be resorted to wherever it is practicable. It is impracticable to procure volunteers on all occasions particularly where Coolies are required for a distant journey or works to be carried on, requiring unusual exertion or in distant places. When volunteers cannot be procured the rate for pressed laborers ought to be very high, perhaps not less than double the ordinary hire.

The works in the Dock Yard at Trincomale have been entirely carried on by voluntary laborers and as the population of that district is small they have been generally hired at Madras, the Coolies or common laborers receiving 7 rupees a month or about six pence a day.

The following observation is made by the Naval Officer at Trincomale:<sup>c</sup> "The natives of this part of the Island have been found readily to engage in the duties of the Department and to the extent required. In point of labor, those employed as Mechanics have been considered quite as intelligent and industrious as those of the Continent when possessing equal advantages of instruction."

I will conclude these Extracts with a summary of the laws applicable to forced labor in Ceylon.

The various regulations under which the native inhabitants are required to render services to the Government have had their origin in the ancient tenures of land by which they were

<sup>a</sup> Evidence of Mr. Walker.

<sup>b</sup> Evidence of Mr. Anstruther. [C.O. 416, 3.]

<sup>c</sup> Evidence of Mr. Curgwyven.



hereditarily bound to serve according to their caste. These ancient tenures still subsist in the Kandyan provinces under certain modifications introduced by a proclamation of the 21st November 1818 by which a tax was imposed on the lands and the people were held liable to work gratuitously on the roads. In other works they are either allowed a remission of the land tax while employed or paid at inadequate rates which are fixed by the Government.<sup>a</sup>

In the Maritime Provinces the service tenures were abolished by Proclamation<sup>b</sup> in 1801, but the people were declared liable to serve on the order of the Governor according to their respective castes.

By a letter<sup>c</sup> of the Commissioner of Revenue in 1808 the Inhabitants were declared liable to repair the roads in their districts, and the headmen were held responsible for the due distribution of the labor.

The service tenures were partially renewed in 1809, the privileges of succeeding to service parveny or hereditary lands being declared to belong only to male heirs and in default thereof such lands to revert to the crown, and to be inalienable by sale or bequest.<sup>d</sup>

By a regulation of 1818 the Governor declared the legality of pressing all persons bound by their Castes, tenure of land, or other customs to perform service and Officers and Headmen were empowered to seize and employ all such persons.<sup>e</sup>

By a Government advertisement published in 1824 it was declared that the "Mahabadde" or people of the Cinnamon Department being liable by caste to work for Government in that Department when required by the Superintendent of Plantations, no exemption would be allowed on the plea of their being engaged in private service.<sup>f</sup>

By a regulation of 1825 a capitation tax was imposed on the Northern districts in commutation of other personal taxes, and the people were declared liable in default of payment to work

<sup>a</sup> See Minutes of Government, 20th October 1829. [C.G.A., B. 204, p. 173.]

<sup>b</sup> Proclamation, 3d September 1801. [II, p. 277.]

<sup>c</sup> Circular Letter to Collectors—11th April 1808. [II, p. 301.]

<sup>d</sup> Regulation of Government No. 8 of 1809. [II, p. 287.]

<sup>e</sup> Regulation of Government No. 5 of 1818. [II, p. 304.]

<sup>f</sup> Government Advertisement dated 7th January 1824. [II, p. 305.]

gratuitously for the public during 14 days, certain headmen and others being exempted.<sup>a</sup>

By a Minute of the Governor in 1824 the Collectors of Maritime districts were prohibited from calling out laborers for gratuitous labor without the sanction of the Governor except in sudden and unforeseen emergencies.<sup>b</sup>

In 1831 the Board of Commissioners at Kandy were restricted from complying with any requisition for laborers gratuitously or for pay, without the previous sanction of the Governor except in cases of emergency.<sup>c</sup>

In 1802 the natives of the Continent of India settled in Ceylon (Moors and Chitties) being generally Merchants and manufacturers were allowed to redeem their services as laborers by a capitation tax called "Ouliam" which was repealed in 1830; these settlers however being declared liable to be employed in common with the other Inhabitants according to their castes on payment and gratuitously in the repair of roads and bridges.<sup>d</sup>

By a Government advertisement of the year 1802, laborers and Workmen employed in the service of Government were declared liable to corporal punishment for neglect of work by the infliction of 25 strokes with a rattan at the discretion of the person superintending the work, and by a Minute of the Governor in 1816 the native headmen were prohibited from exercising this power.<sup>e</sup>

Several advertisements and Minutes have been published by the Governor for regulating the supplies of provisions to travellers at certain rates therein fixed, and for providing them in certain cases with Coolies and torch-bearers either for payment or gratuitously in different parts of the country.<sup>f</sup>

<sup>a</sup> Regulation of Government, No. 10 of 1825. [II, p. 292.]

<sup>b</sup> Minute of the Governor, 23d August 1824. [II, p. 301.]

<sup>c</sup> Minute of the Governor—7th July 1831.

<sup>d</sup> Proclamation—2d October 1802. Regulation of Government, No. 5 of 1830. [II, p. 288.]

<sup>e</sup> Government Advertisement, 28 April, 1802. Minute of the Governor—18 Dec. 1816. [II, p. 305. See also pp. 159-62.]

<sup>f</sup> Government Advertisements, 2 March, 1814, 19 Novem., 1828. Government Advertisements—4 March, 1820, 19 December, 1823, and Minutes of the Governor, 16 Nov., 1825, 20 October, 1829. [II, pp. 310, 309, 312, 306, 308.]

By a Proclamation of the Governor<sup>a</sup> dated Kandy 21st November 1818 and applicable to the Kandyan provinces all persons were declared liable to service for Government on the requisition of the Board of Commissioners and the Agents of Government according to their former customs and families or tenure of their lands on payment being made for their labour—The holding of lands duty-free, was considered as the payment to persons employed in certain Departments and the duty of making and repairing roads and bridges in each district was declared to be a gratuitous service imposed on its inhabitants.

By a regulation<sup>b</sup> of 1829 laborers who are employed in the cultivation of Coffee Cotton Sugar Indigo Opium and Silk or in the manufacture of the produce thereof are exempt from liability to public service, but this regulation has not been applied to the Kandyan provinces.

Under the operation of these various regulations a discretionary power has been exercised by the Governor and by inferior officers in calling out the Native Inhabitants to labor of which no regular accounts have been kept. The most severe labor which the people have been called on to perform since the termination of the Kandyan War has been in opening and making roads and in felling and dragging Timber for bridges and public buildings, this labor having fallen with great severity on the inhabitants of a province (the Four Korles) which I have before mentioned, adhered to the British Government during the rebellion.<sup>1</sup>

In order to ascertain the nature and extent of these works the Collectors and Authorities in the provinces were required to furnish us with returns of the number of laborers who had been called out in the last ten years for various public works and the number that would be required to complete the roads which had been projected and were only partially executed. No complete returns could be rendered of the past services of the people and no correct estimates could be given of the future labor required but from the returns and statements furnished

<sup>a</sup> Proclamation, Nov. 21st, 1818. [II, p. 237.]

<sup>b</sup> Regulation of Government, No. 4 of 1829, Sept. 21st. [II, p. 279.]

<sup>1</sup> Proclamation of 21 November 1818, clause 19. [II, p. 236.]

by the Collector of Colombo the number annually called out in his district from 1820 to 1830 for Government labor have averaged 93,525 day laborers or about 300 a day, and to complete the several roads and bridges in that district alone 222,799 laborers would be required for one day:<sup>a</sup> the payment of these laborers at sixpence a day would amount to £5,569. 19. 6. This is exclusive of the town of Colombo where a fund has been raised for repairing roads.

The Governor who is restricted by his instructions to the disbursement of £200 Stirling without the sanction of His Majesty's Government has thus a power of applying the labor of the people to an indefinite extent and either to fix the rate of their wages, to remit their taxes as a remuneration, or to compel them to labor gratuitously without rendering any regular account and their labor has been thus irregularly enforced from year to year since the establishment of the British Government.

The principal carriage roads in the Kandyan provinces have been undertaken by the verbal directions of and in personal communication with the Commander of the Forces, whose views were not necessarily communicated to the officer employed.<sup>b</sup>

Admitting the utility of these undertakings as well for the defence of the country as for improving the commercial intercourse with the interior, the irregular mode in which they have been executed is open to the greatest objections.

Having already in my general report recommended the adoption of measures for abolishing the forced services throughout the Island, I will only add that any delay in their application might tend to weaken the confidence of the people in the protection of the King's Government and thereby to hazard the tranquillity of the country.

The people of the Maritime provinces who have been long subject to an European Government may generally be less disposed to resist its authority even when oppressively exerted and the Kandyan Chiefs and people may be deterred from any formidable confederacy by a recollection of their sufferings during the last rebellion. Partial insurrections have however

<sup>a</sup> Or about 900 labourers a day for 8 months.

<sup>b</sup> Letter of Sir Edward Barnes, 7th November 1830.

occurred, but as the people have appealed to the justice of His Majesty's Government these it may be hoped will not be renewed.

I have the honour, My Lord,  
Your Lordship's most obedient & humble servant,  
(Signed) WM. M. G. COLEBROOKE

## VII

### *Report of Lieutenant-Colonel Colebrooke upon the Establishments and Expenditure of Ceylon<sup>1</sup>*



*The Right Honourable Viscount Goderich, One of His Majesty's  
Principal Secretaries of State*

London 28th May 1832

MY LORD,

The amount of the Revenue annually derived from the taxes, duties and Government monopolies in Ceylon without deducting the charges of collection or miscellaneous sums received in aid of the Revenue may be estimated at £341,572 while the annual expenditure for the several Departments defrayed by the Island has averaged to £345,040.<sup>a</sup>

In recommending a reform of the system of Revenue with a view of relieving the people as far as possible from the effect of the monopolies and the pressure of the taxes I have endeavoured to point out those resources from which an adequate revenue may be raised with greater economy and with less inconvenience to the people.

To facilitate this essential reform I have also contemplated some considerable reductions in the present establishments.

The principal changes which are required in the civil arrangements for the Island are the following.

1st. The formation of a Legislative Council on a more

<sup>a</sup> Revenue	£341,572
Expenditure	£345,040
Deficiency	£ 3,468

for the details of which see Estimate annexed to this Report. [Not included.]

<sup>1</sup> C.O. 54, 122; Dispatches from the Secretary of State, 1833, C.G.A. 4/18.

enlarged basis for the whole Island, and the appointment of an Executive Council.

2nd. The incorporation of the Maritime and Kandyan Districts into five Provinces, and the appointment of a Government Agent or Commissioner over each to reside at the principal Stations of Colombo, Galle, Jaffnapatam, Trincomale and Kandy.

3rd. The reduction of the Cinnamon Department and the transfer of the superintendance of the Cinnamon Plantations to the Government Agents.—Also the reduction of the Offices of Commissioner of Revenue and Paymaster-General, and the transfer of their duties to the Auditor-General and the Vice-Treasurer respectively—by which three Departments will be abolished.

4th. The formation of a responsible and efficient department for the direction and execution of public Works incorporating with it the present establishment of the Colonial Engineer and Surveyor-General and that of the Pioneers and Artificers now employed under the Royal Engineers and the Deputy Quarter-Master-General.

5th. The gradual reduction of the fixed Establishment of Artificers and Pioneers to a number sufficient for the execution of current repairs and the employment of them in the meantime upon such public works only as are necessary and cannot be executed by contract.

6th. The reduction of the Colonial Commissariat Department and the appointment of a branch of the general Commissariat for the supply of the Troops under the direct control of the Lords Commissioners of His Majesty's Treasury.

The reductions which I had proposed to recommend in the Judicial Department prior to the presentation of my Colleague's Report are detailed in the Schedule annexed to this Report,<sup>1</sup> and will be more fully explained hereafter.

The most intelligent and experienced of the Civil Servants ought in the first instance to be selected to fill the principal offices upon the new Establishment, but without any exclusive claim to such appointments.

<sup>1</sup> The Schedules of Establishments recommended in the Report, having undergone alterations in the hands of the Secretary of State, are not included.

In each District where a Collector or Government Agent has resided or in the Korles which have been under the charge of a Modeliar or Native Headman, an Assistant whether European or Native may if required be stationed. To these Assistants the Inhabitants would immediately refer, although the chief authority would be vested in the Government Agent of the Province.

In all future appointments and in the promotion of the Assistants to the principal stations regard should be had only to the claims and qualifications of the Candidates, and the advancement of the Natives should in no degree depend upon their Caste.

Officers of the Army serving in Ceylon should as at present be eligible to hold the situations of Government Agents and their Assistants in the District. At most of the stations in the Kandyan Provinces they unite the Military Command which is unobjectionable, and they discharge the civil duties upon Salaries which the Civil Servants would not consider adequate for themselves. As Colonial or Island Allowances are paid to Officers of the Army serving in Ceylon, it will be not less economical than advantageous to the Public Service to provide for their continued employment in the Civil duties of the Island. The Salaries which I have proposed for the Government Agencies in the accompanying Schedule will of course be subject to considerable reduction in cases where the appointments may be conferred upon the Officers of the Army proportioned to the emoluments they may be entitled to receive in their military capacity, and on the removal of the Regiments from Ceylon the Officers who may be employed in Civil duties should at their option be allowed to retain their Colonial appointments by exchanging into other regiments or by retiring on half pay.

I am not prepared to recommend an augmentation of the present Civil Service, as independently of other objections a large increase of expence would attend such a measure.

All Europeans who are selected to fill the Civil appointments in the Provinces should be required to obtain a competent knowledge of the Native language (Cingalese or Malabar as the case may be)<sup>a</sup> and when Natives are appointed to such

<sup>a</sup> See Printed Report, pages 29 and 30. [See pp. 68-g above.]



situations they should be equally conversant with the English language.

A simplification of the system of Revenue, the abolition of compulsory services and the appointment of a responsible Department for the direction of all public works will diminish the duties which have hitherto devolved on the Government Agents and Collectors. Some reduction of their emoluments will therefore be practicable, but as it will be essential that they should make periodical circuits through their Provinces or Districts the expence of these circuits ought to be defrayed by the Government, in the shape of a moderate allowance for travelling expences.<sup>1</sup>

As the union of the Maritime and the Kandyan Provinces will lead to an assimilation of the various classes of Functionaries now employed in them, the distinctions at present recognized between Europeans of the Civil Service, and other Officers employed in the Civil duties of the island ought to be abolished, and those subsisting among the Native functionaries should be gradually superseded but without prejudice to their honorary and titular appointments.

In the Schedules which accompany this Report provision has been made for a more efficient establishment of the Government Schools. I would recommend that a College should be instituted at Colombo where general instruction may be afforded to pupils of all classes. A Professor should be appointed from England and the qualifications for admission of Native candidates should be a competent knowledge of the English language acquired in any of the elementary schools. Without at present reducing the various appointments now exclusively held by Natives many of whom have been long employed in the Public Service, and who from their selection are in general strongly imbued with the prejudices of Caste—the future appointment of Natives to the Service of Government should depend upon their having availed themselves of those opportunities of instruction which would be open to them; and upon their disposition to discountenance the prejudices of the people, and to cooperate with the Government in its views for the ultimate abolition of all unnecessary and invidious distinctions.

<sup>1</sup> P. 57 above; also II, p. 265.

With the prospect of preferment thus held out to them, a moderate charge for the expences of their education at the College they would doubtless be ready to incur, and an expectation may not unreasonably be formed that the respectable classes of the community would unite to raise an adequate fund for a more enlarged foundation. In this event it would be just that the Government should afford assistance when required by the grant of buildings and land at its disposal. I have already recommended that the buildings and grounds attached thereto at "Slave Island" near Colombo, should be thus appropriated.<sup>a</sup> If a fund should be subscribed with this object the Government by holding some shares might participate in the nomination of a certain number of pupils, and it would derive much advantage from the acquirement of a competent class of Candidates for general employment in the Public Service, who would unite local information with general knowledge, and would eventually be capable of holding responsible situations upon reduced Salaries.

I have already recommended that due encouragement should be given to the Seminaries which have been formed by the Missionary Societies and that a Commission should be formed of the principal functionaries for the superintendance of the College and Schools.<sup>b</sup>

The duties of the Chief Secretary to Government having for several years past been performed by the Deputy Secretary, I would recommend that the latter appointment should be abolished and that the duties of the Secretary's Office should in future be performed by the Principal. The duties of Clerk of the Council are at present performed by the Deputy Secretary to Government and I propose that they should hereafter devolve upon the Assistant Secretary.

The Department of the Colonial Engineer has no charge at present of the Civil Works and buildings and in order to secure the due regulation of the contingent expenditure upon public works an Officer of some service and experience should be appointed as Civil Engineer and Surveyor General of the Island.

The reduced establishment of Pioneers and Artificers should

<sup>a</sup> Printed Report, p. 32. [p. 74 above.]

<sup>b</sup> Printed Report, Page 31. [p. 73 above.]

be placed under his orders and employed exclusively in the repairs of public works and buildings, and in the opening and repairs of roads.

The works are at present carried on under the direction either of the Officer Commanding the Royal Engineers, of the Deputy Quarter Master-General, or of the Collectors and Government Agents in the several Districts.

The regulations for the Department of the Civil Engineer should be framed with the object of enabling the Government to exercise the strictest control over the public expenditure.

The works should as far as possible be executed under contract and upon Estimates and plans previously approved by Government.

The Surveyor-General should furnish these Estimates and report upon the works which are executed either by contract or by his own Establishment, and in the Districts they should be superintended by his Assistants, one of whom should be stationed in each of the five Provinces.

The accounts of purchases made for materials, and of public Stores issued for different works should not be blended, but all accounts of money expended, of materials issued, and of labourers employed on each particular work should be kept distinct and separate, nor should they be allowed to exceed the estimates without specific Authority.

In executing the Surveys of Lands especially of the tracts of forest or waste land, it would be the duty of the Surveyor-General to ascertain where Tanks, Canals and Embankments might be repaired or constructed for the drainage and irrigation of the Country, and where roads and communications might be advantageously opened.

The publication of his Reports with accurate information of the resources of the Districts would be calculated to attract persons possessing capital to settle in the Country, and to carry these improvements into effect.

The system adopted in other Colonies of disposing of waste lands by sale might be advantageously introduced into Ceylon, and adverting to the regulations under which lands may be acquired by Officers of the Army and Navy, it would be expedient to introduce a regulation for the remission of a part of the purchase money to those public Servants who desire to settle,

proportioned to the periods they had served the Government and the offices they had filled—this privilege should be equally extended to the Native functionaries. Where lands subject to the payment of tythe may be purchased or possessed by them, an equivalent concession may be justly made to them in the remission of the land tax under the same limitations. By this regulation a valuable class of Landholders would be gained whose experience of the Country would enable them to settle themselves with advantage.

The principal roads may be executed partly by contract and partly by the reduced establishment of Pioneers. The main road from Colombo through the level Country to Kurunegalle should be carried on to Trincomale and this important communication opened.

From Kurunegalle a road is opened to Kandy, and an Iron bridge has been sent out from England to be thrown over the Mahavillegange.

The opening of a new road over the hills to Kandy and which has been carried beyond it to join the Trincomale road has been so far prosecuted that the work may be completed. This road has rendered the interior Country more accessible, but it will not promote the Agriculture and the Commerce of the Country in so great a degree as the road to be constructed in the Plains.

Works of this description ought to be planned on a smaller scale, and executed at less expence than those which have hitherto been carried on. In some cases the charge of maintaining the roads in repair may be greater than the revenue of the Island can conveniently bear.

When it is considered that extensive works have been carried on from year to year by means of the compulsory and gratuitous labour of the people of whom no accurate account can now be rendered, that the materials have in most cases been procured either by these labourers, or indiscriminately drawn from the public Stores, that some of these works have either been defectively planned, and have failed, or have been left unfinished, and been superseded by other projects, the necessity for introducing stricter regulations will be apparent.

To prevent the delapidation which may occur in a tropical climate from delaying the repairs of public buildings and other

works, the Governor and Council should be authorized on the report of the Civil Engineer to sanction the expenditure of materials, stores or money to the extent (but not exceeding the value) of £500 on any such work which has sustained material injury, the expence being specifically estimated, and the accounts being kept in such a form as to preclude the expenditure from exceeding the Estimate. For the execution of any new work involving an expenditure either of materials or money, exceeding £300 the previous sanction of the Secretary of State should be required.

I have recommended in a former Report that the Heads of the general Departments in Ceylon should act under precise regulations, for the observance of which they should be responsible to the Authorities in England,<sup>a</sup> and that any departure from these regulations which the Governor might authorize in particular cases should be duly reported. The advantages of this system have been so generally appreciated in the Military Departments that the extension of it to other branches of the public service must be attended with corresponding effects.

I have already recommended that the Commissariat Department should be placed under the direct orders of the Lords Commissioners of His Majesty's Treasury, and with the same view I would propose that the Collector and the Comptroller of Customs should be subject to the regulations and control of the Board of Customs in London. The Heads of all general Departments should be appointed in England and should not be removable by the Governor, except for misconduct.<sup>1</sup>

By appointing a branch of the regular Commissariat Department to Ceylon the Colonial Commissariat would be abolished. This Department is under the direction of an Officer who is appointed by the Governor and is usually selected from one of the Regiments serving in the Island. The Colonial Stores are placed in his charge and include the various articles which are sent out by the Colonial Agent in London or purchased on the spot for carrying on public works. These are issued on the requisition of the several Departments, under the authority of the Governor and Commander of the Forces.

<sup>a</sup> Printed Report, Page 22. [p. 53 above.]

<sup>1</sup> P. 53 above.

The Colonial Government undertakes the supply of provisions to the Troops, and receives the amount of the regulated stoppages made from the pay of the Soldiers. From the cheapness of provisions in Ceylon the Troops can be provided with rations at a charge very little exceeding the amount of the stoppages and in some cases less. Under the present arrangement the Store accounts of the Commissariat undergo no other examination than that of the Auditor-General in Ceylon. Under that which I recommend, they will not only be examined by that Officer on the spot but will be finally audited with the vouchers in support of each issue of Stores by the Comptrollers of Army Accounts in London in the same manner as the Store accounts of the Commissariat in every other foreign possession of His Majesty.

With regard to the Colonial or Civil Stores which are applicable to public works I would recommend that they should be placed under the charge of the Civil Engineer who should be responsible for their due appropriation to the specific works to which they may be applicable. This practice has not hitherto been uniformly observed. If the public works in future should be carried on by contract it will not be necessary for the Government to keep any considerable quantities of public Stores, nor to maintain a larger fixed Establishment of Artificers and Labourers under the Civil Engineer than would be required to execute the current repairs in situations where contracts could not be made with the same facility as at the principal Stations.

It would facilitate the reduction of this expensive Establishment if the Native Troops should be allowed to work on the roads in the neighbourhood of their respective Stations, on receiving a small addition to their Pay, not exceeding the rate at which common Labourers could be hired in the Country.

The regulations of the Colonial Treasury are those which were directed to be adopted by the Lords Commissioners of the Treasury in 1816. The Collectors in the Maritime Districts remit to the Vice-Treasurer, the amount of their collections or issue them under the direction of the Treasury in its authorized disbursements.

The Revenue Commissioner at Kandy collects from the Government Agents in the Kandyan Provinces.

I have noticed in a former Report that some local Collections

are made which are not brought to credit in the public accounts of the Colony.<sup>a</sup> Of this description are the town rates at Colombo and Galle which are levied under a regulation of Government for the repairs and the lighting of the Streets.<sup>b</sup>

Under the proposed arrangements for the Civil administration of the Island, the Government Agents in the five principal divisions, and the Collector of Customs at Colombo, will be responsible for the Collection of all branches of the public Revenue, and the whole of their collections whether arising from local or general taxes should be entered in the public account of the Treasurer of Ceylon, and all disbursements should be made by that Officer whether on account of the fixed Salaries of the several Departments or for the fixed and unfixed Contingent Expenditure of the Government.

The Auditor-General and Comptroller of Revenue will in future check and superintend the receipts as well as the expenditure of the Government, and the Government Agents should make to this Officer the same Reports and Returns that are submitted to the Treasurer. In all practicable cases the accounts should be audited before the disbursements are made.

The details of the several reductions which I recommend to be made without delay are contained in the Schedules which accompany this Report.

These reductions extend to all the Establishments.

1st. In that of the Governor there will be a saving of £6,393. 9. 0. after providing for the separation of the functions of Governor and Commander of the Forces, and should those Offices be hereafter reunited a further reduction might be made.

2nd. In the Department of the Chief Secretary a reduction of £2,852. 0. 0. is proposed and by incorporating the Financial Departments a reduction to the amount of £7,291. 0. 0. will be effected.<sup>c</sup>

3rd. In the Civil Establishments of the Provinces a large increase of expence would be the consequence of appointing

<sup>a</sup> Printed Report, Page 51. [p. 115 above.]

<sup>b</sup> Regulation of Government, 5 of 1820, 8 of 1830. [II, pp. 345-6.]

<sup>c</sup> Treasury, Paymaster-General, Commissioner of Revenue, Auditor-General, p. 268.

the Civil Servants to all the Stations now filled by Military Officers, were such a measure in other respects desirable.<sup>a</sup>

By incorporating the Districts into five Divisions, reducing the salaries of the Functionaries, and appointing Assistants to the Government Agents where required for conducting the duties, a reduction may be made in the present charge after providing for the existing Establishment of Native Headmen.

In stating the number of Assistants and the amount of the Salaries attached to their situations I have been guided by the extent of the present Establishment<sup>b</sup> which will be gradually reduced by not filling up the vacancies occurring amongst the District Headmen.

By abolishing the Cinnamon Department, renting the Plantations and allowing the Headmen and other Inhabitants freely to collect and to cultivate that spice, all the duties in future required may be performed without any additional charge by the Government Agents and the Collectors of Customs.<sup>c</sup>

The annual expences of the Cinnamon Department Amount to £15,014 after deducting the sums paid for the Cinnamon collected in Ceylon,<sup>d</sup> and the commercial Charges incurred in Ceylon and in England.

This saving will therefore properly constitute a reduction from the expence of the Provincial Establishments.<sup>e</sup>

4th. On the plan proposed for the future execution of public works a saving of £6,469 will be effected in the fixed Establishment independently of the reductions that may be

<sup>a</sup> See Printed Report, Pages 29 and 30. [pp. 68-9 above.]

<sup>b</sup> See Printed Report, Page 30. [p. 68 above.]

<sup>c</sup> See Printed Report, Pages from 39 to 42. [pp. 89-95 above.]

<sup>d</sup> Printed Report, Pages 53 to 54. [pp. 117-20 above.]

	£	s.	d.
e Provincl. Estabt.	18,815	6	3
Cinnamon Dept.	15,014	0	6
	<hr/>		
Total	33,829	6	9
Proposed } Establisht. }	17,800	0	0
	<hr/>		
Difference	£16,029	6	9
	<hr/> <hr/>		



made in the contingent Expenditure, under the Civil Engineer and Surveyor General.<sup>a</sup>

5th. I have recommended the abolition of the Stud on the Island of Delft, and the sale of the Government Stock and Property.<sup>b</sup> The value of the Stock was estimated in December 1829 at £12,271 and as the charges have exceeded the receipts, an annual saving of £1091 will be effected by the disposal of the Stud.<sup>c</sup>

The reduction of the small Corps of Ceylon Dragoons will effect a saving of £1496. 11. 0. and also supersede the expence of purchasing horses for the public service which were supplied from Delft.

The abolition of all forced services in Ceylon will have an important effect, not only in improving the resources of the Island but in facilitating the reduction of the Garrison, and I have provided in the Estimates for the immediate removal of one European Regiment. These changes will effect an immediate saving of £5,228 to the Island, and other reductions will eventually be practicable.

I have not proposed a further diminution of the Island allowances which are paid to the Troops, as the Officers who receive them are generally chargeable for quarters, and have not the advantages possessed on other stations. Where quarters are allowed an abatement should be made.

The employment of the Officers more generally than at present in the Civil Administration as well as in the survey of the Country, and in the execution of public works will be a measure of economy more than equivalent to any general

<sup>a</sup> Civil Engineer & Surveyor Genl.	£	s.	d.
Present Estabtd.		955	10 0
Pioneers &c.	16,535	"	"
Bullocks	1,404	"	"
Elephants	1,194	15	"
		<hr/>	
Total	£20,089	5	0
Proposd. Estab.	£		
Civil Engineers	2754		
Pioneers	8267		
Bullocks	1404		
Elephants	1195		
		<hr/>	
		13,620	0 0
Difference	£ 6,469	5	0
		<hr/>	

<sup>b</sup> See Printed Report, Page 46. [p. 103 above.]

reduction in those allowances which might at present be proposed.

The Officers of the Native Corps would superintend the labour of their men when employed under the Surveyor-General.

The Government should dispose of the Coffee Plantations which have been formed, and abstain in future from speculations of that nature.

The Botanical Garden at Kandy may be maintained as a means of introducing useful Plants from other Countries, and of improving those which are indigenous.

The disposal of one of the Government Vessels will effect a saving of £1,046—One Vessel will be useful in the conveyance of Troops coastwise, and in other occasional services.

The discharge of the Government Debentures in 1832 will relieve the Island from the payment of £28,068 of Interest.

The improvidence of the Colonial Government in contracting this Debt, will render it necessary to guard in future against any anticipation of the Revenue of the Island.

The contraction of these loans has led to an expenditure of funds which would have been otherwise usefully employed in improving the resources of the Island,<sup>a</sup> and the Government has delayed those measures of retrenchment, by which alone it could effect a reform in the system of Revenue, and restore the prosperity of the Island.

The annuities now payable to retired Civil Servants, and to their Widows under the regulation of the Pension Fund amount to £13,316, and those which have been granted to retired Governors, Judges, and to other Colonial Servants amount to £13,035.

The Civil Servants are allowed to retire after a period of twelve years service in the Island, on a pension, either of £400 or £500 a year, derived from a fund to which they contribute a tenth of their Salaries the Government engaging to subscribe an equal amount. If they have been in the receipt of Salaries to the amount of £2,000 a year, their pension is increased to £600.

There are other regulations for which I refer to the Report of the Colonial Auditors dated the 1st of October 1829.

The number of Civil Servants who have retired and are now

<sup>a</sup> See Printed Report, Page 26. [p. 61 above.]

receiving Pensions from the fund is twenty five, the aggregate amount of their Pensions is £12,400 per annum, while the subscriptions to the Fund of one tenth of the Salaries of those Civil Servants who have not served twelve years amount to about £2,300 per annum.

At the end of that period they usually cease to contribute to the fund.

The capital of the Pension Fund under an assumed accumulation at compound interest of 6 per cent per annum, amounted in the year 1829 to £146,096.

This nominal accumulation has not been productive of any benefit, while it has led to erroneous conclusions respecting the real state of the Fund, assumed to be in deposit with the Government. It would therefore be desirable in future that the payment of the Pensions due under the regulations to retired Civil Servants, and to those now in employment who have subscribed to the fund, should be simply guaranteed to them on the completion of their subscription for the regulated period. The claims of a numerous class of persons who have been employed in the public Offices are entitled to attention, as the Fund that was provisionally established for them on the principal [sic] of "the Civil Service Pension Fund" has been disallowed. The services of several of these persons might be usefully employed in the Provincial Schools, also as Post holders, and in charge of the District registers which ought to be kept in the English language. The frauds now often committed in the Cingalese Registers would by this means be more easily discovered and prevented.

The practice which prevails in the Kandyan Provinces of remunerating the Native Officers of Government by a remission of the tax upon their lands is congenial to the habits of the people, and as the revival of this practice generally throughout the Island would promote the settlement of the lands and the improvement of Agriculture, I am induced to recommend its adoption under certain regulations.

The Salaries attached to all Offices, whether held by Europeans or by Natives should be fixed, and the amount of the tax due upon any lands held by the person appointed to them might be remitted as an equivalent for such Salaries when of the same amount or deducted from them when less.

By this arrangement the remuneration would not vary as at present with the extent of the possessions of each functionary. The expence of collecting the Land rents from such persons would thus be saved. The same principle would be applicable in the payment of pensions to retired functionaries who are settled in the Country, and it would accord with the measures I have proposed to enable the public Servants to acquire lands free of encumbrance.

From the estimate of the present and proposed Establishments in Ceylon, it will be seen that the fixed and contingent expenditure of the Island will be reduced from £317,785 to £227,532.<sup>a</sup> This reduction will effectually provide for the abolition of the Government monopoly of Cinnamon, and the repeal of the Capitation taxes which press unjustly on a particular class of the people.<sup>b</sup>

Referring to the Estimates of the Revenue it will be seen that after affording this relief to the Island by which its resources will be eventually augmented and after fully providing for the expences of the Government and the maintenance of all its Establishments there will still remain a surplus of £15,000. This surplus will chiefly depend on the produce of the Pearl Fisheries which are estimated to have averaged £14,662 per annum, during the last thirty two years.<sup>c</sup> The Pearl Fisheries however have been very precarious, failing in some years, and producing large receipts in others. I have therefore expressly excluded this branch of Revenue from the regular Estimates, and it will properly constitute a fund which I recommend to be set apart for the execution and repairs of works by which the cultivation of the Island will be extended.

The works claiming the earliest attention are

1st. The repairs of the Giants Tank near Aripo,<sup>d</sup> which the inhabitants of that District have petitioned may be restored, expressing their willingness to co-operate in the undertaking.

2nd. The Drainage and cultivation of the Marsh near Colombo, called the Mootirajville<sup>e</sup> and

<sup>a</sup> see Estimate.

<sup>b</sup> see Printed Report, Page 48. [p. 107 above.]

<sup>c</sup> see Printed Report, Page 44. [p. 99 above.]

<sup>d</sup> see Printed Report, Page 5. [p. 15 above.]

<sup>e</sup> see Printed Report, Page 6. [p. 16 above.]

3rd. The Embankment of the lands bordering on the Mutwall River to secure the cultivated lands from inundation. These and various other works if skilfully executed would restore the fertility of some decayed districts, increase the production of others, and enable them to maintain an augmented population in comfort. The sums advanced would be redeemable from the lands and be progressively available for other undertakings.

In estimating the Revenue I have limited the future collection on Cinnamon to £50,000 a year, and I recommend that it should not be increased beyond that amount but should ultimately be diminished by raising an equivalent Revenue upon the Import Trade of the Island. The other branches of the Revenue are estimated at their present amount but as the Customs and Excise Duties may confidently be expected to increase, I recommend that the Monopoly of Salt, and the duties on Fish should be altogether abolished as soon as the Revenue derived from them can be spared. In the meantime I have already proposed that some relief should be afforded to the Inhabitants which would have the effect of checking the evasion of the duties, and of extending the consumption and promoting the exportation of these productions.<sup>a</sup>

Having formerly recommended that the Customs Revenue should be raised on the Import Trade of the Island,<sup>b</sup> and that the export duties should be reduced, I recommend that while these duties may continue to be levied on the produce of the Island, that they should be equally imposed on all articles exported, and with this object that they should be levied according to value, rather than by Tariff. At present the Tobacco of Ceylon is subject to the payment of an exorbitant Export Duty,<sup>1</sup> while Coffee is freely exported besides being relieved from the burthen of the land tax.<sup>2</sup> An arrangement should also be made with the East India Company for the abolition of the Travancore Monopoly, and for the regulation of the duties in the Ports of India and Ceylon.<sup>c</sup>

<sup>a</sup> See Printed Report, Pages 42, 43, 44. [pp. 95-8 above.]

<sup>b</sup> Printed Report, Page 50. [p. 109 above.]

<sup>c</sup> See Printed Report, Page 51. [p. 111 above.]

<sup>1</sup> See p. 110 above; also II, p. 340.

<sup>2</sup> See II, p. 279.

I will conclude this Report with some observations respecting the currency of Ceylon.

The various attempts that were made to maintain a Metallic currency in the Island having failed, Paper Money has at all times been in circulation. The measure adopted by the Lords of the Treasury in 1825 for introducing British Silver Currency into the Colonies has not superceded the issues of paper in Ceylon.

According to the latest returns, the whole amount in circulation in 1830 was £112,656.<sup>a</sup> The larger Notes vary in denomination from one Pound to fifty Pounds sterling and the smaller notes are of two denominations, viz. two Rix Dollars (3sh.) and five Rix Dollars (7s. 6d.). The value of the Rix Dollars being fixed at one shilling and sixpence sterling. These Notes are exchangeable at the Treasury for Silver currency, and as Bills on England are there granted in exchange for British Silver the nominal value of the paper is sustained. This paper circulates chiefly in the Towns. The transactions of the people in the interior of the Island are generally conducted by barter, the Corn rents are paid in kind, and seed grain and supplies are advanced to the landholders by itinerant traders and occasionally by the Government—the premium for these advances being exorbitantly high.<sup>b</sup> The amount of the premium received by the Government in the issue of its Bills on England has averaged £4,880<sup>c</sup> per annum, but from the course of exchange, these bills which have been remitted to Madras in payment of the supplies of Corn and Rice imported from the Continent, have there sold at a higher premium by the Merchants.

The inconvenience attending this mode of sustaining the currency in Ceylon has been in some degree obviated to the Government by its credits on this Country arising from the payment and subsistence of the Troops, and from the Sales of

<sup>a</sup> See the Returns of the Accountant General.	
In English Currency	£54,991 - -
In Ceylon Currency	£57,665 17 -
	<hr/>
Total	£112,656 17 -
	<hr/> <hr/>

<sup>b</sup> For advance by Government 25 per cent.; by individuals 50 per cent. Printed Report, Page 27. [p. 64 above.]

<sup>c</sup> See Estimate of Revenue.

Cinnamon in London, but if Bills had not been obtainable by the Merchants on these terms, the supplies imported from the Continent of India might have been wholly paid for in the produce of Ceylon, and the Cinnamon sold in the Island would have led to the importation of goods in demand there.

On the transfer of the Cinnamon Trade to Ceylon, I recommend therefore that the practice of drawing Government Bills on England to an indefinite extent should be discontinued.

In requiring that the public accounts of the Colonies should be kept in British Currency, much inconvenience has doubtless been avoided, but the same advantage has not attended the introduction of the British Silver Coins.

A new and improved Coinage had recently been established in India, by the East India Company and the intercourse subsisting between that Country and Ceylon would have rendered it more convenient that the same currency should have been adopted in that Island.

When the Tobacco Trade was free the Indian Coins were much in circulation at Ceylon as they now are when the Pearl Fisheries occur.

Under the circumstances in which the Island will be placed after the abolition of the Monopolies, and the removal of restrictions on Trade, the Indian currency will again become the common medium of transactions, and the facility with which the Government might obtain a supply of Coin from Madras would obviate the necessity of keeping in the Treasury a large deposit of British Silver, which until a British Currency may be established in India, is not likely to be in any general demand.

The whole of the Rix Dollar Notes<sup>1</sup> should be called in, and Notes of equal value in English denominations reissued; these Notes being exchangeable at the Treasury for Indian Gold and Silver Coins. The Bills of the Commissariat issued in payment of the supplies may be negotiated either in Ceylon or at Madras.

As the Colonial Government has been so largely concerned in the Commerce of the Island by which private capital has been discouraged; and as in the present state of the Colony the Government cannot release itself from the necessity of making advances to the Landholders it would be attended with public

<sup>1</sup> R: Ds. 768,878 or £57,665. 17s.

advantage that a Bank of Deposits should be formed under the direct controul of the Treasurer and Auditor-General.

By allowing an interest of five per cent per annum upon sums deposited, advances might be made to the Landholders on moderate terms which would relieve them from the exorbitant demands of the Native Traders and Money-dealers. These advances should be made on adequate security, and on the recommendation of the Government Agents in the provinces and to be recoverable as at present from the ensuing Crops. The Government Functionaries in common with others, would readily avail themselves of the Public security for their funds, and while the Island would have the benefit of a Capital which has hitherto been withdrawn from it, Agriculture would be encouraged and the Government would derive a Revenue in aid of its resources by which the repeal of objectionable taxes would be facilitated.

I have the honour to be, My Lord,  
Your Lordship's most obedient humble servant,  
(Signed) W. M. G. COLEBROOKE



PART II



*The Dispatches of the Secretary of State  
to Governor Horton on the Reports of  
the Commission of Inquiry*



## VIII

### *The Abolition of Compulsory Services*

[Viscount Goderich to Sir R. W. Horton<sup>1</sup>]



Downing Street,  
3rd May, 1832

Sir R. W. Horton

SIR,

I transmit to you herewith the copy of a confidential Report, which has been addressed to me by Colonel Colebrooke, one of the Commissioners of Enquiry,<sup>a</sup> founded upon the Complaints, which were made to him by the Native Inhabitants against the system of forced labour, exacted from them on the plea of ancient custom, under various Proclamations of Government to which they have referred.

I likewise enclose an Order of His Majesty in Council, dated the 12th of April last, repealing all the above Regulations,<sup>2</sup> with directions that you cause it to be published, with translations in the Native Languages of Ceylon, and I am commended by His Majesty to express to you his satisfaction at finding, that it has been considered practicable at once to abandon a system so replete with objections.

In referring to the various Orders and Regulations which have been passed at Ceylon, relative, to this subject the following are the leading points to which I am desirous that your attention should be drawn.

It appears that by the Native Institutions of the Island, the people were liable to render services for the lands held by them on various tenures and according to Caste, and that these services were enforced by the Dutch East India Company in

<sup>a</sup> 16 March 1832. [p. 189 above.]

<sup>1</sup> C.O. 55, 72, No. 52; Dispatches from the Secretary of State, 1832, C.G.A. 4/17, p. 131.

<sup>2</sup> See p. 237 below.

support of their system, which was one of close commercial monopoly.<sup>1</sup>

On the establishment of the British Government, the injurious effects of such a system appear to have been forcibly impressed on the minds of the Local Authorities, and to have led to the partial relaxation of the Dutch Monopolies, and to the adoption of a measure in the administration of Governor North, which, from its import, was clearly intended to bring about a more equitable mode of contribution to the services of the State.

Accordingly, by the Proclamation of the 3rd of Sept. 1801,<sup>2</sup> a Tax varying from one tenth to one fifth, of the Produce was imposed on lands, which had been held free from Tax, but on a condition of performing service, and it was declared that the Inhabitants were thenceforth only to be held liable to serve on the Order of the Governor and on being paid for their labour—the principal objection to this measure appears to have been, that whereas they had been previously liable to serve only for their lands, indiscriminate labor had subsequently been exacted from them, and that a power had been given to the Headmen, which, it was but too apparent, had been greatly abused.

In regard to the liability of the people to work, according to their Castes, it is to be remarked that one effect of the system has been to give the Government an interest in upholding such distinctions, which, for plain and obvious reasons of Policy, should be discontinued.

Although in the Order in Council, which I enclose, a Reserve has been made of the King's Right over the Tenants of Royal Villages, so long as they voluntarily remain in the possession of such lands, I have no intention of authorizing any enforcement of those Rights, and I accordingly recommend as an example to the Chiefs and Priests whose Rights are also reserved, that the Crown Tenants may, in regard to these services, be placed upon the same footing as the owners of Hereditary or Parveny Lands.

While the Governor is withheld, by his Instructions, from undertaking any Public work involving an expence exceeding £200, without the previous authority of the Secretary of State,

<sup>1</sup> See p. 29 above.

<sup>2</sup> II, p. 277.

or the Lords Commissioners of the Treasury, he has thus exercised a discretionary command over the labor, or in other words, over the resources of the People; for admitting the utility and even the necessity of the various works, which have been executed, they could only properly have been commenced with the sanction of His Majesty's Government, founded on full information of the nature and extent of the work and of the expences attending it.<sup>1</sup>

The incessant demands upon the labor of the people on various trivial occasions and the obvious departure even from the customs and Regulations, on which the right to exact them has professedly been founded, would in itself have constituted a ground of interference on the part of His Majesty's Government, and I should have felt it my imperative duty to have imposed some strict limitations on the exercise of a power, thus irregularly directed, had I not been convinced, that the only just and effectual course to be pursued, is to interpose the Authority of His Majesty, for the final and effectual suppression of such a system.

Adverting to the observations which I have made, in regard to the imposition of a Tax upon the lands, it is apparent that the Grain Tax was intended and considered as imposed in commutation of the unpaid services of the People; and the gratuitous services which, since the imposition of that Tax, the Cultivators of Grain have been required to perform, in the opening of Roads and the construction of Bridges, together with many other unpaid services, which have been exacted from them, would therefore appear to be contrary to the principle of the arrangement of 1801.

I lament also to observe that in the Kandyan Provinces this incessant and unpaid labor should have chiefly fallen upon a Province, which adhered to the British Government through the Kandyan Rebellion (the four Korles) and that the complaints should thus have been the most numerous from those who have had the strongest claims to protection.<sup>2</sup>

I must notice in this place, a serious irregularity, to which the Commissioners allude in their Report, committed by the Local Government itself, in the employment of the Challias, at a distance from their homes, in felling and dragging of

<sup>1</sup> See p. 40 above.

<sup>2</sup> II, p. 236.

Timber, in the course of which employment, it is stated, that many have been taken ill with fever and have died. It is manifest that such labor ought not, under any construction of the Laws and Customs of the Country, to have been imposed upon them.<sup>1</sup>

On reference to the Returns alluded to in the Report, it appears that the Services of the native Inhabitants have been exacted in the opening and repairs of Roads—the cutting and dragging of timber for Public Works—in the collection of Salt and Cinnamon—the catching, training and attendance on Elephants—and in various other services, for some of which they have not been paid, or even subsisted, although employed for long periods, while for others, the rates of wages fixed by the Government have not been adequate to induce voluntary Labourers to engage in such employments.

From the representations which have been made to me, there is much reason to conclude that the difficulty in procuring voluntary Labourers in Ceylon, has been in a material degree caused by the system of compulsory labour, established by the Local Government, but not withstanding the obstacles it has occasioned, by an interference with the free disposal of labor, it has not prevented Individuals who have possessed no authority in the Country, from obtaining voluntary Labourers even in parts of the Island where a regular demand for labor had not previously existed. It is therefore, not to be supposed that with due encouragement, the Government can fail to obtain the labor of the Inhabitants, when required, in carrying on Public Works, and at rates equally moderate.<sup>2</sup>

It is stated by the Commissioners in their General Report, that “the difficulty of procuring coolies or Pioneers, during the Kandyan War, induced the Government to raise a Body of men by voluntary Enlistment upon the Continent of India, who from their great ability, are still employed”.<sup>3</sup> If the measures for obtaining Voluntary Laborers in Ceylon should, therefore, fail, the same means could be resorted to of procuring workmen, as were adopted on the former occasion.

It would appear that the injurious effects of the compulsory system were impressed, in some degree, on the mind of Your

<sup>1</sup> See p. 41 above.

<sup>2</sup> See pp. 192, 202 above.

<sup>3</sup> See p. 54 above.

Predecessor, as a Regulation was passed by him in 1829,<sup>1</sup> to exempt from their liability to such services, the Laborers employed in Plantations of certain Colonial Produce, while those engaged in cultivating Grain and even Manufacturers, Traders, and Citizens were subject to be taken from their occupations for the performance of the commonest Labor.

Since the departure of the Commissioners from Ceylon, a more important concession has been made by Sir Edward Barnes, in the substitution of voluntary Laborers in the Cinnamon Plantations near Colombo,<sup>2</sup> and the consequent release of the Challias, who had been liable to be taken from various profitable occupations in their own Districts for such services which added to the partial measure of 1829 before alluded to, have given the strongest support to the conclusion that the Emancipation of the Native Inhabitants from an interference with the free disposal of their time and labor, is recommended, not less by considerations of practical expediency, than of justice and right.

The manner in which the compulsory Labor of the Natives has been applied to the service of the several Departments of the Government will require particular and separate notices and I shall therefore defer any observations which I may have to offer on this subject, until the opportunity may be afforded to me, of entering generally upon the Civil Establishment of the Island.

I am, Sir,

Your most obedient humble servant,

GODERICH

ORDER IN COUNCIL

*At the Court of St. James, 12th day of April 1832.*<sup>3</sup>

Whereas by the ancient laws and customs of the Island of Ceylon the Native and Indian Inhabitants thereof are bound to render various services to the Government in respect of the tenure of their lands or in respect of their caste or otherwise.

<sup>1</sup> II, p. 279.

<sup>2</sup> de Silva, *op. cit.*, II, p. 408.

<sup>3</sup> C.O. 58, 14; C.G.G., 29 September 1832.

And whereas by the 2nd Clause of a Proclamation dated at Colombo the 3rd day of Sept. in the year 1801<sup>1</sup> the Governor of the said Island recited so far as regarded the Maritime Provinces of the said Island that he had seen by experience the absolute necessity of abolishing tenure by service and substituting a less oppressive and irregular mode of contribution to the service of the state.

And whereas by the 4th Clause of the said Proclamation the said Governor of the said Island proclaimed so far as regarded the Maritime Provinces of the said Island that persons of whatever caste and condition should from that day continue subject to serve only on the especial order of the said Governor and his Successors, Governors, or Lieutenant Governors of the said Island only according to their respective castes, and that on the receipt of adequate pay for such service.

And whereas by the 21st Clause of a Proclamation dated at Kandy the 21st day of Nov. 1818,<sup>2</sup> it was proclaimed among other things by the Governor of the said Island so far as regarded the Kandyan Provinces of the said Island, that the obligation of certain Inhabitants of temple villages to perform fixed gratuitous service to the Crown was to continue unaffected.

And whereas by the 30th Clause of the said last mentioned proclamation it was declared amongst other things, by the Governor of the said Island, so far as regarded the Kandyan Provinces of the said Island, that all persons should be liable to service for Government on the requisition of the Board of Commissioners and Agents of Government according to their former customs and families or tenure of their lands, on payment being made for their labour, it being well understood that the Board of Commissioners under the Governor's authority might commute such description of service as under their present circumstances was not usefully applicable to the public good to such other as might be beneficial, and provided further that the holding of lands duty free, should be considered the payment for the service of the Katapurule and Atepatto Department and persons allotted to the Dessaves service and also for the service to Government of certain persons of the Temple Villages, and in part for those which cut Cinnamon, and also that the duty of clearing and making roads and

<sup>1</sup> II, p. 277.

<sup>2</sup> II, p. 231.



putting up and repairing bridges, should be considered a general gratuitous service falling on the districts through which the roads pass or wherein the bridges lie.

And whereas His late Majesty King George the Fourth, by a Commission under the Great Seal of this United Kingdom was pleased to authorise and appoint certain Commissioners therein named to repair to the said Island there to examine into all the Laws, Regulations and Usages of the Settlements in the said Island and into every other matter or thing in any way connected with the administration of the Civil Government thereof, and whereas the said Commissioners, have in pursuance of the said Commission reported to His Majesty that various representations had been made to them by the aforesaid Native and Indian Inhabitants of the said Island, complaining of the evils which they have suffered from the enforcement of the services aforesaid and requesting relief. And whereas the Native and Indian Inhabitants as well of the said Maritime Provinces as of the said Kandyan Provinces of the said Island will be able to follow their own occupations with more profit to themselves and to render their services to His Majesty more effectually and beneficially, if such services are rendered freely and for such remuneration as may be agreed upon between His Majesty's Officers in the said Island and the said Inhabitants, instead of being enforced by punishment without remuneration or with such remuneration only as may be fixed by His Majesty's Officers in the said Island without the consent of the said Inhabitants; And whereas it hath been made to appear to His Majesty that the Governor of the said Island and the Council of Government thereof are unanimously of opinion that the said system of forced labor ought not to be continued.

Now therefore His Majesty is pleased with the advise of His Privy Council to order, and it is hereby ordered, that the said 4th Clause of the said Proclamation dated at Colombo the 3d day of Sept. in the year 1801, and also so much of the said 21st and 30th Clauses of the said Proclamation, dated at Kandy the 21st day of Nov. 1818, as is hereinbefore recited, shall be repealed, abrogated and annulled, and the same are hereby repealed abrogated and annulled accordingly.

And for the removal of all doubts respecting the future

exemption of the said Native and Indian Inhabitants of the said Island from the obligation to render the said services to His Majesty, it is hereby ordered and declared that none of His Majesty's Native or Indian Subjects within the said Island shall be, or are liable to render any service to His Majesty in respect of the tenure of their land, or in respect of their caste, or otherwise, to which His Majesty's Subjects of European birth or descent are not liable, any law, custom or regulation to the contrary notwithstanding.

Provided always, that nothing herein contained shall be construed to affect the services which the tenants of any lands, in any Royal Villages in the said Kandyan Provinces of the said Island, are bound to render to His Majesty, so long as they continue tenants of such lands upon such tenures; or the services which the tenants of any lands in any Temple Villages in the said Kandyan Provinces of the said Island, may be bound to render to any Temple, so long as they continue tenants of such lands; or the service which the tenants of Lands in any other villages in the said Kandyan Provinces of the said Island may be bound to render to the proprietors of such villages, so long as they continue tenants of such lands.

And whereas by the 4th Clause of a Regulation of Government, dated at Colombo the 21st day of September 1829<sup>1</sup> entitled "a Regulation of Government No. 4 of 1829" it was enacted, so far as regarded the Maritime provinces of the said Island by the Governor of the said Island in Council, that with a view to the encouragement of agricultural speculations, all Labourers of whatever nation, caste or description, who should be bona fide employed in any Plantation of Coffee Cotton, Sugar, Indigo, Opium or Silk, or in the manufacture of the produce thereof, should be exempt from being called out in the public service during the period for which they should be so bona fide employed, excepting during actual war, and for the purpose of repelling invasion or during internal commotion.

And whereas the exemption from Public Service, which is conferred by the said 4th Clause, of the said last mentioned Regulation of Government, upon persons employed in such manner as is therein mentioned, is, by the provisions of this

<sup>1</sup> II, p. 279.

present order, secured to such persons, in common with all other His Majesty's Subjects within the said Island.

Now therefore His Majesty is pleased with the advice of His Privy Council, to order the said 4th Clause of the said last mentioned Regulation of Government shall be repealed abrogated and annulled, and the same is hereby repealed, abrogated and annulled.

And whereas, by the 3d Clause of a Regulation of Government, dated the 25th day of Nov. 1825, entitled "Regulation of Government No. 10 of 1825"<sup>1</sup> it was enacted by the Governor of the said Island in Council, that, if, it should appear to any such Collector, as was specified in the 2nd Clause of the said last mentioned Regulation, on or after the first day of July then next ensuing, that any person, liable to a certain tax, imposed by the 1st Clause of the said last mentioned Regulation, upon every Male Inhabitant of the districts of Jaffnapatam, Manar and Trincomalie, and the Wanny Provinces, which said Districts and Provinces are part of the said Maritime Provinces of the said Island, had not complied with the exigencies of that Regulation, such person should be liable to be called on by such Collector to work gratuitously at any public work which might be selected, for a period not exceeding 14 days, and that if any person should abscond from, or evade being employed in, such work, he should be then liable to be committed by such Collector to imprisonment and to be employed at hard labor for the said period of 14 days, or such portion thereof as might remain, after reckoning the days he might have voluntarily worked under the previous order of such Collector.

And whereas it is expedient to repeal the said 3rd Clause of the said last mentioned Regulation of Government.

Now therefore His Majesty is pleased with the advice of His Privy Council, to order, and it is hereby ordered, that the said 3rd Clause of the said last mentioned Regulation of Government shall be repealed, abrogated and annulled, and the same is hereby, repealed, abrogated and annulled accordingly, and it is hereby ordered that when any portion of the said Tax so by the said 1st Clause of the said last mentioned Regulation imposed, shall be in arrear and unpaid, the same shall be

<sup>1</sup> II, p. 292.

recovered from the person liable to pay the same in the same manner, and by the same process, as is used for the recovery of other debts, due to His Majesty in the said Maritime Provinces of the said Island.

And whereas by the 1st Clause of a Regulation of Government, bearing date at Colombo the 1st day of May 1827, entitled "A Regulation No. 3 of 1827",<sup>1</sup> in the preamble of which said last mentioned Regulation of Government, it was recited that evil disposed Persons had been from time to time, employed to seduce and entice away Chalias from the settlements of His Majesty in the said Island, all such Chalias being bound by their caste to serve His Majesty in the cultivation and preparation of Cinnamon, it was amongst other things enacted by the Governor of the said Island in Council, so far as regarded the said Maritime Provinces of the said Island, that any person who should contract with, entice, persuade or endeavour to seduce or encourage any Chalia to go away from the said Island beyond seas, every person, so offending should upon conviction thereof before the Honorable the Supreme Court of Judicature be sentenced by such Court to Transportation, or to fine or imprisonment at hard labour, according to the nature and circumstances of the offence and the condition of the Offender, as the said Supreme Court should in its discretion think fit.

And whereas it is expedient to repeal so much of the said 1st Clause of the said last mentioned Regulation of Government, as is herein before recited. Now therefore His Majesty is pleased with the advice of His Privy Council to order, and it is hereby ordered, that so much of the said 1st Clause of the said last mentioned Regulation of Government, as is herein before recited shall be repealed, abrogated and annulled, and the same is hereby repealed, abrogated and annulled.

And the Right Honorable Viscount Goderich, One of His Majesty's Principal Secretaries of State is to give the necessary orders herein accordingly.

(Signed) W. L. BATHURST

<sup>1</sup> II, p. 328.

## IX

### *The Administration of the Government of Ceylon*

[Viscount Goderich to Sir R. W. Horton]



Downing Street,  
14 Sept. 1832<sup>1</sup>

SIR,

I have the honor to transmit to you herewith a copy of the first part of the Commissioner's Report into the state of the Island of Ceylon, which comprises the administration of its Government.

Having already communicated with you in separate dispatches upon many of the points contained in this Report which His Majesty's Government have considered capable of immediate attention,<sup>2</sup> I shall in this dispatch proceed to call your attention to some of the remaining recommendations of the Commission which it is conceived may be also carried into effect with benefit to the Colony, reserving for future adoption, others, which, not being of such pressing importance, may be safely deferred until His Majesty's Government shall have learned your sentiments and those of your Council, as well as the opinions of those persons in the Colony upon whose local knowledge and judgement reliance can be placed.

\* \* \*

It is recommended that the service tenures of Temple Lands should be re-formed,<sup>a</sup> and that with a view of making this change palatable to the Natives, the desire which they have expressed to become acquainted with the English Language should be promoted by obtaining the concurrence of the Chiefs

<sup>a</sup> Pages 14 and 15. [pp. 35-8 above.]

<sup>1</sup> C.O. 55, 74; Dispatches from the Secretary of State, 1832. C.G.A. 4/17, No. 79.

<sup>2</sup> See pp. 253-6 above.

and Priests to the appropriation of a part of these Revenues to the maintenance of an English Seminary.

It is observed in reference to the prerogative exercised by the Government of Ceylon in the selection and appointment of Chiefs and Priests of Temples,<sup>a</sup> that such an interference with the religious affairs of the country, although adopted from considerations of policy, has been attended with much inconvenience, is liable to very grave objections, has failed to satisfy the Chiefs, and has checked the improvement of the country.

I forbear however to convey to you any specific direction as to the alteration which may be necessary to be introduced in this respect, as I am of opinion that any remedy for the evils complained of, had better be left to you and your Council to suggest, than that any change upon this delicate subject should originate from home. At the same time whatever arrangements it may be, in your and their opinion, expedient to substitute for the administration of the affairs of the Buddhist Establishment and for the ordination of the Priests of that Faith, it cannot fail to strike you that any direct sanction from a Christian Government to a Pagan worship should be most carefully avoided. His Majesty has no disposition to interfere with the strict observance of the Treaty of 1815, by which the cession of the Kandyan Provinces was made, but I do not consider that the British Government can be expected to do more than secure the Inhabitants in the free and undisturbed exercise of their Religious Rites as secured to them upon that occasion.

As I have already addressed to you two separate dispatches upon forced labour and public works,<sup>b</sup> I am not aware that I can add very materially to what I have therein stated upon these subjects.<sup>1</sup> All the laborious duties which the people have been hitherto called upon to perform as detailed in this part of the report, will of course cease, and public works will henceforth be either undertaken by contract or be performed under the direction of the Government officers by Labourers hired for the purpose, as in other countries. The Corps of Artificers and Pioneers which forms what is termed the "fixed Establish-

<sup>a</sup> Page 15, para. 4. [p. 37 above.]

<sup>b</sup> Pages 16, 17 and 18. [pp. 39-45 above.]

<sup>1</sup> See pp. 233 above, 253 below.

ment" will admit of being gradually reduced, as the means will offer of executing works by Contract for the mean time, as this Corps appears to have been raised during the exigencies of the War, and in the service of the Troops, it should be expressly applied to the execution of those works which are connected with the security and defence of the country, and in particular, in opening communications and constructing Roads and Bridges as some of the most important of these Roads will traverse the depopulated Districts, it is obvious that the work could only have been performed by the compulsory labour of the people of other Provinces, and would therefore have under any circumstances depended on the general Resources of the Government.

I must here beg to call your attention to the several instructions which have been addressed to your Predecessors, respecting the erection and repairs of buildings and all other kinds of works, and to the Rules laid down by the Lords Commissioners of His Majesty's Treasury upon this subject. Their Lordships require that plans and detailed Estimates shall on all occasions be transmitted to the Secretary of State for approval, before any new Building or work shall be commenced, and the original Estimates must be so framed as to cover the whole of the expence whether for labor or materials, for which sanction will be required, and that no expenditure on account of Buildings or of any service should be incurred without authority previously obtained, except in cases where the immediate repair of buildings shall be necessary to save them from dilapidation, and in other cases of urgent and immediate necessity. You will have been already apprised by my Circular dispatch of the 1st March last, that their Lordships have determined to enforce the observance of these Regulations by making the Governors of Colonies personally responsible for any deviations therefrom.

I have separated the consideration of the public works from the descriptions of labor which particular classes of the native Inhabitants have been required to perform for the profit of Government, I allude chiefly to the collection of Salt and Cinnamon, of which the Government have hitherto claimed and enforced a monopoly upon which subjects I shall either address you separately or when I shall enter upon the con-

sideration of the Report of the Commissioners upon the Revenues of the Island.

The attachment which the Commissioner notices on the part of the natives to their hereditary Possessions<sup>a</sup> and the objection entertained by them to exchange those possessions for other lands should induce the Local Government to exercise with great caution the power which it has reserved to itself of resuming lands for public purposes. The Regulation on this subject (No. 15 of 1822)<sup>1</sup> which applies to the Maritime Districts (and which having only as yet received His Majesty's provisional approbation, you will now consider as confirmed) might be beneficially extended to the Kandyan Provinces—and care should be taken not to call upon the natives to surrender any portion of their property excepting when the interests of the public service render such a measure indispensable, and then only under an Act of the Colonial Legislature upon full pecuniary compensation adjusted by arbitration.

The subject to which I have next to advert is the system of the Civil Service which has been established in the Colony.<sup>2</sup> I find from the records of this office that a certain number of young men have been sent out from this country by my Predecessors as Writers, and that the Civil Offices of the Government with few exceptions, have been divided into certain classes, according to their respective rank and rate of remuneration, to which classes the persons sent out as Writers have been considered as possessing a claim, to the exclusion of all other Candidates, and it appears that when vacancies in the higher offices are filled up by the promotion of those who hold the lower, the next in rank or in seniority are deemed to have an absolute title to succeed, unless there should appear from their unfitness or from other causes any positive objection.

I am sensible that a system such as this is not without some advantages, inasmuch as gradation of service must always afford a stimulus to exertion, but I am of opinion that these advantages might be obtained in a sufficient degree without incurring the evils which appear to me to preponderate in the

<sup>a</sup> Page 19. [p. 45 above.]

<sup>1</sup> II, p. 317.

<sup>2</sup> See p. 47 above.



present system. Preferment in the public service of the Colonies may be given to those who distinguish themselves in it without appropriating the offices exclusively to a particular description of public servants: So far indeed as gradations of service are established which of themselves confer eligibility to promotion, the difficulty is increased of having due regard to those claims which are founded upon merit and capacity. Although Rank and Seniority in the service do not constitute upon the system established at Ceylon any absolute superiority of title to advancement, there will always be felt no doubt some difficulty in giving the preference to junior and subordinate officers however superior may be their qualifications.

Another objection to the system is that the choice of persons to fill the more important offices in the Colony is confined by it to a class of candidates who have been sent from this country at an age when their capabilities for executing such offices cannot be duly ascertained, to which may be added a further evil—that arising from the frequency with which the different offices are transferred from the hands of those who have long experience in the execution of their duties to those who have little, but more often perhaps from those who have themselves had but little opportunity of learning their business to others who have had less, or who have been altogether without any—I allude more particularly to the inconvenience resulting from the necessity under the present system of transferring officers brought up in the Revenue Departments of the Government to Judicial situations and vice versa.

Owing to this practice of filling up most of the higher situations by persons originally sent from home, as Writers, and who become by seniority holders of those posts which are natural objects of ambition to the Inhabitants generally, the Commissioner considers that the latter are excluded from their fair share of the advantage derived from public employment. I concur in the opinion which he has expressed that a different course of policy in this respect would tend materially to assist the Governor in the discharge of his duties, you will therefore understand that employment on the Civil Situations of the Island will henceforth be open to all classes of the native community, and to such other subjects of His Majesty whose long residence in the Island may have given them a fair claim

to participate in the advantages of the Colonial Service; and I shall be happy to pay all due attention to the claims of any Candidates for employment, who may have distinguished themselves in subordinate public situations, or who may otherwise be conspicuous for ability or merit.<sup>1</sup>

In pursuance of this arrangement it is not my intention that any new appointments should be made of Writers in the Civil Service, nor that the system of granting pensions to those so employed should be continued—you will understand, however, that this measure can only take place prospectively and that those who already belong to the Civil Service will be entitled to all the advantages held out by the Pension fund to which they have hitherto looked. I am also desirous so far as it can be done with justice to the public to consult the interest of the same persons in regard to promotion, and without holding out any definite expectation on this point or establishing any positive Rules, it is my purpose to afford these Gentlemen, as occasions may arise, and economy may permit, such opportunities of advancing themselves by their own merits and exertions, as shall at once fulfil the hopes that they may have fairly entertained, and be conducive to the permanent end of benefitting the public service. At the same time, it must be understood that the higher offices of Government such as heads of departments will not, for the future be exclusively reserved in their favour, as the occasion may occur in which I should consider myself called upon to make an appointment to such an office immediately from home.

You will observe that the Commissioner strongly dwells upon the impolicy of “maintaining separate and independent Establishments for the maritime and Kandyan Provinces by which a check has been opposed to that assimilation which it is on every account desirable to promote between the various classes of whom the population is composed”.<sup>2</sup>

This separate system of Government, which has prevailed in Ceylon since the conquest of the Kandyan Provinces is clearly inexpedient, and the measure recommended by the Commissioner of placing the whole Island under the administration of the Governor and Council should be immediately adopted, as well as the new division of the Island into Provinces, and

<sup>1</sup> See pp. 68-70 above.

<sup>2</sup> See p. 52 above.

the limitation of them which is proposed by the Commissioner.

Referring to the recommendation in his report that the ordinary transactions of the Government should be conducted as far as possible through established and responsible departments acting under Instructions from and subject to the control of the Executive Departments in England, I have to acquaint you that it is the intention of His Majesty's Government (as you will be informed by a separate dispatch) that the Department of the Commissariat at Ceylon should hereafter be conducted under the direct control of the Lords Commissioners of the Treasury, but to any more extensive adoption of this principle I am not at present prepared to give my consent.<sup>1</sup>

In the observations which the Commissioner has offered in regard to the propriety of altering the present mode in which the Executive and Legislative administration of the Island has been conducted,<sup>a</sup> I entirely concur, and it is my intention at an early opportunity to send out to you additional Instructions under the Royal Sign Manual for carrying such alterations into effect.

For your own assistance in the administration of the Government, it is proposed to establish an Executive Council consisting of the Officer in Command of the Land forces, the Secretary to Government, the Advocate Fiscal and the Treasurer, to which will be added the Government Agent for Kandy (or adopting his more proper denomination, according to the proposed new division of the Island, the Government Agent for the Central Province) although it is not probable that he will be very often able to give his attendance at that Board. To this body you will refer for advice upon all occasions of difficulty or importance—you will however be at liberty to act upon your own judgment, in opposition to their opinions, if, in any case, you should see fit to assume that responsibility.

In regard to the Legislative Council, it is proposed that that institution should be composed of fifteen Members, nine of whom should be official, and the remaining six unconnected with the Government.

<sup>a</sup> Pages 22, 23, 24 and 25. [pp. 53-9 above.]

<sup>1</sup> See pp. 53 and 278.

The official Members will consist of

1. The Chief Justice
2. The Officer in Command of the Land Forces.
3. The Secretary to Government.
4. The Auditor General.
5. The Treasurer of the Island.
6. The Government Agent of the Western Province.
7. The Government Agent of the Central Province.
8. The Surveyor General.
9. The Collector of Customs at Colombo.

The Colonial Members will be selected as far as possible in equal proportions from the respectable European Merchants or Inhabitants and the higher classes of Natives.

But should there not be present in the Island a sufficient number of fit and qualified persons of this latter class, whom you may feel justified in recommending, to His Majesty for this distinction, you will understand that the appointment of the Official Members is not to be delayed on that account. Thus no present inconvenience will arise, supposing that circumstances should prevent you from giving full effect to the arrangements for the new organization of the Council by completing the unofficial Members of that Body to the number proposed.

To this body will be entrusted the power of enacting all such laws as may be required for the welfare of the Island. But in order to prevent the valuable time of this Assembly from being improperly consumed in fruitless discussion, the privilege of proposing measures for consideration should be restricted to the Governor, and no question be debated which may not previously have obtained his approbation.<sup>1</sup>

The Introduction into this Council of a proportion of European and Native Inhabitants of the Island, will, I trust, secure at once the advantage of the most exact local information, and the still greater benefit of convincing the population that the laws made for their Government, proceed from persons participating in their own interests and general opinion who will divide with the higher officers of the Government at once the credit and responsibility of Legislative measures.

<sup>1</sup> See p. 56 above.

In regard to the Commissioner's suggestion that it might be deemed necessary to provide that the Governor should take no part in the deliberations of the Legislative Council,<sup>1</sup> I do not consider that the objections which have been urged against involving the Governor in discussions with the Members of the Legislative Council, are of sufficient weight to counterbalance the disadvantages which would result from his absence, and from his consequent inability of personally explaining his own views, or of meeting the objections of the other Members.

I have purposely omitted the subordinate details of the general measure which I have thus announced, as they will be more conveniently explained in the Instructions by which the two Councils will be established. In regard, however, to the principle of Legislation recommended by the Commissioner, and the revision of the existing Laws, I deem it more advisable that the course suggested should be the result of local arrangement than that it should be adopted without limitation by Instructions from home.<sup>2</sup>

The observations of the Commissioner in regard to Slavery, and the measures which he proposes for still further promoting its gradual extinction will of course receive your early attention, and you will not fail to report to me the modifications, which, with this view you consider that it would be desirable to make in the Regulations of 1818 and 1821, relating to this subject.<sup>3</sup>

The removal of all distinctions in the terms and conditions on which Lands are granted to Europeans and to natives of Ceylon and India, seems an indispensable measure, and the Regulations, referred to by the Commissioners, of 1812,<sup>4</sup> will require to be so amended that the same encouragements which are held out to Europeans to settle in Ceylon may be extended to Indian Settlers who may be able to employ the same amount of Capital in the cultivation of the Land. My dispatches of the dates mentioned in the Margin,<sup>5</sup> contained instructions upon this point, as well as on the removal of all restrictions in the cutting down of timber:<sup>5</sup> and in directing that all the other

<sup>a</sup> 17 April, 1832, No. 49. 4th May 1832, No. 53. [See p. 255 below.]

<sup>1</sup> See p. 58 above.

<sup>2</sup> Ibid.

<sup>3</sup> II, pp. 369, 371.

<sup>4</sup> II, p. 314.

<sup>5</sup> II, p. 325.

suggestions of the Commissioners in reference to this subject should be attended to, I have only to express my doubts whether at a time when the system of granting Land is given up in all the other possessions of the Crown, it would be politic to keep it up at Ceylon. A small payment would not perhaps press inconveniently upon the small Capitalist, and the Settler who has no Capital would be unwise to commence the cultivation of land upon his own account; on this point you will receive further and more particular Instructions.

I entirely concur with the Commissioner in the opinion which he had expressed as to the expediency of encouraging the cultivation of Cinnamon, Pepper, Cocoa, and Coffee,<sup>a</sup> but this object should be accomplished without farming these productions at the expence of the growth of any other species of produce. I have already in a separate dispatch directed that the Government Establishment which has been kept up at an annual loss to the public for some time past for the cultivation of some of those articles should be immediately abolished.<sup>1</sup>

The deficiency of Government Schools in the Malabar Districts, and the absence of any Institutions of that nature in the Kandyan Provinces<sup>b</sup> is a subject to which it will be your duty to give your earliest attention; reporting to me, in detail, upon all those Recommendations which are to be found in the report connected with the system of education amongst the Natives, viz. the placing all such Establishments under the direction of a Commission, the securing the appointment of fit persons as Schoolmasters, and the establishment of a College at Colombo, with the object of giving encouragement to the elementary schools, and affording to native youths a means of qualifying themselves for different branches of the public service.

Upon all those points to which your attention has been thus specially invited by reference to the pages of the printed Report, I am commanded by His Majesty to direct you to put in force the suggestions of the Commissioners at the earliest possible opportunity, reserving to yourself at the same time the discretion to postpone such of them as may appear to you to

<sup>a</sup> Page 28. [p. 66 above.]

<sup>b</sup> Page 31. [p. 72 above.]

<sup>1</sup> See p. 246 above.

require further consideration, in which case you will convey to me such additional information as in your judgment may appear calculated to emend or vary any particular recommendation of the Commissioners, and to which I have here given my conditional sanction.

I am, Sir,

Your most obedient humble Servant,

(Signed) GODERICH

## Extracts from Other Dispatches on the Administration of Ceylon

### I. THE DEPARTMENT OF CIVIL ENGINEER AND SURVEYOR-GENERAL<sup>1</sup>

The irregular manner in which the Public Works at Ceylon are reported by the Commissioners to have been carried on,<sup>2</sup> and the inefficient state of the Civil Engineer's Department, fully establish the necessity of placing it under the superintendance of an officer, whose experience and attainments would enable him to controul the expences of all Works, whether undertaken by Contract or with the assistance of Government Artificers, and to introduce and enforce proper Regulations for the economical management of this branch of the Public Expenditure.

\* \* \*

In revising the above Establishment I propose to confine myself (until I shall have learnt what means there may be in the Island of completing the Establishment to the extent recommended by the Commissioners) to the sending out from England a proper Person, with one Assistant, to undertake the united duties of Civil Engineer and Surveyor-General; an arrangement which I am happy to find, so far as relates to the organization of an efficient Engineer Department agrees with that which both yourself and the Council have recommended.

<sup>1</sup> C.O. 55, 74 (No. 74). Goderich to Horton, 13 August 1832; C.G.A. 4/17, p. 374.

<sup>2</sup> See p. 40 above.

On transferring to the Ordnance Department the Barracks and Military Buildings, the duties of the Civil Engineer will be confined to erecting and keeping in repair all Public Works, intended for Civil purposes, the construction of Buildings, Canals, Tanks and Water Courses, whilst in his character of Surveyor-General, he will be required to execute those surveys, which may be required for the purpose of fixing the general boundaries, and extent of the Lands at the disposal of the Government and to ascertain the nature of these resources.

I am aware that it does not form part of the arrangement which you have proposed to transfer any of the works now carried on under the superintendance of the Collectors in the respective Districts, to the Civil Engineer's Department, but the mistakes which are stated by the Commissioners to have been made, not only in works of great magnitude, but also in those of a minor description, which the collectors have superintended, by which useless expences have been incurred, lead me to the opinion that, this branch of contingent expence, connected with the Public works, should be also brought under the controul of the Civil Engineer and Surveyor-General, and executed either by Contract, or by the aid of the Government Artificers. For, although the Collector would, I have no doubt continue, as they have always done, to give their best attention to their undertakings, yet it cannot be expected that they can be executed in the same efficient manner, as if placed under the superintendance of a Department properly constituted and duly responsible for them.

In the meantime, to ensure greater regularity and a stricter control over the Public Expenditure in the works which are in progress, the Officers, who are charged with their superintendance, must be required to keep regular accounts of all labour employed, and of materials used, in any particular work, charging to such work, the labour of the Artificers and Pioneers when employed upon it, and such materials as may be supplied from the Public Stores.

As it is stated by the Commissioners that considerable works have been undertaken on the verbal directions of the Governor and Commander of the Forces by Civil and Military Departments, without any regular survey or Estimate previously made by a Professional Officer, and that the Plans have frequently



been changed, whereby loss has been sustained, you will, in the case of all works not yet finished, cause a Report to be made upon the necessity and utility of completing them, which Report you will send home accompanied by Estimates of the whole of the expences required for the completion.

## II. THE CIVIL SERVICE<sup>1</sup>

The opinions which you have recorded in your Minute on the Constitution of the Civil Service do not coincide with those expressed by the Commissioners in their Report,<sup>2</sup> and I confess that I am disposed, although it is contrary to the system on which His Majesty's Government have hitherto acted, to give the preference to the arrangements, which the Commissioners have suggested—It appears to me to be of the first importance to break through the principle of an exclusive Civil Service.

## III. GRANTS OF LANDS<sup>3</sup>

I deem this a fit opportunity for at once directing that the distinction which appears to have prevailed between the European and the Native Grantee should no longer be permitted to exist, and that all lands granted in future should be regulated wholly with reference to the means of the applicant, rather than upon the principle by which the Colonial Government has hitherto been guided.<sup>4</sup>

## IV. RESTRICTIONS ON THE CUTTING OF TIMBER<sup>5</sup>

The observations contained in your despatch, relative to the duties on Timber and the restrictions imposed upon the felling of the Trees appear to agree entirely with the opinions submitted by the Commissioners in their Report, you will therefore forthwith repeal the Regulation of Government of 1822, by which Proprietors of Lands were prohibited from

<sup>1</sup> C.O. 54, 74. Goderich to Horton, 4 May 1832; C.G.A. 4/17, p. 251.

<sup>2</sup> de Silva, op. cit., II, p. 589.

<sup>3</sup> Dispatches from the Secretary of State, 1832. Goderich to Horton, 17 April 1832; C.G.A. 4/17, p. 115.

<sup>4</sup> II, pp. 314, 315.

<sup>5</sup> C.O. 54, 74. Goderich to Horton, 4 May 1832; C.G.A. 4/17, p. 251.

cutting Timber without a Licence from the Collector of the District by which a duty was levied on the value of the Trees, and I entirely concur in the opinion, expressed by the Commissioners and yourself, that such restrictions are extremely injurious to the Country and vexatious to the people, whilst the comparative insignificance of the sum annually produced from this duty, renders it an object, in point of Revenue of very little importance to Government.<sup>1</sup>

#### V. PEPPER AND COFFEE PLANTATIONS<sup>2</sup>

I have already in my despatch of 7th April, adverted to the recommendation of the Commissioners of Enquiry that the cultivation of Pepper and Coffee on the part of the Govt. should be discontinued. Since that despatch was written, I have under my consideration a Return shewing the expenses which have been incurred on account of these Plantations involving a balance against the Public in the four years ending with the year 1828, to the amount of £2620. 13. 3½. Under these circumstances it cannot be for a moment doubted that the keeping up of any Establishments of this nature, however desirable it might have been in the first instance to encourage the growth of these particular productions, would be exceedingly objectionable; and you will therefore give directions for the disposal of these Plantations without delay, and for the redemption of the Establishments which have been hitherto maintained for the cultivation of them.

<sup>1</sup> See p. 63 above.

<sup>2</sup> C.O. 55, 74. Goderich to Horton, 22 June 1832; C.G.A. 4/17, p. 312.

## X

### *The Revenues and the Establishments in Ceylon*

[Viscount Goderich to Sir R. W. Horton]



Downing Street,<sup>1</sup>  
23rd March, 1833

SIR,

In forwarding to you copies of the Reports of the Commissioners on the Finances and Establishments of Ceylon,<sup>a</sup> I propose, in this despatch, to make such observation as are called for, in regard to the measures recommended for the future Settlement of the Revenue, and the revision of the Establishments.

In replying to your several despatches, I have anticipated many of the subjects, which are noticed in these Reports, but I will recur to them, where any further remarks may be required.

The various changes which have been proposed with the view of relieving the people, as far as possible, from the effect of the Government Monopolies, and the pressure of the system of taxation adopted in Ceylon, have engaged my particular attention.

In my despatch No. 82 of the 12th of October,<sup>2</sup> I have announced to you the decision of His Majesty's Government to abandon the Cinnamon Monopoly, and I have conveyed to you the necessary Instructions for allowing the free cultivation of that article, for opening the Trade, and for raising the Revenue in future, by an Export duty, until other equivalent resources may arise. At the conclusion of the Treasury

<sup>a</sup> 31st January 1832; 28th May 1832. [pp. 77 and 212 above.]

<sup>1</sup> C.O. 55, 74, No. 114; Dispatches from the Secretary of State, 1833, C.G.A. 4/18.

<sup>2</sup> C.O. 55, 94. See p. 287 below.

Minute,<sup>1</sup> enclosed in my above cited despatch, the Lords Commissioners have stated their opinion that, as the Government had relinquished their Monopoly of that staple commodity of the Island, it would be advisable to throw open the Monopolies of the minor productions, and entirely to disconnect the Government from all trading or commercial pursuits. Concurring in this opinion, I have to call your particular attention to their Lordship's observations upon this head, and to desire that you will carry their recommendations into effect. I am aware that the Monopoly of the Choya Root, or madder, was abolished by your Predecessor,<sup>2</sup> and I shall have occasion to advert to other Monopolies, and restrictions, in the course of this despatch.

The collection of Plumbago, and the preparation of Cocoa Nut Oil, are branches of the Colonial Trade in which the Government should cease to have any concern; and by thus rendering the productions of the Country fully available by the Public, I entertain no doubt that Shipping will be encouraged to bring goods to the Island, in exchange for assorted Cargoes—a Trade which cannot fail to be more beneficial than that which depends upon the speculations of the Government.

I take this opportunity of offering some observations on that part of the Commissioner's Report, in which he recommends a revision of the very unequal duties now levied on the produce of the Island. I am aware that the imposition of high duties on some articles, has grown out of the circumstances under which the Revenue of the Island had been raised under the Dutch; that the duty on Areca Nuts was a substitute for the Dutch Monopoly of that Article, and that the duty on Tobacco was imposed on the abolition of that Monopoly in Ceylon. These duties, as well as those on some articles of produce from the Cocoa Nut and Palmyra Plantations, are unquestionably much too high, while, on the other hand, the present exemption from all duties of some other productions of the Island, such as Coffee &c., affords an undue encouragement to the growth of certain Articles, to the prejudice of others of equal value and importance. Were it not for the uncertainty which must, for a time, attend the result of the measures which have recently

<sup>1</sup> II, p. 374.

<sup>2</sup> de Silva, *op. cit.*, II, p. 489.

been sanctioned with respect to that most important source of Revenue, the Cinnamon Monopoly, I should have been induced to concur in the gradual reduction of these high Export duties, and in the repeal and modifications of others, from which the revenue of Ceylon has hitherto been derived; the more especially, as the success which has attended the measure of your Predecessor in raising the Import, and reducing the Export duties, affords the best assurance that the further prosecution of the same system, would extend the Trade, and augment the Revenue, of the Island. But, as in addition to the uncertainty which must, for some time, exist, as to the effect, which will be produced on the Revenue by a removal of the restrictions on the Cinnamon Trade, a difficulty may not only be experienced in accomplishing the several reductions upon which the Commissioner of Enquiry depends for the equalization of the Expenditure of the Colony with its Receipts, and a demand for retired allowances probably be made in consequence of the proposed alterations in the Establishments; I do not feel prepared, at present, to authorize any material alteration of existing laws, or give my consent to any measures which may hazard a diminution of other Branches of Revenue, excepting so far as regards some of the minor Taxes, to which I shall hereafter allude, and which appear, either to be highly objectionable in principle, or partial in operation, or to yield no adequate return for the trouble and expence of collection. While on this subject, I recommend that you should enter into communication with the Governors of Calcutta and Madras, with a view to such concessions as may be mutually agreed upon, in relieving the Trade between the Continent and Ceylon. The attention of Sir Frederick Adam was drawn to this subject, before his departure from this Country, and I hope that, in concert with him, the intercourse between Countries, so closely connected, may be rendered more open by the regulation of intercolonial duties, and the abolition of the Monopoly of Ceylon Tobacco in Travancore.

The prospect of opening a Salt Trade with Bengal will be a proper subject of negotiation with the Supreme Government, and when you shall have communicated to me the result of your correspondence with the Authorities at the Presidencies of India, I shall be prepared to support the measures, which

may be practicable for promoting the Commerce of the Island—I enclose, for your information, a copy of the Evidence given by Colonel Colebrooke before the present East India Committee of the House of Commons relative to the Trade between Ceylon and the Company's Territories.<sup>a</sup>

The central position of the Island, so convenient for Trade with the neighbouring Countries, points out the advantage, which may be derived from raising the greatest part of its Revenue through the Customs. This Revenue has increased so much of late years, under all the disadvantages to which the Trade of the Island has been exposed, that a further augmentation may be confidently relied on—especially when an open Traffic in Cinnamon shall have increased the resort of Shipping to the Island, as it may reasonably be expected to do.

The transmission to this Office of annual Returns of the rate and amount of duties levied on goods of various descriptions, and exported to, or imported from, different quarters, would enable His Majesty's Government to judge of the course of the Trade, and of the modification of the duties, which may, from time to time, become necessary. In reference to any such modifications, I have to call your attention to the 12th Clause of the Instructions addressed to you by the Lords Commissioners of the Treasury, which provides that you are not, except in cases of particular emergency to abandon, discontinue, or alter the amount of any duty or Tax constituting part of the Colonial Revenue, nor to make any material alteration in the mode of collecting the same until the sanction of His Majesty's Government shall have been previously obtained. The Merchants have already complained of the embarrassment occasioned to them from such local charges, but as you will be enabled on the spot to judge more correctly than can be done in this Country of the effect of any duties which experience may have proved injurious to the Trade and Revenue of the Island, you will bring the subject when required, under the consideration of your Council, and take such evidence as may be necessary, transmitting the Minutes of these Proceedings for the consideration of His Majesty's Government, together with your opinion on the subject.

<sup>a</sup> Vide Parliamentary Paper 735, III, 1832, p. 243. [C.O. 54, 121.]

The Export duty on Cinnamon which was ordered to be imposed by my despatch No. 82 of the 12th of October last,<sup>1</sup> will, for a time, constitute an exception to this rule, and if it should appear to you that any urgent necessity exists for an immediate reduction of the proposed duty from 3s. to 2s. 6d. or even to a lower rate per lb., in order to enable you to establish the Trade and to sustain the Revenue, you would consider yourself authorized, under the Instructions given to you in my despatch of the above date, to carry the change into effect, in concurrence with your Council, either upon all Cinnamon exported from Ceylon, or upon Cinnamon exported for consumption to the eastward of the Cape of Good Hope. While the East India Company held the Monopoly of Cinnamon, a considerable Revenue appears to have accrued to the Island in the sale of that Article, at reduced prices, for the supply of the Eastern Markets, and it is not improbable that, to encourage the Indian and Arabian Traders again to resort to the Island, who are stated to supply themselves now from Malabar and Batavia, it may be necessary, in the first instance, to hold out the same particular inducement. I have already referred to the observations of the Commissioner of Enquiry on the exemption of some particular Articles of Colonial Produce from Export duty. I now come to that part of his Report, in which he states the benefits, which the Trade of the Island will derive by reducing the export duties on the various products of the Plantations, and the relief which will be afforded thereby to the Planters.

I fully assent to the propriety of making the export duties, on the ordinary descriptions of produce, as light as possible, but I make this suggestion under the impression that it is desirable that the Inhabitants should be left to cultivate the produce, which may best answer their own commercial purposes, without the artificial encouragement, which special exemptions from duties, hold out, and which are either uncalled for or tend to foster speculations generally ending in disappointment. On the other hand, I consider it expedient, in connection with the restrictions on the Cinnamon Trade, and with the prospect, which that measure holds out of an increased resort of Shipping, and demand for all other kinds of produce, and

<sup>1</sup> See p. 287 below.

with a view also to future equalization of the duties on all importable articles, to authorize you to impose the lowest rate of export duty levied under the existing Tariffs upon those articles, which have, hitherto, been exempted from that impost.

Of the internal Revenues the most important is the Excise duty on Spirits, which appears to exceed the average amount of the Revenue from Salt. Although the owners of Cocoa Nut Plantations complain of these duties, I conceive that they could not be conveniently reduced in the present state of the Finances of the Island; I object, however, to the Government Monopoly of the Arrack Trade, which the existing Regulations have established in the Colombo District.<sup>1</sup> I am fully impressed with the great importance of encouraging the Plantations of Cocoa Nut and Palmyra Palms, not only, from the great resource, which they afford to the People, but, because the Government derives a Revenue from them; and considering its amount, I can by no means recognize the justice of imposing any further Tax, or Duty, as contemplated by your Predecessor, upon these Plantations, or their produce.<sup>2</sup>

The proposal to impose such a Tax, connects itself with the consideration of the Grain Tax, the vexations attending the collection of which, particularly where property is so much subdivided as it is in Ceylon, are inseparable from such a source of Revenue, and have already given rise to representations and complaints upon the subject from the People.<sup>3</sup> Such an interference with the Cultivators in the management of their lands, is equally felt in situations where the right of collection is sold to Speculators, or where it is made by a number of Petty Officers employed under the Speculators; and a Tax, thus imposed, on the subsistence of the people, from which other articles of produce are exempt, or upon which alone a rate of duty is levied, must by discouraging the natural application of Capital, operate as a check to that branch of Agriculture, which is the most important, and which ought, on every ground to receive the utmost encouragement.<sup>3</sup> Although, the Grain Tax in Ceylon does not generally exceed a tenth of the produce, it appears to have been found necessary, in order to encourage the cultivation of waste lands to remit it

<sup>1</sup> See p. 104 above.

<sup>2</sup> See p. 85 above.

<sup>3</sup> See p. 80 above.



for a term of years on such lands. The experience of other Colonies has also shewn that the imposition of Quit Rents is discouraging to the Settlement of new lands, on which account it has been found preferable to dispose of them by Sale; and I look with some anxiety for the Report which you have informed me in your despatch No. 85 of the 15th of Octr. 1832, that it is your intention to send home upon this subject.

On the subject of those Taxes which have hitherto been paid in kind,<sup>1</sup> I beg to call your attention to the recommendation of the Lords Commissioners of the Treasury contained in their Minute which accompanied my despatch No. 82,<sup>2</sup> that a money Rent should be substituted, and when the Colonist should be unable to pay otherwise than in kind, that the valuation should be estimated so low as to stimulate him to procure some other way of disposing of his crop. I am aware that this subject has already engaged the attention of the Revenue Officers of your Government, and that some progress has been made in realizing a money Tax, where the means have been at hand for facilitating the disposal of the produce.

Viewing the circumstances of Ceylon, the imposition of a Quit Rent on certain Lands when cultivated in Grain, the exemption of produce from assessment, the quantity of Grain annually imported from the Continent, the magnitude of the works to be restored, constructed and maintained for irrigation of the Country, and the extent of Lands to be cleared, I cannot but entertain an opinion favourable to the adoption of a combined measure in the sale of the Waste Lands, and in allowing the redemption, at an equitable rate, of the Tithe, or Grain Tax, now chargeable on the Corn Lands.

It is indeed manifestly politic to encourage this redemption, as in the event of the Lands being cultivated in other produce than grain, the Revenue would be lost, while the People would be rendered, generally, dependant on imported supplies. By allowing the redemption to be effected by Instalments, to be paid at the convenience of Land-holders, a remedy will be afforded against all the inconveniences felt or complained of, under the present modes of collection, and the fund raised from the sales of waste lands, to the improvement of which they will so directly contribute, will be properly applied to

<sup>1</sup> See p. 82 above.

<sup>2</sup> See II, p. 374.

the opening of Roads, to the repairs of ancient Tanks, and water courses, and to the execution of other Public Works of equal utility. But referring to the precautions I have already recommended in regard to the reduction of Taxes, until the effect of the relinquishment of the Cinnamon Monopoly shall be ascertained, I have particularly to desire, not only that no new work of any description may be undertaken in anticipation of and reliance on Funds to be produced by redemption of the Grain Tax and Sales of Land; but also that any Funds derived from these sources may be reserved, until their appropriation shall be expressly authorized by His Majesty's Government, in order that, previously to the commencement of any work of magnitude, sufficient means may be insured for carrying on, and completing it. In authorising the adoption of these measures, in respect to the Land Revenue, it is satisfactory to me to find that the current receipts from that source will not suffer any diminution, as has already been experienced in the case of those redemptions of Quit Rents which have already been effected. I anticipate with confidence that the encouragement thus given to Agriculture, will lead to the application of capital, and to a development of the resources of the Island, by which those of the Government will be proportionally augmented.

As it may be desirable to encourage the Natives of India to settle in Ceylon, the publication, in India of the terms on which Lands may be acquired, would tend to promote an influx of Asiatic, as well as of European Colonists.

I cannot quit this subject without expressing the sense I entertain of the able and zealous exertions of Mr. Turnour, the Revenue Commissioner at Kandy, in effecting a composition with the numerous Landholders of the Interior Provinces for a term of years, and in registering the Lands. As these engagements will generally terminate in the course of the present year, the measure of allowing the redemption of the Tithe will obviate the necessity of renewing them in those Provinces, or extending the same arrangements to other parts of the Country; and the failure of the experiment made in the Maritime Provinces during the administration of Sir Robert Brownrigg, attests the difficulties which would be found to attend any general application of the principle.

I concur with the Commissioners in opinion that the Revenue derived from the Salt Tax, and from the Fisheries<sup>1</sup> is liable to great objection, as well from its undue pressure on the necessary subsistence of the people, as from the mode of its collection, whilst the exorbitant price charged on Salt, which in some places appears to be spontaneously produced, in great abundance, and must, therefore, in any form, be an objectionable source of Revenue, not only as tending to the encouragement of smuggling, which has accordingly been found to prevail to a great extent, but as offering inducements to the adulteration of the Article, as well as creating obstacles to the curing of Fish, which, it would appear is taken in great abundance on the Coasts of Ceylon.

In reference to the foregoing considerations, a reduction of the Monopoly price of Salt would doubtless be attended with considerable benefit to the Inhabitants, whilst by a more extended consumption of that Article, and by removing the present temptations to smuggling such a measure would very possibly be attended with little or no loss to the Revenue; but so long as any uncertainty exists as to the effect, which will be produced on the Revenue by the other measures of relief, which have been afforded to the Island, it will not be prudent to modify the existing system in reference to an article from which so large an amount is collected. Whenever this Revenue, however, can be spared with less inconvenience than at the present moment, I must express my conviction that it will be wisely relinquished by the gradual substitution of another mode of collecting this duty, either by Licence or Excise, with permission for the free collection of Salt for the curing of Fish in all situations where it is naturally formed or collected near to the Sea Shore. In the meantime, you will do all in your power to alleviate, as far as may be practicable, the injurious effects which must result from the Taxation of an Article of so great importance to the necessities of the People.

As the amount of the Fish Tax is not so considerable, I hope that it may soon be practicable to repeal it—but so long as this Tax shall exist, the readoption of the mode of collecting it by Licence of the Fishing Boats which was ordered by me on the 4th of May 1832,<sup>2</sup> will remove some of the vexations attending

<sup>1</sup> See pp. 95 and 98 above.

<sup>2</sup> See p. 285 below.

its collection; and from the poverty of the Fishermen, who are dependant upon the Headmen and Farmers of the Tax, it would facilitate the change, to authorize the payments for Boat Licences to be made by Instalments. When I consider the importance of the Fisheries to the Trade of the Island, and to the subsistence of the People, I must repeat the opinion, which I have already expressed in that despatch that, these measures, although affording but a partial relief, will give considerable encouragement to their prosecution, although as I have already stated in my despatch of the 14th inst., I shall wait for further information from you on the subject, before I direct the change in question to be carried into effect.

I am not prepared to acquiesce in any reduction of the Revenue, derived from Stamps and Fees collected in the Courts, further than to suggest to you the importance of guarding against any undue exaction of such duties, where they might tend to obstruct the course of Justice, and to occasion unnecessary charges to Suitors. The charge to be made on the Petitions of the Native Inhabitants should not exceed the expence of making Translations.<sup>1</sup>

The capitation Tax<sup>2</sup> is so partial in its operation, and the amount is so inconsiderable, that I cannot hesitate to sanction its repeal. This Tax, as originally imposed, appears to have been intended by the Regulation to have been levied on the Cingalese as well as the Native Inhabitants of the Malabar Districts; but being limited only to certain classes of the latter, it must operate injuriously, as a Tax upon them as Labourers, and as a Premium to the others who are exempted from its operation.

The tribute of Wax from the Weddahs, is of the same description, and I take this opportunity of drawing your attention to the means of reclaiming and settling these people, in the progress of the measures for the disposal of the waste lands, and for the restoration (when such undertakings can be commenced) of the ancient Tanks, which are understood to exist in the depopulated Districts, which they inhabit.

The insignificant and objectionable Revenue from the licence of Gaming Houses, Honorary Ceremonies, and for

<sup>1</sup> See p. 172 above.

<sup>2</sup> See p. 107 above.

the collection of precious stones, should be immediately relinquished.<sup>1</sup>

The restrictions on the taking and destroying of Elephants should also be abandoned and, instead of the Elephant Hunts, (which are occasionally undertaken in Districts, infested by these animals, and by which the Inhabitants at large are withdrawn from their productive occupations) it would be preferable to encourage the people to capture Elephants, by purchasing them when required for the Public Service, and by encouraging the exportation of them to the Continent, where Ceylon Elephants are preferred to others.<sup>2</sup>

In my despatch of the 6th of April 1832,<sup>3</sup> I directed you to break up the Establishment at Delft Island, and dispose of the Stud &c., and I am happy to perceive by your despatch No. 32 of the 29th May last, that you have already partially carried those orders into effect. I have only now to desire that you will, remove all peculiar restrictions on the cultivation and Trade of that Island.

The receipts of the Post Office,<sup>4</sup> which should constitute no charge in the general Revenue of the Island, I regret to observe, do not, at present, defray the expences of the Department. It should, therefore, be placed under stricter Regulations, the number of daily Posts throughout the Country should be limited and the Carriers adequately remunerated.

In revising the Post Office Regulations, you should restrict the privilege of franking, and I would suggest to you the expediency of arranging for the carriage of all Packages above a certain weight, by weekly runners, upon the plan that is understood to be established on the Continent of India.

In my despatches of the 22nd of July and 24th of August last,<sup>5</sup> I communicated to you my sentiments in regard to the Local Rates which had been imposed on the Towns for repairing and lighting the Streets of which complaints appear to have been made by the Inhabitants, and I directed all receipts and disbursements for local services, to be included in future in the general accounts of the Island under a separate head. In addition to what I then stated, I have now to observe

<sup>1</sup> See p. 106 above.

<sup>2</sup> See p. 102 above.

<sup>3</sup> See p. 285 below; also p. 103 above.

<sup>4</sup> See p. 114.

<sup>5</sup> C.O. 56, 24. See p. 287; also p. 114.

that the accumulation of a Fund from this source under the Regulation applying to Colombo, is liable to great objection, and you will, therefore, apply the Fund already collected, to the repairs of the Streets, taking care that the sums, which may be raised, hereafter, for these purposes, should, in consideration of the poverty of the People, be as limited as possible, and by no means exceed the actual expences required to be incurred.

These are all the Instructions which I propose at present to give you on the subject of the Revenue, and although there is much that will remain to be accomplished, at a future time, when the circumstances of the Island may admit of it, I consider that the liberation of the Trade in Cinnamon—the gradual reduction of the Fish duties, and the redemption of the Land Rents are concessions of the first importance to the Inhabitants of Ceylon, and combined with their exemption from compulsory services, under the Order of His Majesty in Council—an unfettered intercourse with the Continent—and the settlement and improvement of the waste lands, will afford such stimulus to Trade and Industry, that the repeal of the Salt and other injurious Taxes will, in a short time, become practicable.

I have omitted to notice, in its place, the Pearl Fishery, which as a precarious source of Revenue, cannot be relied on in the regular Estimates of Revenue, although it will be available in supplying any unforeseen deficiency. The inconvenience attending the present mode of conducting the Fisheries, as pointed out in the Commissioner's Report, and the suggestions offered by him that partial Fisheries of a Few Boats, in every season, would be preferable to the practice of drawing at distant intervals a large concourse of people to Aripo from the Continent, induced me to direct, by my despatch of the 4th of May No. 53, that an officer should be appointed to reside permanently at Aripo, upon whom the Superintendence of those Fisheries, and the Inspection of the Banks should devolve.<sup>†</sup>

By my subsequent despatch of the 15th instant in reply to one which I had received from you dated 3rd of October 1832, you were informed that I was ready to give my consideration to any

<sup>†</sup> See p. 286 below; also p. 99 above.

further representations, which you might think proper to address to me on the subject; and I shall, therefore, refrain from carrying into effect that part of the Commissioner's recommendation, which refers to the appointment of a Resident Naval Officer for this duty, until I shall have had an opportunity of knowing your further sentiments upon the proposed arrangement. In adopting the views of the Commissioner, in the first instance, I was led by the impression that the regular and more frequent fisheries, suggested by him, would render the Master Attendant unequal to the Superintendence of them, in addition to his other duties, although his knowledge and experience would be still available to the Government in the general superintendence which he would still exercise over this branch of the Revenue, the mode of collecting which by licencing private Boats, would appear to be preferable to that of employing those of the Government, particularly, if the Boatmen can be encouraged to reside on the spot to pursue the Fishery, as a regular Branch of Trade. There can, however, be no objection to resort to both modes, should the number of licensed Boats not prove adequate to the purpose.

This Revenue must, for the present, be held available to the general Resources of the Colony; but from the uncertainty of its amount, it may eventually be made applicable to the execution of such Public Works as will improve the resources of the Districts, and from the Reports which have been made upon the Giant's Tank near to Aripo, and the unfinished canal and swamp to the northward of Colombo,<sup>1</sup> I shall be prepared, at some future period, to sanction the application of a part of this Fund towards the execution of those useful works, if there should be no disposition manifested by private Capitalists, (which ought on every account to be encouraged), to employ their funds in undertakings of this nature. It is indispensable, however, to reserve the proceeds of this Fishery to meet any deficiency of Revenue, which may arise from the proposed changes, and you will, therefore, not consider yourself at liberty, under any circumstances, to apply them to the execution of public works, however useful, without the previous sanction of His Majesty's Government.

In considering the alterations which have been proposed in

<sup>1</sup> II, p. 32.

the Public Establishments, I shall generally confine my observations in this place, to the reductions, which are immediately and indispensably required, in order that the Expences of the Island may not exceed its future Revenues, and on this subject, I must draw your attention to the observations contained in the Minute of the Lords of the Treasury, to which I have already referred.

By the reduction of the Cinnamon Department, and several of the District Establishments, and by the appointment of five Agents of Government, at the principal Stations of Colombo, Galle, Jaffna, Trincomalee, and Kandy, a considerable saving will be made, for the details of which, I refer to the Schedules which accompany this despatch.<sup>a</sup>

Upon examining these Schedules, you will perceive that a considerable number of the Civil Officers are to be altered in name, amount of Salary, or extent of duty, and it is very probable that with a view to the efficiency of the respective Departments, you will find it necessary to make several changes in the present distribution of the higher appointments. In doing so, I feel assured that you will be guided by that consideration, which is due to the interests of the Public, and to the fair claims of Individuals,—I am, accordingly, to convey to you the King's authority to exercise this power, as soon as it may be practicable to make the necessary arrangements, after the arrival of this despatch, with the distinct understanding, that you will adhere strictly to the Schedules, both in respect to the number of appointments, and to the Salaries therein fixed, taking care, as a measure of economy to offer employment to those whose offices may be abolished and who may be desirous of accepting it in preference to retiring on their pensions. I am fully aware that existing interests must in some instances be seriously affected by the reductions which are rendered necessary in consequence of the state of the Colonial Finances, and I am anxious that the weight of these reductions should press with as little severity as possible upon those members of the Civil Service whose merits and qualifications may be such as to entitle them to the utmost consideration—With this view, His Majesty is pleased to direct that you be guided by the following instructions.

<sup>a</sup> From N. 1 to N. 11 inclusive. [See p. 296 below.]



There are four modes in which the Civil Servants will be affected by the reductions and alterations of Establishments.

1—Certain Offices are to be abolished altogether, for instance those of the Commissioner of Revenue, Paymaster General &c.

2—Other Offices are not abolished, but the duties, belonging to them, are henceforth to be entrusted to Officers of inferior grade, for instance the Collectors of Manar, Tangalle, Chilaw, Ratnapora &c., at which Stations it is intended that *Assistants*, only, should be placed.

3—Certain Offices are to undergo no other change than that of the reduction in Salaries, for instance, the Auditor General, Vice-Treasurer, Collector of Customs &c.

4—Several Offices are retained in fact, but under a new designation, for instance, Collectors of Districts, Provincial Judges &c., who will, henceforth, be styled Government Agents, District Judges &c., but, as in the former instance, with reduced Salaries.

With regard to the first and second classes you will allow each officer, whose appointment is abolished, or whose duties are transferred to Officers of subordinate Rank, to receive three months' full salary or emolument from the date of such abolition or transfer, and his pension under the Regulations of the "Civil Fund", will commence from the expiration of those three months, but, in the event of his accepting a new appointment, he will be permitted to continue in the receipt of his former rate of Salary or emolument for six months, after this despatch reaches you, at the end of which period the salary allotted to the new office must commence.

With regard to the 3rd and 4th Classes, you will allow each Officer, who may be retained in his situation, whether under the old or the new designation, to continue for the first six months after the arrival of these Instructions, in the receipt of the same rate of salary or emolument, which he may be now enjoying, after which period his salary is to be subjected to one half of the amount of reduction fixed in the Schedules.

It is, however, distinctly to be understood that this favor is not to be extended beyond those Gentlemen, who may be now in the occupation of these Offices, but that whenever any one of them becomes vacant, the Successor will only be

allowed to receive the salary allotted to the Office by the Schedules.

I will take this opportunity of informing you generally, that, at the termination of six months from the date of your receiving these Instructions, no other rates of salary will be allowed by the Board of Audit, in the Public Accounts of Ceylon, than those specified in the Schedules, with two exceptions, viz. that of certain Officers exempted by the foregoing instructions from one half of the reductions, and that of certain Judicial Functionaries, hereafter to be noticed in this despatch.

I believe I have now provided for all cases that are likely to arise among the Gentlemen composing the "Civil Service".

The other classes of Public Servants, who will be affected, tho' in a limited degree by the reductions and changes now directed to be carried into effect, is that of Europeans and Natives, holding, either the Offices of sitting Magistrates, or the various minor appointments in the several branches of the Colonial Service.

With respect to the number of Clerks and Officers of inferior grade, I am aware that it is impossible in this Country to judge to what precise extent, or in which of the appointments, preferably, the reductions should be carried into effect. While, therefore, I leave it to yourself with the assistance of your Executive Council to define the amount of subordinate assistance to be afforded for the purpose of securing efficiency in the several Civil, Judicial, Ecclesiastical and Military branches of the Colonial Service, I must, at the same time, require that the total expenditure be reduced within twelve months from your receipt of this despatch to the limits assigned by the several Schedules, with only such difference, as may arise directly from the partial postponements of reduction, which are sanctioned in the course of this despatch, and you will understand that every appointment of the description, I am now alluding to, which in the opinion of yourself, and your Council is not strictly necessary, must be, at once, abolished without waiting for a vacancy, but in such cases, you will assign to the Holders, (being Europeans), who have served more than ten years, retiring allowances apportioned to the length of their services, according to the Scale set forth

in the first Section of the Superannuation Act, of which a copy is enclosed herewith.<sup>a</sup>

With regard to the Native Functionaries, those who have completed a service of ten years may be permitted to retire on an allowance equal to one fourth of their Salaries, and to those who have not served so long, whether European or Native you will allow such gratuity, as, in the opinion of yourself and Council, may be fair and reasonable, provided that in no case it exceeds one year's salary. You will, however, in all future appointments, take care to select the Successors from the Native Officers thus displaced, so that the Revenues of the Colony may be relieved from the burthen of their retired allowances, as soon as possible, and I am disposed to entertain a strong hope, that, in the general arrangements for the new Provincial Administration of Ceylon, you will not find yourself compelled to remove even temporarily from His Majesty's Service any considerable number of old Servants.

I would, however, impress upon you the great advantage that will be found eventually to accrue from a diminution of the present excessive number of Clerks in the Public Offices, and from a proportionate augmentation in the salaries of those, who may be retained, and you will find that the Schedules are so framed as to admit of your exercising the most free and unshackled discretion in the new arrangements for the subordinate appointments.

The Cinnamon Plantations should, as you have been already informed, be let on lease, or sold, as opportunities may offer, and the Native Functionaries of the Department may appropriately receive, in consideration of their past services, free grants of allotments, by which they would acquire the privilege of cultivating the Cinnamon on their own account, unless they should prefer a retired allowance.

You will have learnt by my despatch No. 79 of the 14th of September the objection which I entertain to the continuance of the Civil Service, and my determination not to send out any more Writers on their present footing to the Colony.<sup>1</sup>

The employment in the Kandyan Provinces of a number of

<sup>a</sup> 3 Geo. 4 Cap. 113. [C.G.A. Dispatches from the Secretary of State, 4.]

<sup>1</sup> See p. 246 above.

Officers selected from the Regiments serving in Ceylon, having been attended with advantage to the Public Service, you will not only continue that practice, but will extend it to the other Provinces as a measure of public economy, as long as there may be no unemployed Civil Servants. From the evidence, which these Officers have afforded to the Commissioners, several of them appear to have acquired an intimate knowledge of the Country, and to have shewn great zeal and intelligence in the discharge of their duties, while the emoluments they have received (being a small addition to their Military allowances in Command at the outstations) would have been wholly inadequate to remunerate the Civil Servants, had they been exclusively employed.

Although I fully appreciate the advantages which have been derived from the services of the Gentlemen, who compose the Civil Service, I agree with the Commissioner that it will be advisable, for other reasons stated by him, that the practice of employing in the discharge of Civil duties, the Military Officers stationed in the Country should be adopted in the Maritime, as it is in the Kandyan, Provinces.

I acquainted you in my despatch No. 74 of the 13th of August, that the General Commanding in Chief would instruct Major General Sir John Wilson to permit Military Officers to accept civil appointments, provided their Regimental Services could be dispensed with, and with the understanding that they should relinquish those appointments, when called upon to return to their Military duties. But in all cases where Civil and Military Functions are thus united, the allowances of every kind, both Civil and Military, received by the Officer should, in no instance, exceed the amount of the salary that would be assigned for the Civil Office, if otherwise filled, and in all cases of the employment of Military Officers, on half pay, and who may not from any other cause, have Military Duties to discharge, the aggregate of their Public Emoluments of every description should be limited to the amount of such Civil Salary. The option, however, which the Commissioners would propose to allow to Officers, thus employed, to exchange or to go upon half-pay, upon their Regiments being withdrawn from the Island, would be highly objectionable, and you will, therefore, most studiously abstain from holding out any expectation of

that nature. I have only further to remark that I rely upon the cordial understanding, between yourself and Sir John Wilson, to obviate any present inconvenience to the Public Service.

I am disposed to anticipate that some of the Native Functionaries may be entrusted with the subordinate appointments in the Districts, and be recognized, in the first instance, as Assistants to the Government Agents; and I consider it to be good policy, that this preferment should be publicly held out to them, and that their advancement to higher and more responsible situations, in common with the European Public Servants, should not be precluded, where their character and qualifications would justify their advancement. I am well aware of the general objection to the employment of Natives in responsible situations, arising from their prejudices of Caste; but these may be expected to subside, when they are effectually discountenanced by the European Authorities. The compulsory employment of people of certain Castes in public labour, has hitherto been a sufficient reason to account for their degradation, and for the prejudices entertained by the privileged classes, who were exempted from such services. The only general rule I would prescribe to you, in regard to future appointments in the Civil Administration of the Provinces, is that no European, Civil or Military, should be considered qualified to hold such appointments, unless he has acquired some knowledge of the Native language, and that no Native should be appointed, who has not a competent knowledge of English.

The higher appointments in the Provinces should, in the first instance, be conferred on the Civil Servants, who are duly qualified, and I shall be prepared to confirm the nominations you may make under the proposed arrangements for the Provincial Administration.

In regard to the principal Departments at the seat of Government, I would observe first, that the salaries of the present Governor and the Commander of the Forces having been fixed on their departure from this Country, they will not be subject to any present reduction, but the Salaries fixed in Schedule No. 1 are to be considered as the Emoluments of their Successors.<sup>1</sup> The Native Attendants on the Governor ought to be immediately reduced—my despatches of 11th April

<sup>1</sup> See p. 293 below.

and 6th August, allow the Governor to retain those Attendants whose services are honorary, gradually reducing their number by appointing them to small civil situations. The Lascoryns, personal Attendants on the Governor were, in all cases to be discharged, except where they might be required for official purposes.

The Native Attendants, or Lascoryns, who are *personally* attached to other Public Officers are, in all cases, to be disallowed, or paid for by the Parties requiring their services, according to the practice, existing in the other parts of India.

I have to desire that you will give the necessary Orders for the separation of the Military from the Colonial Accounts, as directed in the Treasury Minute, and implicitly follow the other directions contained on this head.

Having so recently remodelled the salaries of the Colonial Chaplains, I have not considered any further immediate reduction feasible in the Ecclesiastical Establishment. I think it right, however, to mention in this place, that on the next appointment to the office of Archdeacon, the salary will be reduced to £1,500.

No immediate change is proposed to be made in the Customs Department, with the exception of the Collector, whose salary will be reduced on the same principle as that of other Civil Servants,<sup>1</sup> but it will be necessary, that the Regulations under which it is conducted, should be assimilated, as far as possible, to those of His Majesty's Customs in England. Until other arrangements may be made the Auditor and Comptroller General will continue to act as Comptroller of the Customs at Colombo, and the Government Agents, or their Assistants at the several out Posts, where Custom Duties are received. To prevent smuggling in the Cinnamon Trade, it will be desirable to restrict it to the Ports of Colombo and Galle, where proper Establishments are maintained, and where Cinnamon may be deposited for exportation.

My despatch No. 74 of 13th of August, apprized you of the alterations, which have been deemed necessary in the Department of the Civil Engineer and Surveyor General,<sup>2</sup> and certain appointments, which have in consequence been made have also been notified to you. I shall, therefore, defer any further

<sup>1</sup> See p. 297 below.

<sup>2</sup> See p. 253 above.

Instructions in regard to that important Department, which, for the present, must be limited to the number of Officers, of which it is now composed, although, I am aware it falls below that contemplated by the Commissioner in the more perfect organization of the Department which he has recommended. In the meantime, I am desirous that no considerable works may be undertaken.

I have regretted much to notice the inefficiency of the Government Schools under the system, which has been pursued and the necessity of reforming it is very apparent. The appointment of a Commission to be composed of the highest Civil, Judicial and Ecclesiastical Functionaries, with whom some respectable Natives may be associated, will afford that efficient means of superintendence which is so much required. Since the dissemination of the English language is an object, which I cannot but esteem of the greatest importance, as a medium of Instruction, and as a bond of union with this Country, no Schoolmaster should be, in future, employed, who does not possess a knowledge of English. The appointment should be made on the recommendation of the Commission and the Government Agents in the Provinces, should consider it to be a special part of their duty to visit the Schools, established by the Missionary Societies. It will be proper that the Commission should inform themselves of the nature of these Establishments, and of the progress made by them as a part of the general means applicable to the education and moral improvement of the people.

To the institution of an English College, or Seminary at Colombo, I have already adverted in a former despatch.<sup>1</sup> I shall not, at the proper time, object to the appropriation to this service of the Government Buildings at Slave Island, or any others, at the disposal of the Government, which would be calculated for such a purpose, but important as this object certainly is, I do not feel at liberty to sanction any undertaking of this nature at present.

The Office of Superintendant of Charities was directed to be abolished by my despatch No. 80 of the 16th of Sept. last, and the duties to be transferred to the Officer at the head of the Colonial Medical Department.<sup>2</sup>

<sup>1</sup> See pp. 244 and 252 above.

<sup>2</sup> C.O. 53, 74.

In regard to the Military Department, I have in this place to observe that the removal of one of His Majesty's Regiments will effect a material reduction of the Military charges of the Island, whenever the circumstances alluded to in my despatch No. 53, of the 4th of May last, will admit of arrangements being made for that purpose. I do not contemplate, at present, any further diminution of the Island Allowances granted to Officers, excepting in situations where Quarters are occupied by them. In such cases a deduction should be made equal to the amount of Rent fairly chargeable on those Quarters, to be fixed by your directions. In cases of Command, exercised by Officers, who are remunerated by receiving the Allowances of the Rank superior to their own, I am of opinion, that a better principle of remuneration should be adopted; and that an established allowance should be made to the Officer, exercising such Command, with reference to the extent and responsibility of the duties belonging to it, and not varying, as at present, with the Rank of the Officer.

You will cause a Schedule to be made out, and transmitted to this Office, of the allowances now enjoyed by officers exercising Command throughout the Island, and when the allowances attaching to the Command of Stations and of Corps, shall be fixed, the practice of granting to Officers the Allowances of the Rank superior to their own, will be discontinued.

I intimated in my despatch No. 79 of the 14th of Sept., the intention to transfer the Commissariat Department to the Treasury,<sup>1</sup> but I have since received a communication from their Lordships in which, they express an opinion that it will be advisable to postpone this measure, until it can be seen, whether the Revenue, collected in future, will be equal to the additional expence, which the change will occasion.

The Instructions, which have been conveyed to you by the Lords Commissioners of the Treasury, in regard to the purchase and application of Stores for the Public Service, will, no doubt, have remedied much of the irregularity and improvidence, which may have occurred on this head. An implicit obedience to those Instructions will be expected on your part, more especially, as to restricting the purchases of Stores to such Articles as are absolutely required for the Public Service.

<sup>1</sup> See p. 249 above.



I approve of the suggestion of the Commissioner, that the Stores, required for the Public Works, should be at the sole disposal of the Officer at the head of the Civil Engineer's Department, who should be responsible for the due appropriation of them to that Branch of the Service, and I conceive that this principle may be usefully extended to all other descriptions of Stores, without incurring any increased charge for Storekeepers or Store Houses, by instructing the Commissary or other Officer, in whose custody Stores may be deposited, to issue each Class of Stores upon the requisition of the proper Officer only, whose duty it may be to direct their application. With the same view, all general Requisitions for Stores, to be supplied from this Country, should specify the Department and head of Service, for which they are required, and any purchases of Stores made in the Colony, should be included in the Expenditure of that Branch of the Establishment for whose use they are required.

In connection with this subject, it appears desirable in order that encouragement may be afforded to Traders, resorting to the Island, that every opportunity should be embraced of purchasing Stores on the spot or of contracting with Merchants engaged in the Colony, provided such purchases or contracts can be made upon reasonable terms.

The immediate reductions of expence, which are proposed to be made in the Judicial Department will not be proportioned to those which are directed to take place in the Civil Department of the Service, the alterations recommended by Mr. Cameron in his Report on the Administration of Justice, being attended, in some cases by an increase rather than a diminution of Expence. Upon reference to Schedule, No. 2,<sup>1</sup> you will perceive that the salary of the Chief Justice has been permanently fixed at £2,500 per annum, that of each Puisne Justice, at £1,500, and those of the King's Advocate and his Deputy, at £1,200 and £1,000, respectively. It is not intended that this arrangement, should be carried into immediate effect. Sir Charles Marshall will receive £3,000 a year, Mr. Serjeant Rough £2,000, Mr. Norris £1,800, Mr. Carr £1,500, and Mr. Perring £1,200. I have in this despatch already provided for the case of the Provincial Judges. The other reductions,

<sup>1</sup> See p. 297 below.

mentioned in the Judicial Schedule, you will carry into immediate effect, but I have not considered it necessary to interfere with any of the Emoluments of the Minor appointments, specified in that Schedule. You will, therefore, consider yourself authorized to make such changes, in the minor officers and their Emoluments, as the new Charter shall require, provided that, under any circumstances, the future change, on account of the Judicial Establishments, shall not exceed the aggregate amount fixed for each Court.

In my despatch of the 14th of Sept. 1832, I intimated to you the determination of His Majesty's Government to abolish the "Civil Service Pension Fund" at Ceylon.<sup>1</sup> In regard to those Gentlemen, who, at present, belong to the Civil Service, they will be considered, in due time, to have a specific claim on the Government for those Pensions, to which they are entitled, under the Regulations of the Civil Fund, on proof being given that their subscriptions have been duly paid in conformity with them. An account of such payments or deductions should be duly noticed in the Treasurer's Accounts, to shew what parties are to be entitled to such further Pensions, as will become payable under the Regulations of it. But as the Civil Pension Fund has merged in the general Revenue, and as the Government has made itself answerable for the payment of the Pensions, it can be attended with no advantage to maintain a separate account of a Fund assumed to accumulate from the interest of the subscriptions deposited. As no Persons will be sent to Ceylon, who could have claims to retiring Pensions under the Regulation of the Fund, those claims will be distinctly limited to the Gentlemen, now belonging to the service, and viewing the amount of the charge for Pensions at Ceylon, I consider that the claims to retirement upon Pensions, must, in all other cases, be strictly limited to those instances, where services have been rendered, which would, in the opinion of His Majesty's Government, entitle the Individual to their favourable consideration.

I shall conclude this despatch by drawing your particular attention to that part of the Minute of the Lords of the Treasury, which relates to the Colonial Debt, and to the existing Regulations respecting the Currency of the Island.

<sup>1</sup> See p. 248 above.

It is scarcely necessary for me to urge that the improvidence, which has occasioned so large an accumulation of Debt, in past years, must be sedulously guarded against, in future, and that, on no account, can the Revenue of the Island be allowed to be anticipated by the issue of Government Debentures.

To meet any disbursements requiring to be made in this Country, remittances must be duly transmitted to the Colonial Agent, and a separate account must be kept of all payments for the Troops, which are provided for by Bills drawn on the Lords of the Treasury.

In regard to the currency, having considered the effect of the measures, which were adopted on the introduction of the British Silver Coinage in 1825, it would appear that, while the practice, of keeping the accounts of the Island in English denomination, has been attended with convenience, the course of Trade, which has been carried on chiefly with the Indian Continent, has checked the circulation of the British Coins; and that the terms on which the Treasury Bills have been obtained, in exchange for Silver or paper currency, have caused the negotiation of them at Madras at a premium, and have induced the Merchants to demand such Bills for remittance in payment of imported supplies, rather than to export goods.

The liberation of the Cinnamon Trade may be expected to encourage the exchange of the products of the Island for the supplies of Cloths and Grain imported, especially when the Bills on the Treasury will be limited to the extent of the Commissariat demand for the Pay and Provisions of the Troops. The practice of indefinitely granting Bills on the Treasury on demand for Silver and paper currency will necessarily be discontinued, and I entertain no doubt, when the Government shall also have ceased to trade in the chief staple produce of the Island, by which the course of Exchange with the neighbouring Continent has been disturbed, that the Exportation of goods thither, will supersede the demand for pecuniary remittances to any inconvenient extent.

Referring to the Reports of the Commissioner, I have noticed the practice of making advances of seed grain to the Landholders, which are repayable, with a high premium from the ensuing crops. There can be no doubt that, in demanding a premium of 25 per cent on these advances, the Cultivators

have been relieved from the exorbitant demand of 50 per cent, made by private Capitalists, but a smaller rate of Interest would be more favourable to Agricultural improvement; and, therefore, conducive to the Interest of the Government, as well as of the people. Accordingly His Majesty's Government would by no means object to the premium on these Loans of Grain, when made by the Government, being reduced even as low as 10 per cent, which would probably do little more than indemnify the Government for any actual loss in such transactions, provided measures can be adopted for ensuring that the Borrowers require the seed Grain for their own use, and do not again lend it out to others at a higher rate of profit. Under no circumstances, however, do His Majesty's Government conceive that it would be advisable to make advances to the Cultivators in money.<sup>1</sup>

As there are no Banks in Ceylon, where Funds may be securely deposited, and from whence Loans can be obtained, and as the poverty of the Landholders has left them wholly dependent, in unfavorable Seasons, on the accommodation afforded to them on the terms before mentioned, the institution of a Savings Bank at Colombo with Branches in each of the other four Divisions of the Island, would tend to facilitate the accumulation of a Fund, which might be made available in promoting the Industry and improvement of the Country, and it is, therefore, with infinite satisfaction, that, I find, by the arrival of your despatch No. 76 of the 1st of October last, that a Savings Bank has been already established by you. The great objections entertained by His Majesty's Government to the establishment of any Government Bank for Commercial Loans, or discount, or to the Government being in any way concerned in transactions of this nature, must preclude my assenting to the suggestions contained in the Commissioner's Report, in reference to this subject. The attempts which have, hitherto, been made to establish private Banking in the Island have probably failed from the general discouragement to all private speculations, which the restrictions in its Trade have hitherto occasioned, but as the measures now in progress with respect to the Trade of Ceylon and the increased facilities and advantages, which will be afforded to individual Enterprize, will, in all

<sup>1</sup> See p. 64 above.

probability, produce a demand for Commercial Loans and discount, private Speculators will doubtless be found ready to furnish the means of meeting that demand, and the intervention of the Government by the Establishment of a Bank of Deposits and Discount would only interfere with the free Employment of private capital for purposes of commercial accommodation, and you are, therefore, distinctly to understand that you are not to give your countenance to any plan for establishing a Bank in Ceylon, excepting it be exclusively on private credit, and you will then most studiously avoid taking any steps by which the Government may be implicated in its concerns.

From the limited amount of Paper, in circulation, at Ceylon, and from the probable state of the Exchange under an open Trade in Cinnamon, and other produce of the Island, there can be no ground of apprehension that the credit of the currency will require to be sustained by Bills drawn on Europe. Indeed it appears by the Commissioner's Report that previous to the restrictions on the Tobacco Trade, specie was imported from the Continent, and if in the course of Trade, the Indian Coins should again generally circulate in Ceylon, the demand for Colonial Paper, and for British Silver would be subject to further limitation, and the reception and issue of these Coins at the Colonial Treasury, at the rates fixed by the Regulations, would obviate the necessity of sending specie from this Country, which, if exported, in the course of exchange, would not be retained for circulation in the Island.

I must again request that you will strictly conform to the Instructions of the Lords of the Treasury, in keeping the Accounts of the Military Receipts and Disbursements, which are chargeable on this Country, separate from those expences, which are borne by the Revenue of the Island; and where Bills are drawn on the Lords of the Treasury for defraying the former, you will, on no account, apply the proceeds to any Colonial Services, or to any, others than those of a Military nature for which they are drawn.

I have now touched upon the principal measures of improvement, which an examination of the Reports of the Commissioners of Enquiry has suggested. I am fully aware that there are many other subjects in those Reports of deep importance

to the interests of the Island under your administration which will demand an early consideration; but as these will require a greater knowledge of local details, which a residence in the Island can alone afford, I confidently look to you and to the Members of your Council for the suggestion of such further measures of economy and improvement as your united experience and knowledge of the Interests of the People may enable you to propose; and I trust, I need not assure you that any such recommendations will meet the most anxious and favorable consideration of His Majesty's Government.

I am,

Sir,

Your most Obedient humble Servant,

(Signed) GODERICH

P.S.

In addition to the Schedules which accompany this despatch, I transmit a comparative Estimate of the present and future Revenue of your Government, referred to in the Commissioner's Report, together with a comparative Estimate of its present and future Expenditure, calculated with reference to the future Establishments as fixed by His Majesty's Government.<sup>1</sup>

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## Extracts from other Dispatches on the Revenues and the Establishments in Ceylon

### I. THE GOVERNMENT STEAM ENGINE<sup>2</sup>

Having under my consideration the expenses and receipts for the Government Steam Engine at Colombo for four years ending with that of 1828, from which it appears that an actual loss to the amount of £1,833. 4. 4. has been incurred to the Public, I have to desire that you will take the first opportunity of disposing the Engine, & discharging the persons composing this Establishment.

<sup>1</sup> See pp. 291 and 293 below.

<sup>2</sup> C.O. 55, 74. Goderich to Horton, 23 June 1832; C.G.A. 4/17, p. 314.

II. THE FISH TAX<sup>1</sup>

It is my intention to recommend to His Majesty that the repeal of this (Fish) Tax and all restrictions to which the Fishermen are subject, should take place as soon as the Revenues of the Colony will admit of its being spared. In the meantime, and adverting to the Regulations of the Colonial Government of 1812, it is desirable that Licences on the Boats should be substituted for the present system of farming the Rents, keeping in view, that, if the Fishermen are too poor to pay an annual Licence, the amount may be taken from them by monthly instalments. It is my intention, in pursuance of the recommendation of the Commissioners, to remove many of the restrictions, at present imposed on the collection of Salt, a reduction in the price of which, would be strictly in accordance with the foregoing principle, and as by allowing the natives of the Island freely to collect Salt, where it is required for the curing of Fish, many of the obstacles, at present experienced by them in carrying on the Fisheries, would be removed, you will immediately afford to them, this relief, as well as that which is anticipated in the Report by adopting the Licencing System in lieu of the share, which the Government receive on the produce of all the Fish which may be caught.

## III. THE GOVERNMENT STUD AT DELFT

(i) *The Proposal for its Discontinuance.*<sup>2</sup> From the papers which have been transmitted by Sir Edward Barnes it appears that a Government Stud, having been established in the Island of Delft, various restrictions have from time to time, been imposed on the Inhabitants in order to provide for its support—Notwithstanding which, the profit of the Stud, independently of the charge for the Superintendent has not exceeded, upon an average of the last three years, much more than its actual Expences. The Commissioners have recommended, in their Report the abolition of this useless establishment, and I am to desire that you will give your early attention to the best mode of carrying this recommendation into effect—you will—of

<sup>1</sup> C.O. 55, 74. Goderich to Horton, 4 May 1832; C.G.A. 4/17, p. 251.

<sup>2</sup> C.O. 55, 72, p. 368 (No. 41). Goderich to Horton, 6 April 1832; C.G.A. 4/17, p. 91.

course repeal all the restrictive Regulations, on the Industry of the people which have hitherto existed for the support of this Establishment, together with the Regulation No. 5 of 1831<sup>1</sup> and you will place the Inhabitants of Delft upon the same footing in respect to Taxes with those Resident in the other parts of Ceylon, with the exception of the Poll Tax, the repeal of which, in the Malabar Districts, has been recommended by the Commissioners, and on which subject, I shall probably have to address you by an early opportunity.

(ii) *The Encouragement of the Breeding of Horses.*<sup>2</sup> In disposing of the Stud and other Public property, belonging to the Government, every encouragement, which may not be inconsistent with the complete reduction of the Establishment should be given to such persons, as may be desirous, with the view of introducing an improved breed of horses into the Colony, of entering upon this speculation in their own account.

#### IV. THE SUPERINTENDANCE OF THE PEARL BANKS<sup>3</sup>

I am, therefore, induced to avail myself of the opportunity which your observations upon this subject have afforded me (Despatch No. 2 of 9th Nov. 1831) to direct in conformity with the recommendation of the Commissioners, that in lieu of the present system, an officer permanently residing at Aripo, should be entrusted with the sole duty of superintending the Banks, with a small Establishment of Boats and Divers at his disposal for their protection and examination, and that small Fisheries, made available to such of the inhabitants of Ceylon as may be disposed to enter upon the Speculation, should be carried on whenever the Season may be favourable for it. The Chank Fishery, which, for the reasons stated by the Commissioner appears no longer to yield any Revenue worthy of consideration, compared with the difficulty and inconvenience of retaining this monopoly, should also be opened to those who may be desirous of engaging in it.

<sup>1</sup> C.G.G. 8 October 1831. II, p. 295.

<sup>2</sup> C.O. 55, 74 (No. 53). Goderich to Horton, 4 May 1832; C.G.A. 4/17, p. 251.

<sup>3</sup> C.O. 55, 74 (No. 53). Goderich to Horton, 4 May 1832; C.G.A. 4/17, p. 251.



V. TAX ON IVORY<sup>1</sup>

The special Tax on Ivory it may also be proper to take off, and to subject that article to the same general duty, on exportation, which it is proposed to levy on other articles.

VI. LOCAL RATES IN TOWNS<sup>2</sup>

Although from the observations contained in my Dispatch of the 22nd July last, I think it will be sufficiently evident to you that His Majesty's Government do not approve of any assessment of the Inhabitants of Colombo for municipal purposes, to a larger amount than the circumstances of the case may require, yet I deem it advisable, in addition to that Dispatch, to acquaint you that any rate of this description should be limited to the actual exigency to be provided for, and should not be assessed or levied for the purpose of accumulating a capital to be placed out at interest in the manner reported by the Commissioners of Enquiry in reference to the fund raised by the assessment for paving and lighting the streets of Colombo.

VII. THE CINNAMON MONOPOLY<sup>3</sup>

You will observe that their Lordships are of opinion, that no further consignments of Cinnamon should be made from Ceylon, on account of the Government; that the sales in London should be discontinued so soon as the stocks in hand have been disposed of, and that measures should be taken for discontinuing all participation or concern on the part of the Government, in the cultivation and sale of this spice, that the trade should be open to the Public, and that the Revenue arising from it, should in future be raised by removing at once those restrictions, and by imposing a custom duty on the export of Cinnamon; lastly that all the vexatious and oppressive Regulations which are now in force, for securing the Monopoly, should be forthwith abrogated.

I proceed to consider the further arrangements, which have been recommended by the Lords of the Treasury, and I will in

<sup>1</sup> C.O. 55, 74. Goderich to Horton, 4 May 1832; C.G.A. 4/17, p. 251.

<sup>2</sup> Dispatches from the Secretary of State, 1832, C.G.A. 4/17, p. 397. Goderich to Horton, 24 August 1832.

<sup>3</sup> C.O. 55, 74. Goderich to Horton, No. 82, 12 October 1832; C.G.A. 4/17.

the first instance, draw your attention to the view, which has been taken by their Lordships, of the duty that should henceforth be imposed on the Export of Cinnamon, and the reserve, under which the sales of stock in hand should be conducted. On the first point, the argument of their Lordships, in favour of one uniform rate of duty on all sorts of Cinnamon, rather than a discriminating duty, is entitled to great weight, and by fixing that duty at a rate, that will afford a fair profit to the Exporter of the coarser kind, encouragement will be given to the production of the finer sorts, which being peculiar to Ceylon are more likely to maintain in the Market a preference for the Cinnamon of that Island. I could have wished that the state of the Colonial Revenue would have admitted of fixing the maximum of this duty at 2s. as recommended by the Commissioner, but in adopting 3s. per lb, as the maximum, under the calculation of the Lords Commissioners, you will be able to exercise your judgment in reducing it to 2s. 6d. per lb. or to a lower rate, according to the quantities produced and sold. The State of the Import Trade may also be a guide to you in this reduction. Hitherto the Cinnamon has been sent to England by Government, and Bills have been drawn which have been negociated at Madras, in payment of goods there imported, but if, as may reasonably be expected, the effect of a Free Trade shall be to induce the Native and European Merchants to import goods at Ceylon in exchange for Cinnamon, these goods will be liable to duties, affording, in part, an equivalent Revenue.

#### VIII. THE REPEAL OF CINNAMON LAWS

[Regulation No. 5 of 9th July, 1833<sup>1</sup>]

For repealing all the existing Laws relating to Cinnamon, for allowing the cultivation, possession and sale of Cinnamon by all persons whomsoever, under certain restrictions, for allowing the exportation thereof from the Ports of Colombo and Point de Galle, on payment of a certain duty, and for securing the due payment of that duty.

Whereas it has been determined by His Majesty's Government to allow, from and after the 10th day of July next, the

<sup>1</sup> C.G.G. 13 July 1833; 58, 14.

cultivation, possession and sale of Cinnamon under certain restrictions, and from the same date to allow all persons whomsoever to export Cinnamon from the Ports of Colombo and Point de Galle exclusively, on payment of the duty hereinafter mentioned, and it is therefore expedient that all the Laws now in force relating to Cinnamon should be repealed.

1. It is therefore enacted by His Excellency the Right Honourable the Governor and Council, that from and after the 10th day of July next, all Laws, Customs, Proclamations, and Regulations, now in force within this Island, in so far as the same shall relate to or affect the Growth, Cultivation, Gathering, Possession, Sale, Purchase, Price, Transport, Exportation or Preservation of Cinnamon, or of Cinnamon Oil or Clove Oil or of Cinnamon trees, plants, seeds or plantations, shall be and the same are hereby repealed—and that from and after the said 10th day of July next it shall and may be lawful for all persons whomsoever to cultivate, possess and sell or otherwise dispose of Cinnamon, subject to the restrictions and exceptions hereinafter expressed and declared, and such restrictions as may hereafter be deemed necessary and be duly enacted for enforcing the payment of the export duty thereon.

2. And whereas it is indispensably necessary to make provisions for the due payment of the duty hereinafter mentioned—It is therefore further enacted that from and after the 10th day of July next, it shall and may be lawful for all persons whomsoever to ship, for Exportation beyond seas, any quantity of Cinnamon or of Cinnamon Oil or Clove Oil from the Ports of Colombo and Point de Galle exclusively, upon payment of a duty on such Cinnamon calculated at the rate of three Shillings for every pound weight thereof, and so in proportion for any less quantity, such duty to be levied indiscriminately and without distinction of quality on all Cinnamon so exported; and a duty of One Shilling for every ounce weight of Cinnamon Oil and one penny for every ounce weight of Clove Oil so exported.

\* \* \*

15. And it is hereby further enacted, that it shall not be lawful to export from this Island, or its Dependencies, any

Cinnamon plants, or seeds and that every person or persons engaged or concerned in the exportation thereof shall be liable to a fine of ten shillings for every plant and for every ounce of seed exported or attempted to be exported contrary to this prohibition, and the article so exported or attempted to be exported shall be confiscated.

16. And it is further enacted, that Trials for breaches of this Regulation shall be had before any Court of Competent Jurisdiction and that the property of the offender shall be answerable for any penalty or penalties to be imposed under any of the clauses; but in cases in which his or their property shall be insufficient to satisfy such penalty or penalties, the offender or offenders shall be liable to one month's imprisonment at hard labour for every pound sterling, remaining unpaid provided that such imprisonment shall not exceed twelve months on any one conviction.

17. And it is further enacted, that in all cases of conviction under this Regulation the Informer shall be entitled to one half of the penalties imposed upon the offender or offenders, and to one half of the property confiscated, and the Court before whom the Conviction shall be had is hereby authorised and required immediately upon conviction to cause to be paid to the Informer from and out of the Public Funds one half of the penalty or penalties imposed—Provided always, that if such half of the penalty or penalties imposed on any one occasion shall exceed the sum of £10, the Court shall only authorise such immediate payment to the amount of £10 to the Informer, who shall be entitled to receive the remainder of such half from the first sums recovered from or levied upon the goods of the offender or offenders.

Given at Colombo, this Ninth day of July, One Thousand Eight hundred and thirty three.

By Order of the Council

(Signed) P. E. WODEHOUSE

Sec. to Council

By His Excellency's Command

(Signed) P. ANSTRUTHER

Colonial Secretary.

COMPARATIVE ESTIMATE OF  
PRESENT AND FUTURE REVENUE

referred to by Colebrooke in his Report on 28 May 1832

Heads of Revenue	Present Revenue Average of 1829-31	Remarks	Future Revenue
	£		£
Gross Proceeds of 500,000 lbs. of Cinnamon	138,343	Nett Proceeds of 500,000 lbs. of Cinnamon sold in Ceylon by the Govt. @ 2s. 6d. and purchased @ 6d. per lb. or export duty of 2s. per lb. on 500,000 lbs. of Cinnamon	50,000
Do. of Pepper sold in London	1,562		
Present Gross Revenue	139,905		
Deduct total Expenses	42,300		
Present Nett Revenue	97,605		
Salt Customs	27,781		27,781
Excise (Duties on Spirits)	63,667		63,667
Land Revenue	28,620		28,620
	20,911		20,911
{ Fees in the Supreme Court	544		12,898
{ Fees and Stamps in the Provincial and Magistrate's Courts	9,155		
{ Stamps for general purposes	3,199		
Fish Rents	7,888		7,888
Lands Customs or Tolls	4,210		4,210
Harbour Duties	3,155		3,155
Capitation Tax	3,312	To be repealed	—
Post Office	1,546		1,546
Fines and Forfeitures	1,383		1,383
Duty on Gaming Houses	446	To be repealed	—
Duty on Honorary Ceremonies	219	To be repealed	—
Duty on Auctions	232		232
Carried Forward	273,873		222,291

Heads of Revenue	Present Revenue Average of 1829-31	Remarks	Future Revenue
£	£		£
Brought Forward	273,873		222,291
Licences for digging Precious Stones	78	To be discontinued	—
Licences for Pearl Sand Sifting	40	To be discontinued	—
Printing Office (Sale of Gazettes etc.)	289		289
Loan Board	530		530
Rent of Govt. Houses and Lands	239		239
Warehouse Rents and Forfeitures in the Customs Dept.	176		176
Tribute from Vadda Rata	61		61
Steam Engine at Colombo	1,283	Steam Engine to be sold	—
Elephant Tusks sold	50		50
Clove and Cinnamon Oil sold in Ceylon	46	The Distillery to be discontinued	—
Govt. Cattle sold	24		24
Delft Horses sold	768	The Establishment to be broken up	—
Premium received on Govt. Bills on England	4,880		2,000
Contributions from Civil Servants to the Pension Fund	2,273		2,273
Present Revenue	284,610	Future Revenue	227,933
Pearl Fishery (average of 32 years)	14,662		14,662
N.B.—Funds to be realized from the sale of Govt. Property and Stock—			
1st From sales of Govt. Plantations of Coffee, Cinnamon, etc.			
2nd From sales of Waste Lands			
3rd From sales of Govt. Horses, Steam Engines, Elephants and Bullocks			
Total Present Revenue	£ 299,272	Total Future Revenue	242,595

COMPARATIVE ESTIMATE OF  
PRESENT AND FUTURE EXPENDITURE  
referred to by Goderich in his Dispatch of 23 March 1833

Establishments	Amount at Present	Future Establish- ment fixed by Secretary of State	Remarks
	£	£	
Governor and Commander of the Forces	17,394	11,000	
Judicial Establishment	32,985	25,348	
Colonial Secretary	7,718	3,867	
Vice-Treasurer, Commis- sioner of Stamps and Pay- master-General	5,931	2,654	
Commissioner of Revenue and Auditor-General	7,531	3,518	
Customs Department, Collectors and Government Agents	18,815	17,800	
Colonial Engineer and Surveyor-General	956	2,754	
Schools and Registries	1,957	3,050	
Charitable Institutions	3,201	2,949	
Island Allowances to the Army	56,428	51,199	
Church Establishment	5,922	5,922	
Gaols and Fiscal Establish- ments	1,361	2,000	This increase is intended to pro- vide for a more efficient Police.
Medical Department	1,750	1,750	
Post Office	3,106	3,106	
Harbour Masters	2,553	2,553	
Board of Commissioners, Kandy	171	—	To be abolished.
Printing Office	475	475	
Delft Island Establishment	1,091	—	To be abolished.
Botanical Gardens	1,299	1,299	
Steam Engine at Colombo	478	—	To be sold.
Two Government Vessels	2,093	—	To be sold.
Interest on Dutch Paper Currency	234	234	
Supervisor of the Pearl Banks	200	500	This arrangement to be deferred.
Carried Forward	178,001	146,330	

Establishments	Amount at Present	Future Establishment fixed by Secretary of State	Remarks
Brought Forward	£ 178,001	£ 146,330	
Kandyan Chiefs and Native Headmen throughout the Island	5,958	5,958	
State Prisoners in Ceylon, India and Mauritius	6,681	1,000	This expense will gradually cease in consequence of the death of the King of Kandy.
Subsistence to Prisoners in the several gaols of the Island	3,573	3,573	
Circuits of the Supreme Court	872	2,000	This increase is intended to provide for the more extended circuits under the new Charter.
Fixed and unfixed Contingent Expenses of the Judicial Departments	1,364	1,364	
Do. in the Civil Departments	4,599	3,000	A number of these departments being dismissed, contingent expenditure will be reduced.
Do. in the Revenue Department	9,671	6,000	
Stationery purchased in London	1,640	1,640	
Stores purchased in London	1,800	1,800	
Stores purchased in Ceylon	1,887	1,887	
Pioneer and Artificer Corps	16,535	8,268	One half of the Corps reduced.
Royal Engineers' Department	3,603	3,603	
Materials for Royal Engineers' Department	3,302	3,302	
Roads, Bridges and Canals	3,782	3,782	
Public Buildings	1,680	1,680	
Pensions to Civil Servants	12,400	12,400	
Pensions to Widows of Civil Servants	916	916	
Carried Forward	258,264	208,503	



Establishments	Amount at Present	Future Establish- ment fixed by Secretary of State	Remarks
Brought Forward Pensions to various Public Servants in the Colonial and Military Service	£ 258,264	£ 208,503	{ To provide for pensions of the late Board.
Colonial Audit Board in London	13,035	13,035	
Colonial Agent in London Colonial Agents at Calcutta, Madras and Bombay	2,000	440	
Interest on Government Debentures	1,150	1,150	{ These debentures to be paid off.
	226	226	
Total £	<u>302,743</u>	<u>223,354</u>	

## SCHEDULE NO. 1: OFFICES ABOLISHED

Establishment of 1833	Salary per annum	New Schedule	Salary per annum	
	£ s. d.		£ s. d.	
Commissioner of Revenue	3,000 0 0	Abolished	£ 7,000 0 0	
Paymaster-General and Commissioner of Stamps	2,000 0 0		£ 2,000 0 0	
Second Assistant, Colonial Secretary's Office	512 0 0			
Private Secretary to the Governor	500 0 0			
Sitting Magistrate of Colombo	1,000 0 0			
Sitting Magistrate and Fiscal of Jaffna	610 0 0			
Sitting Magistrate of Tangalla	180 0 0			
Sitting Magistrate of Vāligama	135 0 0			
Sitting Magistrate of Poneryn	135 0 0			
Sitting Magistrate of Kandy	135 0 0			
Sitting Magistrate of Galle	100 0 0			
Sitting Magistrate of Kalpitiya	67 10 0			
Registrar of the Vice-Admiralty Court	270 0 0			
	8,674 10 0			
SCHEDULE NO. 2: CIVIL OFFICES OF THE YEARLY VALUE OF £500 AND ABOVE				
Establishment of 1833	Salary per annum	New Schedule	Salary per annum	
	£ s. d.		£ s. d.	
*Governor	8,000 0 0	Governor	7,000 0 0	
†Colonial Secretary	2,000 0 0	Colonial Secretary	2,000 0 0	

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First Assistant, Colonial Secretary's Office	640	0	0	Assistant Colonial Secretary and Clerk to the Executive and Legislative Councils	600	0	0
Treasurer	2,000	0	0	Treasurer and Commissioner of Stamps	1,500	0	0
Auditor-General and Surveyor-General	800	0	0	Auditor-General and Comptroller of Revenue	1,500	0	0
Postmaster-General	512	0	0	Civil Engineer and Surveyor-General	800	0	0
Master Attendant of Colombo	700	0	0	Postmaster-General	300	0	0
Master Attendant of Galle	500	0	0	Harbour Master of Colombo	700	0	0
Collector of Customs	1,574	0	0	Harbour Master of Galle	500	0	0
Collector of Colombo	1,341	0	0	Collector of Customs	1,000	0	0
Assistant Collector at Colombo	512	0	0	Government Agent at Colombo	1,200	0	0
Assistant Collector at Kalutara	512	0	0	Assistant Government Agent at Colombo	300	0	0
Collector of Galle	1,000	0	0	Assistant Government Agent at Kalutara	400	0	0
Collector of Tangalla and Mātara	1,107	0	0	Government Agent at Galle	1,000	0	0
Collector of Batticaloa	785	0	0	Assistant Government Agent at Mātara	400	0	0
Collector of Trincomalee and Agent of Government for Tamankaduva	1,338	0	0	Assistant Government Agent at Batticaloa	400	0	0
Collector of Jaffna	1,226	0	0	Government Agent at Trincomalee	1,000	0	0
Assistant Collector at Jaffna	512	0	0	Government Agent at Jaffna	1,200	0	0
Collector of Mannār	788	0	0	Assistant Government Agent at Jaffna	300	0	0
Collector of Chilaw	1,014	0	0	Assistant Government Agent at Mannār	400	0	0
Revenue Commissioner of Kandy	1,500	0	0	Assistant Government Agent at Chilaw	400	0	0
Agent of Government at Kurunāgala	1,000	0	0	Government Agent at Kandy	1,200	0	0
Agent of Government at Ratnapura	500	0	0	Assistant Government Agent at Kurunāgala	400	0	0
				Assistant Government Agent at Ratnapura	400	0	0
Total	32,061	0	0	Total	24,900	0	0

\* 1831 salary £10,000. † 1831 salary £3,000.

## SCHEDULE No. 3

## CIVIL UNDER £500 PER ANNUM

Establishment of 1833	Salary per annum		New Schedule	Salary per annum	
	£	s. d.		£	s. d.
Superintendent-General of Vaccination	450	0 0	Superintendent-General of Vaccination	450	0 0
Five Assistants at £90 each	450	0 0	Five Assistants at £90 each	450	0 0
Master Attendant of Trincomalee	400	0 0	Harbour Master of Trincomalee	400	0 0
Assistant Engineer and Surveyor	300	0 0	Assistant Engineer and Surveyor	300	0 0
Superintendent of the Botanical Gardens	250	0 0	Superintendent of the Botanical Gardens	250	0 0
Supervisor of the Pearl Banks	200	0 0	Supervisor of the Pearl Banks	200	0 0
Agent of Government at Badulla	135	0 0	Assistant Agent at Badulla	400	0 0
Agent of Government at Alupota	67	10 0	Assistant Agent at Alupota	400	0 0
Agent of Government at Ruauvälla	67	10 0	Assistant Agent at Ruauvälla	400	0 0
Agent of Government at Mâtalé	67	10 0	Assistant Agent at Mâtalé	400	0 0
Agent of Government at Fort King	45	0 0	Assistant Agent at Fort King	400	0 0
Agent of Government at Maðavalatänna	90	0 0	Assistant Agent at Maðavalatänna	400	0 0
Total	2,522	10 0	Total	4,750	0 0

\* These offices were held by Military officers who received in addition their full Military allowances.

SCHEDULE No. 4

JUDICIAL OFFICES OF THE YEARLY VALUE OF £500 AND OVER

Establishment of 1833	Salary per annum			New Schedule	Salary per annum		
	£	s.	d.		£	s.	d.
Chief Justice	3,000	0	0	Chief Justice	2,500	0	0
Puisne Justice	2,250	0	0	Senior Puisne Justice	1,500	0	0
His Majesty's Advocate Fiscal	1,800	0	0	King's Advocate	1,200	0	0
Deputy Advocate-Fiscal and Master in Equity	1,200	0	0	Deputy King's Advocate	1,000	0	0
Registrar of the Supreme Court	600	0	0	Registrar of the Supreme Court	600	0	0
Provincial Judge of Colombo	1,600	0	0	District Judge of Colombo	1,000	0	0
Provincial Judge of Galle	1,600	0	0	District Judge of Galle	1,000	0	0
Provincial Judge of Trincomalee	1,152	0	0	District Judge of Trincomalee	1,000	0	0
Provincial Judge of Jaffna	1,500	0	0	District Judge of Jaffna	1,000	0	0
Provincial Judge of Kalpiitiya	500	0	0	District Judge of Chillaw and Puttalam	500	0	0
Judicial Commissioner of Kandy	2,000	0	0	District Judge of Kandy	1,000	0	0
Agent of Government at Ratnapura	500	0	0	District Judge of Ratnapura	150	0	0
Total	17,702	0	0	Total	12,450	0	0

## SCHEDULE NO. 5: JUDICIAL UNDER £500 PER ANNUM

Establishment of 1833	Salary per annum		New Schedule	Salary per annum	
	£	s. d.		£	s. d.
Fiscal of Colombo	350	0 0	Fiscal of the Western Province	350	0 0
Private Secretary to the Chief Justice	270	0 0	Private Secretary to the Chief Justice	270	0 0
Private Secretary to the Puisne Justice	180	0 0	Private Secretary to the Senior Puisne Justice	180	0 0
Provincial Judge of Batticaloa	250	0 0	District Judge of Batticaloa	250	0 0
Provincial Judge of Mannār	200	0 0	District Judge of Mannār	200	0 0
Sitting Magistrate of Kalutara	—	—	District Judge of Kalutara	135	0 0
Sitting Magistrate of Panadurē	135	0 0	District Judge of Panadurē	225	0 0
Sitting Magistrate of Negombo	225	0 0	District Judge of Negombo	225	0 0
Sitting Magistrate of Balapitmodera	135	0 0	District Judge of Negambo	225	0 0
Sitting Magistrate of Mātara	225	0 0	District Judge of Ambalangoda	225	0 0
Sitting Magistrate of Hambantota	135	0 0	District Judge of Mātara	225	0 0
Sitting Magistrate of Mullaitivu	180	0 0	District Judge of Hambantota	135	0 0
Sitting Magistrate of Point Pedro	67	10 0	District Judge of Mullaitivu	225	0 0
Sitting Magistrate of Mallagam	135	0 0	District Judge of Point Pedro	157	10 0
Sitting Magistrate of Kayts	67	10 0	District Judge of Mallagam	225	0 0
Sitting Magistrate of Chavakachchēri	135	0 0	District Judge of Kayts	157	10 0
Judicial Agent at Kurunāgala	135	0 0	District Judge of Chavakachchēri	225	0 0
Agent of Government at Badulla	135	0 0	District Judge of Kurunāgala	150	0 0
Agent of Government at Alupota	67	10 0	District Judge of Badulla	150	0 0
Agent of Government at Ruavālla	67	10 0	District Judge of Alupota	150	0 0
Agent of Government at Mātālē	67	10 0	District Judge of Ruavālla	150	0 0
Agent of Government at Fort King	45	0 0	District Judge of Mātālē	150	0 0
Agent of Government at Maturata	90	0 0	District Judge of Fort King	150	0 0
			District Judge of Nuvara Eliya	150	0 0
Total	3,297	10 0	Total	4,460	0 0

\* These offices were held by Military officers who received in addition their full Military allowances.

SCHEDULE No. 6  
ECCLESIASTICAL OFFICES OF THE YEARLY VALUE OF £500 AND ABOVE

Establishment of 1833	Salary per annum		New Schedule	Salary per annum	
	£	s. d.		£	s. d.
Archdeacon and King's Visitor	2,000	0 0	Archdeacon and King's Visitor	1,500	0 0
Senior Colonial Chaplain	900	0 0	Senior Colonial Chaplain	900	0 0
Colonial Chaplain at Galle	700	0 0	Colonial Chaplain at Galle	700	0 0
Colonial Chaplain at Trincomalee	700	0 0	Colonial Chaplain at Trincomalee	700	0 0
Colonial Chaplain at Kandy	700	0 0	Colonial Chaplain at Kandy	700	0 0
Total	5,000	0 0	Total	4,500	0 0

SCHEDULE No. 7  
ECCLESIASTICAL UNDER £500 PER ANNUM

Establishment of 1833	Salary per annum		New Schedule	Salary per annum	
	£	s. d.		£	s. d.
Colonial Chaplain at Colombo	400	0 0	Colonial Chaplain at Colombo	400	0 0
Sinhalese Chaplain at Colombo	400	0 0	Sinhalese Chaplain at Colombo	400	0 0
Malabar (Tamil) Chaplain at Jaffna	200	0 0	Malabar Chaplain at Jaffna	200	0 0
Clergyman of the Dutch Church	350	0 0	Clergyman of the Dutch Church	350	0 0
Total	1,350	0 0	Total	1,350	0 0

## SCHEDULE NO. 8

## OFFICES NEWLY CREATED

	Salary per annum £
Civil:	
Assistant Agent at Negombo	400
Assistant Agent at Galle	300
Assistant Agent at Hambantota	400
Assistant Agent at Kandy	300
Judicial:	
Second Puisne Justice	1,500
Private Secretary to Second Puisne Justice	180
District Judge of Nuvarakalāviya	150
Ecclesiastical:	
College Professor	300
	<u>3,530</u>

## RECAPITULATION

Offices	Establishment 1833 £	Establishment New Schedule £
Abolished	8,674½	—
Civil: of £500 and above	32,061	24,900
under £500	2,522½	4,750
Judicial: of £500 and above	17,702	12,450
under £500	3,297½	4,460
Ecclesiastical: of £500 and above	5,000	4,500
under £500	1,350	1,350
New Creations	—	3,530
	<u>70,607½</u>	<u>55,940</u>



# XI

## *The King's Supplementary Commission to Governor Horton*

[19 March 1833<sup>1</sup>]



WILLIAM the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, To Our right trusty and well-beloved Councillor, Sir *Robert John Wilmot Horton*, right greeting: Whereas by Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster, on the 23rd day of April 1831, in the First year of Our reign, We did constitute and appoint you to be, during Our will and pleasure, Our Governor and Commander-in-chief in and over Our settlements in Ceylon, in the Indian Seas, and did thereby declare Our pleasure to be, that there should be within Our said Island of Ceylon a Council of Government, to be constituted in such manner as in your general Instructions therewith given to you was in that behalf directed, and did thereby give and grant to you the said Sir Robert John Wilmot Horton, full power and authority, with the advice and consent of the said Council of Government, to make, enact, ordain, and establish laws for the order, peace and good government of Our said Island, subject to all such rules and regulations as therein mentioned:<sup>2</sup> Now We do hereby revoke so much of the said Letters Patent as relates to the said Council of Government; and We do hereby further declare Our pleasure to be, and do grant, ordain and appoint, that there shall be within Our said Island of Ceylon two separate Councils, that is to say, one Council to be called the Legislative Council, and the other Council to be called the Executive Council; and We do direct

<sup>1</sup> *House of Commons, Accounts and Papers, 1833*, No. 698. Vol. XXV., pp. 389-98. C.O. 55, 74.

<sup>2</sup> II, p. 138.

that the said Councils shall respectively be constituted in such manner as is in that behalf directed by the Instructions herewith given to you, or according to such further powers, instructions and authorities as shall at any future time be granted to or appointed for you under Our signet and sign manual, or Our order in Our Privy Council, or by Us, through one of Our principal Secretaries of State: And We do hereby give and grant to you the said Robert John Wilmot Horton, full power and authority, with the advice and consent of the said Legislative Council of Our said Island, to make enact, ordain, and establish laws for the order, peace and good government of Our said Island, subject nevertheless to all such rules and regulations as by the Instructions herewith given to you, We have thought fit to prescribe in that behalf: Provided nevertheless, and We do hereby reserve to Ourselves, Our Heirs and Successors, Our and their undoubted right and authority to disallow any such laws, and to make and establish from time to time, with the advice and consent of Parliament, or with the advice of Our or of their Privy Council, all such laws as may to Us, or them appear necessary to the order, peace and good government of Our said Island and its dependencies, as fully as if these presents had not been made. In witness, &c. witness, &c. And for so doing, this shall be your warrant. Given at Our Court at St. James's, the 19th day of March 1833, in the Third year of Our reign.

By His Majesty's Command,

GODERICH

## XII

### *The King's Additional Instructions to Governor Horton*

[20 March 1833<sup>1</sup>]



WILLIAM R.

INSTRUCTIONS to Our right trusty and well-beloved Councillor, Sir Robert John Wilmot Horton, Knight, Our Governor and Commander-in-Chief in and over Our Island of Ceylon and its dependencies. Given at Our Court at St. James's, the 20th day of March, in the Third year of Our reign.

First. WHEREAS by a Commission under Our Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date the 23rd day of April 1831, in the First year of Our reign, We did constitute and appoint you during Our pleasure, Our Governor and Commander-in-chief of and over Our Island of Ceylon, in the Indian Seas;<sup>2</sup> and by certain Letters Patent bearing date the 19th day of March instant, in the Third year of Our reign, We did revoke certain parts of that Commission, and did declare Our pleasure to be, that there should be within Our said Island, two separate Councils, to be called respectively the Legislative Council and the Executive Council: And whereas by the said Commission and Letters Patent respectively, We did amongst other things refer to and require you to conform to and observe such general Instructions as are therein respectively mentioned: And whereas the general Instructions under Our signet and sign manual, referred to in your said Commission, bore date on the 30th day of April 1831,<sup>3</sup> and accompanied the same: And whereas We have deemed it expedient to revoke the said general Instructions, and to substitute for them the general Instructions following. Now,

<sup>1</sup> *House of Commons, Accounts and Papers, 1833*, No. 698. Vol. XXVI, p. 389-98. C.O. 55, 74.

<sup>2</sup> II, p. 138.

<sup>3</sup> II, p. 142.

therefore, We do hereby declare Our pleasure to be, that the said general Instructions of the 30th day of April 1831, shall be and the same are hereby absolutely revoked and annulled accordingly; We hereby in place and stead thereof substituting and requiring you, and all others whom it may concern, to conform to and observe the several Instructions following, that is to say:

Secondly. You having, in pursuance of Our said Commission and former Instructions, already taken the several oaths therein mentioned, it is Our will and pleasure that the Lieutenant-governor, or officer who, in the event of your death or absence from the said Island, may be appointed to the temporary administration of the Government in Our said Island, shall on his assuming and entering upon the execution of such office, with all due solemnity, cause our Commission to be read and published in the presence of the Chief Judge and members of the Executive Council, and shall then and there take the oaths appointed to be taken by an Act passed in the first year of the reign of King George the First, intituled, "An Act for the further security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Princes of Wales and his open and concealed Abettors", as altered and explained by an Act passed in the sixth year of his late Majesty King George the Third, intituled, "An Act for altering the Oath of Abjuration and the Assurance, and for amending so much of an Act of the Seventh year of her late Majesty Queen Anne, intituled, "An Act for the Improvement of the Union of the two Kingdoms; as after the time therein limited requires the delivery of certain lists and copies therein mentioned to persons indicated of high treason or misprision of treason," or in lieu thereof, the Oath required to be taken by an Act passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled, "An Act for the Relief of His Majesty's Roman Catholic Subjects", according as the said former Acts or the said last-mentioned Act shall be applicable to your case; and likewise that you do take the usual Oath for the due execution of the office of Our Governor and Commander-in-chief in and over Our said Island, and for the due

and impartial administration of justice; and further that you do take the oath required to be taken by the governors of plantations, to do their utmost that the several laws relating to trade and to the plantations be duly observed, which said oaths the Chief Judge for the time being of Our said Island shall and he is hereby required to tender and administer you; all which being duly performed, the Governor, Lieutenant-governor or officer appointed as aforesaid, shall administer to the said Chief Judge and to the members hereinafter appointed of Our said Executive Council, and of the Legislative Council of the said Island respectively, such of the oaths mentioned in the said several Acts as shall be applicable to the case of such Judge and of the individual member of Our said respective Councils taking the same; and you are also to administer unto them the usual oath for the due execution of their places and trusts respectively, all which oaths shall also be administered by the Governor, Lieutenant-governor or person administering the government of Our said Island for the time being, to all such persons as shall hereafter be appointed to be members of Our said Councils respectively, before they respectively enter upon the execution of the duties of such their office.

Third. And We authorize and require the Governor, Lieutenant-governor or officer administering the government as aforesaid of Our said Island, from time to time and at any time hereafter, or by any other to be authorized by you in that behalf, to administer and to give to all and every such person or persons as you or he shall think fit, who shall hold any office or place of trust or profit, or who shall at any time or times pass into Our said Island, or be resident or abiding there, such of the said oaths in the said several Acts contained as shall be applicable to the case of the individual to whom the same shall be administered.

Fourth. And whereas by the said Letters Patent under the great seal of Our United Kingdom of Great Britain and Ireland, bearing date the 19th day of March 1833, We declared Our will and pleasure that there should be within Our said Island of Ceylon a Council, to be called the Legislative Council of Our said Island, to be constituted in such manner as in our general Instructions in that behalf should be directed. Now,

We do hereby signify and declare Our pleasure to be, that the said Legislative Council of Our Island of Ceylon shall always consist of fifteen persons, of whom nine shall at all times be persons holding offices within the said Island at Our pleasure, and the remaining six shall at all times be persons not holding any such office.

Fifth. And We do hereby declare and appoint that the Chief Justice of the Supreme Court of Our said Island for the time being; the senior officer for the time being in command of Our land forces in the said Island, and not being in the administration of the government thereof; the Colonial Secretary for the time being; the Auditor-General for the time being; the Colonial Treasurer for the time being; the Government Agent for the Western Province for the time being; the Surveyor-General for the time being, and the Collector of Customs at Our port of Colombo for the time being, shall be such nine official members as aforesaid; and that any persons lawfully executing the duties of the said several offices, or any of them, during the absence or suspension or incapacity, or upon the death or resignation of any such officers, shall during their performance of any such duties be the official members of the said Legislative Council, as fully and effectually as though they had been by Us appointed to such their offices.

Sixth. And We do further declare and appoint that six persons, to be by you selected for that purpose from and out of the chief landed proprietors and principal merchants of the said Island, who have been actually resident for a period not less than two years in the said Island, shall be the first or original un-official members of the said Legislative Council, and shall respectively hold their places therein during Our pleasure, and which first or original unofficial members shall by you be appointed by Commissions to be for that purpose issued under the public seal of Our said Island.

Seventh. And upon the death, incapacity, absence from the said Island, suspension or resignation of any of the said unofficial members of the said Legislative Council, We do authorize and empower you to nominate and appoint by a Commission, to be for that purpose issued under the public seal of Our said Island, any fit and proper person or persons to fill any such vacancy or vacancies in the said Legislative

Council, who shall be so appointed only until Our pleasure shall be known.

Eighth. And We do require you immediately to signify to Us any such original or subsequent appointment as aforesaid, to the intent that the same may by Us be confirmed or disallowed as We shall see occasion.

Ninth. And We do further declare Our pleasure to be, that the said Legislative Council shall not be competent to act in any case unless six members at the least of such Council in addition to yourself, or to the member who may preside therein in your absence, shall be present at and throughout the meetings of such Council.

Tenth. And We do further declare, that in the said Legislative Council the official members shall take precedence of the unofficial members, and that the official members shall between themselves take precedence according to the order in which their respective offices are hereinbefore enumerated, and that the said unofficial members shall among themselves take precedence according to the priorities of their respective appointments.

Eleventh. And We do authorize and require you to preside in the said Legislative Council, except when you may be prevented by some insuperable impediment, and at any meetings of the said Council which may be holden during your absence, We do authorize and require the senior member present to preside. And We do further declare Our will to be, that all questions proposed for debate in the said Legislative Council shall be decided by the majority of votes, it being Our Pleasure that you, or the member presiding in your absence, shall have an original vote in common with the other members of the said Council, as also a casting vote, if upon any question the votes shall be equally divided.

Twelfth. And for insuring punctuality of attendance of the members of the said Legislative Council, and for the prevention of meetings of the said Council being holden without convenient notice to the several members thereof, it is Our pleasure and We do hereby direct, that you do frame and propose to the said Legislative Council for their adoption such standing rules and orders as may be necessary for those purposes, with such other standing rules and orders as may be best adapted for

maintaining order and method in the dispatch of business and in the conduct of all debates in the said Council, which rules and orders not being repugnant to your said Commission, or to the said Letters Patent, or to these your general Instructions, or to any other Instructions which you may receive from Us, shall at all times be followed and observed, and shall be binding upon the said Legislative Council, unless the same or any of them shall be disallowed by Us.

Thirteenth. And whereas We have by Our said Commission given and granted to you full power and authority, with the advice and consent of the said Legislative Council of Our said Island of Ceylon, to make, enact, ordain and establish laws for the order, peace and good government of Our said Island, subject nevertheless to all such rules and regulations as by Our general Instructions We should think fit to prescribe in that behalf: Now We do hereby declare the following to be the several rules and regulations so mentioned and referred to in your said Commission.

Fourteenth. It is Our pleasure and We do hereby direct, that no law or ordinance shall be made or enacted by the said Legislative Council, unless the same shall have been previously proposed by yourself, and that no question shall be debated at the said Council, unless the same shall first have been proposed for that purpose by you.

Fifteenth. Provided nevertheless, and it is Our pleasure, that if any member of the said Legislative Council shall deem any law fit to be enacted by the said Council, or any question proper to be there debated, and shall of such his opinion transmit a written statement to you, it shall be lawful for any such member of the said Legislative Council to enter upon the minutes thereof a copy of any such statement, together with the reason upon which such his opinion may be founded.

Sixteenth. And We do further direct that minutes be regularly kept of the proceedings of the said Legislative Council by the Colonial Secretary or his assistant, and that the said Legislative Council shall not ever proceed to the dispatch of business until the minutes of the last preceding meeting have first been read and confirmed or corrected as may be necessary.

Seventeenth. And We do further require and enjoin you



twice in each year to transmit to Us through one of Our principal Secretaries of State, a full and exact copy of the minutes of the said Legislative Council for the last preceding half-year, with an index to the subjects contained therein.

Eighteenth. And it is Our further pleasure that you do not propose or assent to any ordinance whatever respecting the constitution, proceedings, numbers, or mode of appointing or electing any of the members of the said Legislative Council or otherwise, in relation to any of the matters mentioned or referred to in your said Commission and in these Our Instructions, which shall be in anywise repugnant to or inconsistent with such Commission or Instructions, or repugnant to any Act of Parliament, or to any order made or to be made by Us in Our Privy Council, extending to or in force within Our said Island, but that any such ordinance or pretended ordinances shall be absolutely null and void to all intents and purposes.

Nineteenth. And you are expressly enjoined not to propose or assent to any ordinance whatever whereby any person may be impeded or hindered from celebrating or attending the worship of Almighty God in a peaceable and orderly manner, although such worship may not be conducted according to the rites and ceremonies of the Church of England.

Twentieth. And We do further enjoin you not to propose or assent to any ordinance whatever whereby any new rate or duty may be imposed or levied, or Our revenue might be lessened or impaired, or whereby Our prerogative might be diminished or in any respect infringed, or whereby any increase or diminution might be made in the number, allowance or salary of any public officers which have or shall have received Our sanction, without Our special leave or command therein first received.

Twenty-first. And We do further direct, that you do not propose or assent to any ordinance whatever whereby bills of credit or debentures, or other negotiable securities of whatever nature may be issued in lieu of money on the credit of the said Island, or whereby any Government paper currency may be established therein, or whereby any such bills, or any other paper currency, or any coin, save only the legal coin of the realm, may be made or declared to be a legal tender,

without special permission from Us in that behalf first obtained.

Twenty-second. And We do further enjoin and command you not to propose or assent to any ordinance whatever by which persons, not being of European birth or descent, might be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent would not be also subjected or made liable.

Twenty-third. And it is Our further pleasure that you do not propose or assent to any ordinances whatever for raising money by the institution of any public or private lotteries.

Twenty-fourth. And it is Our will and pleasure that you do not propose or assent to any ordinance whatever for the naturalization of aliëns, or for the divorce of persons joined together in holy matrimony, or for establishing a title in any person to lands or other immoveable property acquired by any alien before his or her naturalization.

Twenty-fifth. And We do further direct that you do not propose or assent to any ordinance whatever by which any tax or duty might be imposed upon transient traders, or upon persons residing and carrying on business for a short time within Our said Island, from which other traders or persons carrying on the like business would be exempt.

Twenty-sixth. And We do further direct that you do not propose or assent to any ordinance whatever whereby any grant of money or other donation or gratuity may be made by the said Legislative Council to you, or to any member of the said Council.

Twenty-seventh. And We do further order and direct that you do not propose or assent to any private ordinance whatever whereby the property of any individual may be affected, in which there is not a saving of the rights of Us, Our Heirs and Successors, and of all bodies politic and corporate, and of all other persons, excepting those at whose instance or for whose especial benefit such ordinance may be passed, and those claiming by, from, through and under them.

Twenty-eighth. And it is Our will and pleasure that you do not propose or assent to any ordinance whatever to which Our assent has once been refused, without express leave for that purpose first obtained from Us.

Twenty-ninth. And for the sake of orderly dispatch, and the prevention of all undue precipitation in the enactment of ordinances intended to affect the property of individuals by the said Legislative Council, We do hereby authorize and require you from time to time, as occasion may require, to frame and propose to the said Council, for their adoption, such standing orders, rules and forms of proceedings as may be best adapted for the purposes aforesaid, and for insuring previously to the passing of any ordinance intended to affect or benefit private persons, that due notice may be given to all parties concerned of the provisions thereof, with ample opportunity for opposing the same, and that a full and impartial examination may take place of the grounds upon which the same may be proposed or resisted; and We do authorize you from time to time, with the consent of the said Council, to revoke, alter or renew such rules, orders and forms as there may be occasion; and We do direct that the same, when adopted by them, shall be duly observed in all their proceedings.

Thirtieth. And it is Our further will and pleasure, that all laws to be enacted by the said Legislative Council shall henceforth be styled, "Ordinances enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof"; and that no other style or form shall ever henceforth be observed in any such enactments, and that all such ordinances be drawn in a simple and compendious form, avoiding prolixity and tautology.

Thirty-first. And We do further direct, that when any ordinance shall have been passed by you, with the advice of the said Legislative Council, the same shall be forthwith laid before you for Our final assent, disallowance or other direction thereupon, to be signified through you, for which purpose We do hereby require you with all convenient speed to transmit to Us, through one of Our principal Secretaries of State, a transcript in duplicate of every such ordinance as aforesaid, duly authenticated under the public seal of the said Island, and by your own signature; and We do direct that every such transcript be transmitted by the earliest occasion next after the enactment of the said ordinance, and that no such ordinance be made to take effect until Our pleasure thereupon be first

made known and signified to you, and by you to the inhabitants of the said Island, excepting only in the case of ordinances for raising the annual supplies for the service of the said Island, and in any other cases in which the delay incident to a previous communication with Us would be productive of serious injury or inconvenience, in which several cases We do hereby authorize you, with the advice of the said Legislative Council, to determine the time at which any such ordinance shall take effect and have its operation within the said Island; which proceeding, with the reasons thereof, you shall on the earliest occasion report to Us through one of Our principal Secretaries of State. And We do hereby reserve to Us, Our Heirs and Successors, full power and authority to confirm and finally enact or to disallow any ordinance which may be passed by you, with the advice and consent of the said Legislative Council, either in whole or in part, such confirmation or disallowance being from time to time signified to you through one of Our principal Secretaries of State. And We do further reserve to Ourselves, our Heirs and Successors, with the advice of Our and their Privy Council, full power and authority to amend any such ordinance as aforesaid in such manner as may be necessary and expedient; and if on any occasion Our pleasure should not be signified to you upon any such ordinance as aforesaid within three years next after the date thereof, then and in every such case it is Our pleasure that from and after the expiration of such term of three years, such ordinance shall be deemed to be disallowed, and shall thenceforth cease to have any force or effect within our said Island.

Thirty-second. And We do require and enjoin you to transmit to the Chief Judge of the Supreme Court of Judicature of the said Island, to be enrolled in the said court, a transcript duly authenticated in the manner before mentioned, of every ordinance to be passed by you, with the advice and consent of the said Legislative Council, together with a certificate under your hand and seal of the effect of every order which you may receive from Us for confirming or disallowing in the whole or in part, or for amending the provisions of any such ordinance, which certificates shall in like manner be enrolled in the said court, and there remain on record to the intent that the judges of the said court may, without further or other proof, take

cognizance of all ordinances to be made and promulgated for the peace, good order and government of the said Island: Provided always, and We do hereby declare, that the judges of the said court have not and shall not have any right or authority to prevent or delay the enrolment of any such ordinance, and that the validity thereof doth not and shall not depend upon such enrolment.

Thirty-third. And We do further declare Our pleasure to be, that in the month of January, or at the earliest practicable period at the commencement of each year, you do cause a complete collection to be published for general information, of all ordinances enrolled during the preceding year. And We do particularly require and direct that transcripts of all minutes and proceedings of the said Legislative Council be regularly transmitted every six months without fail, for our information, through one of Our principal Secretaries of State.

Thirty-fourth. And We do further direct that all ordinances to be made by you, with the advice of the said Legislative Council, be distinguished by titles, and that the ordinances of each year be also distinguished by numerical marks, commencing on each successive year with number one, and proceeding in arithmetical progression to the number corresponding with the total number of ordinances enacted during the year; and that every such ordinance be divided into successive clauses or paragraphs, distinguished in like manner by numerical marks, and that to every such clause be annexed in the margin a short summary of its contents; and you are to observe that subjects which have no proper relation to each other, be not comprised in one and the same ordinance; and that no enactments be introduced into any such ordinance which may be foreign to its professed scope and object; and that no perpetual clause be part of any temporary ordinance; and that no law or ordinance be suspended, altered, continued, revised or repealed by general words, but that the title and date of every such law or ordinance be particularly mentioned and expressed in the ordinance suspending, altering, continuing, revising or repealing the same.

Thirty-fifth. And We do direct that no law shall by you be proposed to the said Legislative Council or enacted by them, unless the draft of the same shall first have been published in the Gazette of Our said Island, or otherwise made publicly known

for at least three weeks next before the enactment thereof.

Thirty-sixth. And whereas by Our said Letters Patent We have, as before mentioned, signified Our pleasure to be, that there should be within Our said Island a Council, to be called the Executive Council thereof, and to be constituted in such manner as We should by these Our Instructions direct. Now We do direct and declare that the said Executive Council shall consist of the several persons following; that is to say, the senior officer in command of Our land forces in the said Island, and not being in the administration of the government thereof; the Colonial Secretary for the time being; the King's Advocate for the time being; the Colonial Treasurer for the time being, and the Government Agent for the Central Province for the time being.

Thirty-seventh. And We do hereby direct and require, that in the execution of the powers and authorities committed to you by your said Commission, you do in all cases consult with the said Executive Council, excepting only when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of such advice being given by the time within which it may be necessary for you to act in respect of any such matters; provided that in all such urgent cases, you do subsequently and at the earliest practicable period communicate to the said Executive Council the measures which you may so have adopted with the reasons thereof.

Thirty-eighth. And We do authorize and require the said members of the said Executive Council to meet in obedience to any summonses which shall by you for that purpose be addressed to them, and to consult with and advise you upon any question connected with the executive government of Our said Island, which may by you be proposed for their consideration; provided always that two of such members at the least be always present on any such occasion, and that distinct minutes be kept of their deliberations and proceedings, which minutes it shall be the duty of the said Colonial Secretary or his assistant to keep. And We do require you to transmit to Us, twice at least in each year, through one of Our principal Secretaries of State, full and exact copies of all such minutes.

Thirty-ninth. And We do authorize you in your discretion, and if it shall in any case appear right so to do, to act in the

exercise of the power committed to you by your said Commission, in opposition to the advice which may in any such case be given to you by the members of your said Executive Council; provided nevertheless that, in any such case, you do fully report to Us, by the first convenient opportunity, every such proceeding with the grounds and reasons thereof.

Fortieth. And whereas We have by Our said Commission given to you full power and authority in Our name and in Our behalf, but subject nevertheless to such provisions as are in this respect contained in your general Instructions, to make and execute in Our name, and under the public seal of Our said Island, grants of waste lands to Us belonging within the same, to private persons, or for the public uses of Our subjects there resident. Now We do hereby require and authorize you, from time to time as occasion may require, to cause all necessary surveys to be made of the vacant or waste lands to Us belonging in Our said Island, and to cause the persons making such surveys to report to you what particular lands it may be proper to reserve for public roads or other internal communications by land or water, or as the sites of towns, villages, churches, school-houses, or parsonage-houses, or as places for the burial of the dead, or as places for the future extension of any existing towns or villages, or as places fit to be set apart for the recreation or amusement of the inhabitants of any town or village, or for promoting the health of such inhabitants, or as the sites of quays or landing-places or towing-paths, which it may at any future time be expedient to erect, form or establish on the sea-coast, or in the neighbourhood of navigable streams, or as places which it may be desirable to reserve for any other purpose of public convenience, utility, health or enjoyment; and you are specially to require persons making such surveys to specify in their reports, and to distinguish in the charts or maps to be thereunto annexed, such tracts, pieces or parcels of land within Our said Island as may appear to them best adapted to answer and promote the several purposes before mentioned. And it is Our will, and We do strictly enjoin and require you that you do not on any pretence whatsoever grant, convey or demise to any person or persons any of the lands which may be so specified as fit to be reserved as aforesaid, nor permit or suffer any such lands to be occupied by any private person for any private purpose.

Forty-first. And We do further charge and require you not to make any grant of land to or in trust for or for the use of any private person, by any one instrument or by successive instruments, exceeding 100 acres in the whole, without Our special permission for that purpose first obtained.

Forty-second. And whereas in and by your said Commission We have granted unto you power and authority, in Our name and in Our behalf, to grant to any person convicted of any crime in any of the tribunals in Our said Island an absolute or conditional pardon. Now We do enjoin and require you, in every case where you shall be applied to for any such pardon, and in every case whatever in which sentence of death shall have been passed, to obtain from the Judge who presided at the trial of any such offender, a report in writing of the proceedings upon any such trial, and of the evidence then adduced, and of the opinion of such Judge whether the conviction of any such offender was obtained in due course of law, and whether any reason exists for the total or partial remission or commutation of any such sentence. And We do strictly command that you do not upon any occasion permit any such kind of punishment to be inflicted as can in no case be inflicted by the law of England, and that you do not remit any fine or forfeiture above the value of £50 sterling, without previously signifying to Us the nature of the offence committed and the amount of the proposed remission, and receiving Our directions thereupon; but in the meanwhile it shall be lawful for you to suspend the payment of such fine or forfeiture.

Forty-third. It being Our intention that all persons inhabiting Our Island under your government should have full liberty of conscience, and the free exercise of all such modes of religious worship as are not prohibited by law, We do hereby require you to permit all persons within Our said Island to have such liberty, and to exercise such modes of religious worship as are not prohibited by law, provided they be contented with a quiet and peaceable enjoyment of the same, not giving offence or scandal to the Government.

Forty-fourth. It is Our further will and pleasure that you recommend proper measures for erecting and maintaining schools in order to the training up of youth to reading, and to a necessary knowledge of the principles of religion. You are



not however to propose or assent to any ordinance respecting Religion, without a clause suspending its operation until Our pleasure shall have been signified thereupon, unless a draft thereof shall have been previously transmitted by you for Our consideration and approval.

Forty-fifth. And whereas We have by Our said Commission authorized you, upon sufficient cause to you appearing, to suspend from the exercise of his office within our said Island, any person exercising the same under and by virtue of any commission or warrant granted or to be granted by Us in Our Name or under Our authority, and We have by the said Commission strictly required and enjoined you, in proceeding to any such suspension, to observe the directions in that behalf given to you in and by your general Instructions. Now We do charge and require you that, before proceeding to any such suspension, you do consult with the said Executive Council, and that you do signify, by a statement in writing to the person so to be suspended, the grounds of such your intended proceeding against him, and that you do call upon any such person to communicate to you in writing a statement of the grounds upon which and the evidence by which he may be desirous to exculpate himself, and that you transmit both of the said statements to Us, through one of Our principal Secretaries of State, by the earliest conveyance.

Forty-sixth. And We do hereby direct and instruct you, that all commissions and appointments to be granted by you to any person or persons for exercising any office or employment in or concerning the said Island be granted during pleasure only, and that whenever you shall appoint to any vacant office or employment any person not by Us especially directed to be appointed thereto, you shall at the same time expressly apprise such person that such appointment is to be considered only as temporary and provisional, until Our allowance or disallowance thereof be signified.

Forty-seventh. And whereas great prejudice may happen to Our service and to the security of the said Island, by the absence of the Governor, you shall not, upon any pretence whatever, quit the said Island without having first obtained leave from Us for so doing under our sign manual and signet, or through one of Our principal Secretaries of State.

## XIII

### *Ceylon Charter of Justice, 1833<sup>1</sup>*



WILLIAM the Fourth by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. to all to whom these presents shall come, greeting:

Whereas his late Majesty King George the Third, by three several Charters and Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date respectively at Westminster the 18th day of April, in the year of our Lord 1801;<sup>2</sup> the 6th day of August, in the year of our Lord 1810;<sup>3</sup> and the 30th day of October, in the year of our Lord 1811,<sup>4</sup> did establish within his said late Majesty's settlements of the Island of Ceylon, and the territories and dependencies thereof, a certain court called the Supreme Court of Judicature in the Island of Ceylon,<sup>5</sup> and a certain other court called the High Court of Appeal in the Island of Ceylon,<sup>6</sup> and did make certain other provisions for the due administration of justice in the said settlements, territories and dependencies:

And whereas since the day on which the last of the said several Charters and Letters Patent bears date, a certain territory in the interior of the said Island of Ceylon, called the kingdom of Kandy, or the Kandyan provinces of the Island of Ceylon, hath become and now is subject to His Majesty, whereby the whole Island of Ceylon with its dependencies has become and now is part of His Majesty's dominions:

And whereas it is provided by each and every of the said several Charters and Letters Patent, that nothing therein respectively contained, or any act which should be done under

<sup>1</sup> *House of Commons, Accounts and Papers, 1833*, No. 332, Vol. XXVI, p. 57. C.O. 55, 74.

II, p. 170.

<sup>3</sup> I, p. 200.

<sup>5</sup> I, p. 172

<sup>4</sup> II, p. 214.

<sup>6</sup> II, p. 196.

the authority thereof respectively, should extend, or be deemed or construed to extend to prevent his said late Majesty, his heirs and successors, from making such further or other provision for the administration of justice throughout the said settlements and territories in the said Island of Ceylon with their dependencies, at his and their will and pleasure, and as circumstances might require, his said late Majesty meaning and intending fully and absolutely, and to all intents and purposes whatsoever, to reserve to himself, his heirs and successors, such and the same rights and powers in and over the said settlements, territories and dependencies and every part thereof, and especially touching the administration of justice therein, and all other matters and things in and by the said several Charters and Letters Patent provided for, as if the said several Charters and Letters Patent had not been made, anything therein contained, or any law, custom, usage, matter of thing whatsoever to the contrary in anywise notwithstanding:<sup>1</sup>

And whereas it is expedient to make more general and more effectual provision for the administration of justice in the said Island and its dependencies.

Now know ye that We, upon full consideration of the premises, and of Our certain knowledge and mere motion, have thought fit to revoke and annul, and do hereby revoke and annul each and every of the said Charters and Letters Patent, such revocation to take effect at and from afar the time when (as hereinafter mentioned) this Our Charter will come into operation in Our said Island.

And whereas in the several districts and provinces of the said Island there now are several Courts appointed to administer justice by the exercise of original jurisdiction, to the inhabitants of the said districts and provinces, known respectively by the names and titles of the Provincial Courts, the Courts of the Sitting Magistrates, the Court of the Judicial Commissioner, the Court of the Judicial Agent, the Courts of the Agents of Government, the Revenue Courts, and the Court of the Sitting Magistrate of the Mahabadde:<sup>2</sup> And whereas such Courts differ among themselves in respect of their constitution, of their rules of procedure, and of the kinds and

<sup>1</sup> II, p. 198.

<sup>2</sup> II, pp. 239-42.

degrees of the jurisdictions which they exercise within the limits of their respective districts or provinces.

Now know ye that We, upon full consideration of the premises, have thought fit to direct, ordain and appoint, that the said Provincial Courts, the said Courts of the Sitting Magistrates, the said Court of the Judicial Commissioner, the said Court of the Judicial Agent, the said Courts of the Agents of Government, the said Revenue Courts, and the said Court of the Sitting Magistrate of the Mahabadde, shall be and the same are hereby respectively abolished, such abolition to take effect at and from after the time when (as hereinafter mentioned) this Our Charter will come into operation in Our said Island:

And whereas the Governor of Our said Island for the time being, and the said Court of the Judicial Commissioner have hitherto exercised an appellate jurisdiction for the administration of justice in certain cases arising in the Kandyan provinces of Our said Island: And whereas certain Courts called the Minor Courts of Appeal, and certain Courts called the Minor Courts of Appeal from revenue cases, have hitherto exercised an appellate jurisdiction for the administration of justice in certain cases, arising in the Maritime provinces of the said Island:<sup>1</sup> And whereas the existence of several independencies appellate judicatures in the said Island tends to introduce uncertainty into the administration of justice there.

Now know ye that We, upon full consideration of the premises, have thought fit to direct and ordain, and do hereby direct and ordain, that the said appellate jurisdictions of the Governor of the said Island, and of the said Court of the Judicial Commissioner respectively, shall be and the same are hereby respectively abolished, and that the said Minor Courts of Appeal, and the said Minor Courts of Appeal for revenue cases, and such their appellate jurisdiction, shall be and the same are hereby abolished.

And to provide for the administration of justice hereafter in Our said Island, Our will and pleasure is, and We do hereby direct, that the entire administration of justice, civil and criminal, therein shall be vested exclusively in the Courts erected and constituted by this Our Charter, and in such other

<sup>1</sup> II, p. 389.

Courts as may be holden within the said island under any commission issued or to be issued in pursuance of the statutes in that case made and provided for the trial of offences committed on the seas, or within the jurisdiction of Our Lord High Admiral or the Commissioners for executing his office, or under any commission issued or to be issued by Our Lord High Admiral or by the Commissioners for executing his office for the time being. And it is Our pleasure, and We do hereby declare, that it is not and shall not be competent to the Governor of Our said Island, by any law or ordinance to be by him made with the advice of the Legislative Council thereof, or otherwise howsoever, to constitute or establish any Court for the administration of justice in any case, civil or criminal, save as hereinafter is expressly saved and provided: provided nevertheless, and We do hereby declare, that nothing herein contained shall extend or be construed to extend to prevent any persons from submitting their differences to the arbitration of certain assemblies of the inhabitants of villages known in Our said Island by the name of Gansabes.<sup>1</sup>

And We do hereby grant, direct, ordain and appoint, that there shall be within the said island of Ceylon one Supreme Court, which shall be called "The Supreme Court of the Island of Ceylon".

And We do direct and appoint that the said Supreme Court of the island of Ceylon shall consist of and be holden by and before one Chief Justice and two Puisne Justices, and that the Chief Justice shall be called and known by the name and style of the Chief Justice of the Island of Ceylon; and that the said Chief Justice and Puisne Justices shall from time to time be nominated and appointed to such their offices by letters patent, to be issued under the public seal of the said island, in pursuance of warrants to be from time to time issued by Us, Our heirs and successors, under Our or their sign manual, and shall hold such their offices during the pleasure of Us, Our heirs and successors.

And we do further direct and appoint, that upon the death, resignation, sickness or incapacity of the said Chief Justice, or any of the said Puisne Justices, or in case of the absence of any of them from the said island, or in case of any such suspension

<sup>1</sup> See p. 28 above.

from Office, as hereinafter mentioned, of any such Chief Justice or Puisne Justice, it shall and may be lawful to and for the Governor of Our said Island for the time being, by letters patent to be by him for that purpose made and issued under the public seal of the said island, to nominate and appoint some fit and proper person or persons to act as and in the place and stead of any such Chief Justice or Puisne Justice so dying or resigning, or labouring under such sickness or incapacity as aforesaid, or being so absent as aforesaid from the said colony, or being so suspended, until the vacancy or vacancies so created by any such death, or resignation, or sickness, or incapacity, or absence, or suspension, shall be supplied by a new appointment to be made in manner aforesaid, or until the Chief Justice or Puisne Justice so becoming sick or incapable, or being absent or suspended as aforesaid, shall resume such his office, and enter into the discharge of the duties thereof.

And whereas cases may arise in which it may seem necessary to Our Governor for the time being of Our said Island, that a Judge of the said Court should be suspended from the exercise of his functions therein provisionally until Our pleasure can be known, and it is expedient that no such act of suspension should take place except upon the most evident necessity and after the most mature deliberation; and that in any such event the Judge who may be so suspended should receive the most early, complete and authentic information of the grounds of such proceeding against him; We do therefore declare, direct and appoint, that it shall and may be lawful for the Governor of Our said Island for the time being, by any order or orders to be by him for that purpose made and issued under the public seal of the said island, with the advice and consent of the Executive Council of the said Island, or the major part of them, upon proof of the misconduct or incapacity of any such Chief Justice or Puisne Justice as aforesaid, but not otherwise, to suspend him from such his office and from the discharge of the duties thereof; provided that in every such case the said Governor shall immediately report for Our information, through one of Our principal Secretaries of State, the grounds and causes of such suspension; and provided also, that a full statement be entered on the minutes of the said

Executive Council of the grounds of such proceeding, and of the evidence upon which the same may be founded, a full copy of which minutes and evidence shall by such Governor be transmitted to such Judge, together with the order suspending him from such his office.

And We do hereby reserve to Us, Our heirs and successors, with the advice of Our or their Privy Council, full power and authority to confirm or to disallow any such suspension from office as aforesaid of any such Chief Justice or Puisne Justice.

And We do hereby give and grant to Our said Chief Justice for the time being rank and precedence above and before all Our subjects whomsoever within the said Island and its dependencies, excepting the Governor or Lieutenant-governor for the time being thereof, and excepting such persons as by law or usage in England take place before Our Chief Justice of Our Court of King's Bench.

And we do hereby give and grant to the said Puisne Justices for the time being rank and precedence above and before all Our subjects whomsoever within the said island and its dependencies, excepting the Governor or Lieutenant-governor for the time being thereof, the said Chief Justice, and the Officer for the time being commanding Our forces in the said island and its dependencies, and excepting such persons as by law or usage in England take place before Our Puisne Justices of Our Court of King's Bench.

And We do hereby declare, that the said Puisne Justices shall take rank and precedence between themselves according to the priority of their appointments respectively.

And We do further grant, direct, ordain and appoint, that the said Supreme Court of the Island of Ceylon shall have and use, as occasion may require, a seal bearing a device and impression of Our Royal Arms, with an exergue or label surrounding the same, with this inscription, "The Seal of the Supreme Court of the Island of Ceylon": And that the said seal shall be delivered to and shall be kept in the custody of the said Chief Justice, with full liberty to deliver the same to any Puisne Justice of the said Court for any temporary purpose; and in case of the vacancy of or suspension from the office of Chief Justice, the same shall be delivered over to and kept in the custody of such person as shall be appointed by the said

Governor of the said Island, to act as and in the place and stead of the said Chief Justice.

And We do further direct and appoint, that no such Chief Justice or Puisne Justice as aforesaid shall be capable of accepting, taking or performing any other office, place of profit or emolument within the said island, on pain that the acceptance of such other office as aforesaid shall be *ipso facto* an avoidance of such his office of Chief Justice or Puisne Justice, as the case may be, and the salary thereof shall cease accordingly from the time of such acceptance of any other office or place: provided nevertheless, that no such Chief Justice or Puisne Justice shall be rendered incapable of holding his office, or shall forfeit his salary by accepting the office of Judge of the Court of Vice-Admiralty in the said island, or of Commissioner for the trial and adjudication of prize causes and other maritime questions arising in India.

And We do hereby constitute and appoint our trusty and wellbeloved Sir Charles Marshall, Knight, to be the first Chief Justice of the said Supreme Court, and our trusty and wellbeloved William Rough, esq. serjeant-at-law, to be the senior Puisne Justice of the said Supreme Court, and our trusty and wellbeloved William Norris, esq. to be the second Puisne Justice of the said Supreme Court.

And We do hereby direct, ordain, appoint and declare, that there shall be attached and belong to the said Court an officer to be styled the Registrar and Keeper of Records of the said Court, and such and so many other officers as to Our Chief Justice of the said Court for the time being shall from time to time appear to be necessary for the administration of justice, and the due execution of the powers and authorities which are granted and committed to the said Court by these Our Letters Patent: provided nevertheless, that no office shall be created in the said Court, unless the Governor of the said Island for the time being shall first signify his approbation thereof to the said Chief Justice for the time being, in writing under the hand of such Governor.

And We do further direct and declare Our Will to be, that all the subordinate officers of the said Court shall be appointed to such their offices by Us, or by the Governor of the said Island on Our behalf, by commissions to be for that purpose



issued under the public seal of the said island: provided nevertheless, that all persons who shall be attached to or hold any office in the said Court, as clerk or private secretary to any of the Judges thereof, shall be appointed to such office by the Judge for the time being whom such person may so serve in any such capacity.

And We do further direct and appoint, that the several officers of the said Supreme Court shall hold their respective offices during the pleasure of Us, Our heirs and successors, and shall be subject to be suspended from their offices therein by the said Court, for misconduct or other sufficient cause.

And We do hereby authorize and empower the said Supreme Court to admit and enrol as advocates or proctors in the said Supreme Court all such persons, being of good repute, as shall, upon examination by one or more of the said Justices of the said Supreme Court appear to be of competent knowledge and ability; provided always, that whenever the said Supreme Court shall refuse to admit and enrol any person applying to be admitted and enrolled as an advocate or proctor in the said Supreme Court, the Judges of the said Court shall in open court assign and declare the reasons of refusal.

And We do direct and declare, that no persons whatsoever not so admitted and enrolled as aforesaid shall be allowed to appear, plead or act in the said Supreme Court, for or on behalf of any other person being a suitor in the said Court.

And We do further declare Our pleasure to be, and do hereby ordain and appoint, that for the purpose of the administration of justice under this Our Charter, the said Island of Ceylon shall be divided into the district of Colombo, and three circuits to be called respectively the Northern Circuit, the Southern Circuit, and the Eastern Circuit, and the said Northern Circuit shall comprise the district of Jaffna, together with the several districts which are parcel of the Maritime provinces of the said island, and which lie to the westward of the Kandyan provinces of the said island, between the said district of Jaffna and the district of Colombo; and that the said Southern Circuit shall comprise the district of the Mahagam-pattoo, and all the districts parcel of the Maritime provinces of the said island lying to the westward and southward of the Kandyan provinces of the said island, between the district

of the Mahagampattoo and the district of Colombo; and that the said Eastern Circuit shall comprise all the Kandyan provinces of the said island, and all the districts parcel of the Maritime provinces of the said island lying to the eastward of the Kandyan provinces of the said island, between the district of Jaffna and the district of the Mahagampattoo: provided nevertheless, that it shall be lawful for the Governor for the time being of Our said Island, on any application to him for that purpose made in writing, under the hands of the Judges for the time being of the said Supreme Court, or the major part of them, but not otherwise, by any proclamation or proclamations to be from time to time for that purpose issued, to alter, as occasion may require, the before-mentioned division of the said island as aforesaid, and to establish any other division or divisions thereof for that purpose which may appear to the said Governor, and the whole or the major part of such Judges, more conducive to the public convenience and the effective administration of justice in the said island.

And We hereby authorize and require the Governor for the time being of Our said Island, with the concurrence of the Judges of the said Supreme Court, or the major part of them, but not otherwise, by any proclamation or proclamations to be by him for that purpose from time to time issued, to subdivide into districts each of the circuits into which the said island, exclusive of the district of Colombo, is or shall be in manner aforesaid divided; and from time to time, with the like concurrence, but not otherwise, to revoke, alter and amend any such proclamation or proclamations, as occasion may require, and which appointment of the said circuits and districts shall be made in such a manner as may best consist with and promote the prompt and effectual administration of justice therein as hereinafter mentioned: provided always, that until the said circuits shall in manner aforesaid be divided into districts, in pursuance of this Our Charter, the existing divisions of Our said Island comprised within the respective limits of the said circuits respectively, shall for the purposes hereof be deemed and taken to be such districts as aforesaid.

And We do further grant, direct and appoint, that within each and every district of the said island there shall be one Court, to be called the District Court of such district; and that

every such District Court shall be holden by and before one Judge, to be called the District Judge, and three assessors, and that every such District Judge shall be appointed to such his office by letters patent, to be for that purpose issued under the public seal of the said island, by the Governor thereof for the time being, in pursuance of warrants to be for that purpose addressed to him by Us, Our heirs and successors; provided that such Governor may, and he is hereby authorized and required to issue such letters patent as aforesaid provisionally and subject to the future signification of the pleasure of Us, Our heirs and successors, and without any such warrant or warrants as aforesaid, on any occasion or occasions on which it may be necessary to make any such appointment or appointments, before the pleasure of Us, Our heirs and successors can be known.

And We do hereby declare, that the said District Judges respectively shall hold such their offices during the pleasure of Us, Our heirs and successors.

And We do further direct and appoint, that the before-mentioned assessors shall be selected from amongst Our subjects inhabiting the said Island, whether natives thereof or otherwise, and being respectively men of the full age of 21 years and upwards, and possessing such qualifications as shall from time to time be determined by any rules or orders of court to be made in the manner hereinafter mentioned, and not having been convicted of any infamous crime, nor labouring under any such bodily or mental incapacity as would render them unfit for the discharge of that office.

And We do hereby reserve to Ourselves, Our heirs and successors, the right of appointing in each of the said District Courts one person to act as a permanent assessor, but in respect of all assessors until any such appointment shall be made, and after any such appointment shall be made in respect of all assessors not so appointed, it is Our pleasure, and We do hereby direct and declare, that they shall be selected, summoned and required to serve in the said office, in such manner as shall be provided by such rules and orders of court as are hereinbefore particularly mentioned.

And We do hereby further direct, that the ministerial and other subordinate officers of the said District Courts respec-

tively shall respectively be appointed to and shall hold such their offices therein, in such and the like manner in every respect as is hereinbefore provided with regard to the ministerial and other officers of the said Supreme Court; and that the admission and enrolment of persons to appear to plead or act in any of the said District Courts as advocates or proctors, shall be regulated and provided for by such general rules and orders of court as are hereinafter mentioned.

And We do further direct and appoint, that the said Supreme Court shall be holden at Colombo in the said island, excepting for the purpose of such circuits as are hereinafter mentioned, and that every such District Court as aforesaid shall be holden at such convenient place within every such district as the Governor for the time being of Our said Island shall from time to time for that purpose appoint by any proclamation or proclamations to be by him in manner aforesaid issued for such division as aforesaid of the said island into districts.

And We do further grant, direct and appoint, that each of the said District Courts shall be a Court of Civil jurisdiction, and shall have cognizance of and full power to hear and determine all pleas, suits and actions in which the party or parties defendant shall be resident within the district in which any such suit or action shall be brought, or in which the act, matter or thing in respect of which any such suit or action shall be brought, shall have been done or performed within such district: provided nevertheless, that no such District Court as aforesaid shall be competent to hold jurisdiction of, or to hear, or to determine any cause, suit or action wherein the judge of such Court shall himself be a party, plaintiff or defendant; but that every cause, suit or action which, according to the provisions aforesaid, would have been cognizable in any District Court, if the Judge of such Court had not been a party thereto, shall in that case be cognizable in the Court of any district immediately adjoining.

And We do further grant, direct and appoint, that each of the said District Courts shall be a Court of Criminal Jurisdiction, and shall have full power and authority to inquire of all crimes and offences committed wholly or in part within the district to which such Court may belong, and to hear, try and determine all prosecutions which shall be commenced

against any person or persons for or in respect of any such crimes or offences, or alleged crimes or offences: provided always, that such criminal jurisdiction as aforesaid shall not extend to any case in which the person or persons accused shall be charged with any crime which, according to any law now or hereafter to be in force within the said island, shall be punishable with death, or transportation, or banishment, or imprisonment for more than twelve calendar months, or by whipping exceeding 100 lashes, or by fine exceeding 10*l*.

And We do further grant, direct and appoint, that each of the said District Courts shall have the care and custody of the persons and estates of all idiots, lunatics, and others of insane or nonsane mind, resident within such districts respectively, with full power to appoint guardians and curators of all such persons and their estates, and to take order for the maintenance of such persons, and the proper management of their estates, and to take proper securities for such management from such guardians and curators, and to call them to account, and to charge them with any balance which may be due to any such persons as aforesaid, or to their estates, and to enforce the payment thereof, and to take order for the secure investment of any such balances, and such guardians and curators from time to time to remove and replace as occasion may require.

And We do further give and grant to the said District Courts respectively, in their said respective districts, full power and authority to appoint administrators of the estates and effects of any persons dying within such respective districts intestate, or who may not have by any last will and testament appointed any executor or trustee for the administration or execution thereof, and like power and authority to inquire into and determine upon the validity of any document or documents adduced before them as and for the last will and testament of any person who may have died within such districts respectively, and to record the same, and to grant probate thereof, with like power and authority to appoint administrators for the administration or execution of the trusts of any such last will or testament as aforesaid, in cases where the executors or trustees thereby appointed shall not appear and take out probate thereof, or having appeared and taken out such probate, shall by death or otherwise become incapable to carry

any such trusts fully into execution. And We do further authorize and empower the said District Courts in their said respective districts, to take proper securities from all executors and administrators of the last wills and testaments of any deceased persons, or of the estates and effects of any persons who may have died intestate, for the faithful performance of such trusts, and for the proper accounting to such Courts respectively for what may come to their hands, or be by them expended in the execution thereof, with like power and authority to call all such executors and administrators to account, and to charge them with any balances which may be due to the estates of any such deceased persons, and to enforce the payment thereof, and to take order for the secure investment of any such balances, and such executors and administrators from time to time to remove and replace as occasion may require.

And whereas doubts might arise whether by virtue of the provisions aforesaid, and without an express authority in that behalf, the said District Courts would be competent to entertain suits therein brought for the protection of Our revenue, and for the punishment of offences committed against the revenue laws of Our said Island. Now, therefore, for the removal of any such doubts, We do hereby expressly declare, that all causes affecting Our revenue arising within Our said Island, and all prosecutions for the punishment of offences therein committed against the revenue laws thereof, shall be cognizable within the said District Courts respectively, in such and the same manner as any other suits and prosecutions; saving nevertheless and reserving to all Courts of Vice-Admiralty established or to be established within Our said Island, all such rights, powers, jurisdictions and authority as are by law vested in them, as fully as if this Our Charter had not been made: provided nevertheless, that no such prosecution for any offence committed against the revenue laws shall be cognizable within any such District Court, in cases where the punishment may be of greater degree or amount than such District Court can, under the provisions aforesaid, award upon prosecutions for any other offence.

And We do further grant and declare, that the several jurisdictions so vested as aforesaid in the said District Courts, is and shall be an exclusive jurisdiction, and shall not on any plea

or pretext whatsoever be assumed or exercised by any other Court, Tribunal or Judge within Our said Island, save and except in so far as cognizance of the same suits, causes, actions, prosecutions, matters and things, is hereinafter expressly given by way of appeal to the Supreme Court aforesaid, or to the respective Judges thereof, and also save and except in so far as an original jurisdiction in certain suits, causes, actions, prosecutions, matters and things is hereinafter vested in the said Supreme Court, or in the respective Judges thereof, and also save and except in as far as respects the jurisdiction of the Court of Vice-Admiralty in the said Island.

And We do further direct and appoint, that every final sentence or judgment of the said Districts Courts respectively, and that every interlocutory order of the said Courts having the effect of a final sentence or judgment, and that every order of any such Court having the effect of postponing the final decision of any cause or prosecution there pending, and any other order which to the Judge of any such Court may appear of adequate importance, shall by such Judge be pronounced in open court, and that such Judge shall in all such cases state, in the presence and hearing of the assessors before mentioned, what are the questions of law and of fact which have arisen for adjudication, and which are to be decided upon any such occasion, together with his opinion upon every such question, with the grounds and reasons of every such opinion, and that every assessor shall also in open court, and in the presence and hearing of the Judge and the other assessors, declare his opinion and deliver his vote upon each and every question which the Judge shall have previously declared to have arisen for adjudication, whether such questions shall relate to any matter of law, or to any matter of fact: provided nevertheless, that in case of any difference of opinion between any such Judge and the majority or the whole of such assessors, upon any question of law or of fact depending before any such District Court, the opinion of such Judge shall prevail, and shall be taken as the sentence, judgment or order of the whole Court; but in every such case a record shall be made and preserved among the records of the said Court of the questions declared by the Judge to have arisen for adjudication, and of the vote of such Judge and of every such assessor upon each such question.

And We do hereby grant, declare, direct and appoint, that the Supreme Court of the Island of Ceylon shall be a Court of Appellate Jurisdiction for the correction of all errors in fact or in law which shall be committed by the said respective District Courts, and shall have sole and exclusive cognizance by way of appeal of all causes, suits, actions, prosecutions, matters and things of which such District Courts may, in pursuance of the provisions of this Our Charter, or any of them, take cognizance by way of original jurisdiction. And we do further grant to the said Supreme Court power, jurisdiction and authority to hold an original jurisdiction for inquiring of all crimes and offences committed throughout the said island, and for the hearing, trying and determining all prosecutions which shall be commenced against any person or persons for or in respect of any such crimes or offences, or alleged crimes or offences.

And to provide for the due execution of the powers and authorities and jurisdictions so vested as aforesaid in the said Supreme Court, it is Our further pleasure, and We do direct, ordain and appoint, that civil and criminal sessions of the said Supreme Court shall be holden by some one of the Judges thereof in each of the circuits into which Our said Island is or shall be so divided as aforesaid.

And we do further direct and appoint, that such sessions as aforesaid of the said Supreme Court shall be holden twice in each year within the Northern, Southern and Eastern circuits of the said island respectively hereinbefore described or referred to, at such places within such respective circuits, and at such particular times in each year as the Governor for the time being of Our said Island shall, after previous consultation with the Judges of the said Supreme Court, by proclamations to be by him from time to time for that purpose issued, direct and appoint: provided always, that the times and places for holding such civil and criminal sessions of the said Supreme Court on such circuits shall be so arranged as that all the Judges of the said Supreme Court shall never at the same time be absent from Colombo, and that all such Judges shall be resident at the same time at Colombo not less than one month twice in each year. And We do direct and appoint, that the Chief Justice of the said Court shall first choose the circuit on which he will



proceed for the purposes aforesaid, and that the second choice shall be made by the senior Puisne Judge for the time being.

And We do further direct, ordain and appoint, that at every civil sessions of the Supreme Court to be holden on any such circuit as aforesaid, three assessors shall be associated with the Judge, and that every criminal sessions of the Supreme Court to be holden on any such circuit, shall be holden before such Judge and a jury of 13 men, which assessors and jurors shall be selected, summoned and required to appear and serve in such manner and form as shall be provided by such general rules and orders of court as hereinafter mentioned.

And We do will, ordain and appoint, that within each and every of the said circuits respectively all and every the appellate powers, jurisdictions and authorities hereby vested in the said Supreme Court shall be exercised by the Judge for the time being of such circuit, and the assessors so to be associated with him as aforesaid and that within each and every of the said circuits respectively, all and every the original powers, jurisdictions and authorities hereby vested in the said Supreme Court shall be exercised by the Judge for the time being of such circuit, who, upon the trial of any crimes made cognizable by the said Supreme Court by way of such original jurisdiction as aforesaid, shall be associated with such jurors as aforesaid.

And We do further direct and appoint, that at every civil sessions of the said Supreme Court so to be holden as aforesaid on every such circuit, the said Court shall proceed to hear and determine all appeals which may be then depending from any sentence, judgment, decree or order of any District Court within the limits of such circuit, and to affirm, reverse, correct, alter and vary every such sentence, judgment, decree or order, according to law, and, if necessary, to remand to the District Court for a further hearing, or for the admission of any further evidence, any cause, suit or action in which any such appeal as aforesaid shall have been brought; and upon hearing every such appeal it shall also be competent to the said Supreme Court to receive and admit, or to exclude and reject, new evidence touching the matters at issue in any such original cause, suit or action, as justice may require.

And We do further direct and appoint, that the Supreme Court aforesaid at every civil sessions to be holden on any

such circuit as aforesaid, shall have full power and authority to grant and issue mandates, in the nature of writs of *mandamus procedendo* and prohibition, against any District Court within the limits of such circuit, and to make order for the transfer of any cause, suit or action depending in any one District Court in such circuit to any other District Court within the same circuit, if it shall be made to appear to the satisfaction of the said Supreme Court at any such civil sessions as aforesaid, that there is any sufficient cause or reason to conclude that in such particular cause, suit or action, justice would not probably be done in the District Court in which the same had so been commenced; and in every such case the District Court to which any such cause, suit or action shall be so transferred, shall take cognizance thereof, and have power and jurisdiction for the hearing, trial and decision of the same, as fully and effectually to all intents and purposes as the District Court in which the same was originally brought could or might have had.

And We do further direct, declare and appoint, that the Judge of the Supreme Court holding any such civil sessions thereof as aforesaid on any such circuit, shall in open court state and declare, in the presence and hearing of the assessors before mentioned, what are the questions of law and of fact arising for adjudication upon every appeal brought before the said Supreme Court at such sessions, and which are then to be decided, and shall then pronounce his opinion upon every such question, with the grounds and reasons of every such opinion; and that every such assessor shall thereupon also in open court, and in the presence and hearing of such Judge and the other assessors, declare his opinion and deliver his vote upon each and every question which the Judge shall have previously declared to have arisen for adjudication, whether such question shall relate to any matter of law or to any matter of fact; and in case of any difference of opinion between any such Judge and the majority or the whole of such assessors, upon any question of law or of fact depending upon such appeal, the opinion of such Judge shall prevail, and shall be taken as the sentence, judgment or order of the whole Court; but in every such case a record shall be made and preserved among the records of the said Supreme Court of the questions declared by the Judge

to have arisen for adjudication, and of the vote of such Judge and of every such assessor upon every such question.

And We do further direct, ordain and appoint, that at every criminal sessions of the said Supreme Court to be holden on any such circuit as aforesaid, such Court shall proceed to hear and determine all appeals which may be then depending from any sentence or judgment pronounced by any District Court within the limits of any such circuit in any criminal prosecution, and to affirm, reverse, correct, alter and vary every such sentence and judgment according to law; and upon hearing every such appeal it shall also be competent to the said Supreme Court to receive and admit, or to exclude and reject, new evidence touching the matters at issue in any such original prosecution, as justice may require; and it shall also be lawful for the said Supreme Court, at any such criminal sessions as aforesaid, to make order for the transfer of any prosecution depending in any one District Court in such circuit to any other District Court within the same circuit, if it shall be made to appear to the satisfaction of the said Supreme Court at any such criminal sessions as aforesaid, that there is any sufficient cause or reason to conclude that in such particular prosecution justice would not probably be done in the District Court in which the same had been so commanded; and in every such case the District Court to which any such prosecution shall be so transferred shall take cognizance thereof, and shall have power and jurisdiction for the hearing, trial and decision of the same, as fully and effectually to all intents and purposes as the District Court in which the same was originally brought could or might have had.

And We do further declare and ordain, that notwithstanding the right of appeal hereby given from the judgments and sentences of the said District Courts upon such criminal prosecutions as aforesaid, no such appeal shall have the effect of staying the execution of any sentence or judgment pronounced by any such District Court upon any prosecution, unless the Judge of such District Court shall in the exercise of his discretion see fit to make order for the stay of any such execution pending such appeal.

And We do further direct, ordain and appoint, that at every criminal sessions of the said Supreme Court so to be holden

as aforesaid on every such circuit, the said Supreme Court shall inquire of all crimes and offences committed within the limits of any such circuit, for the trial of which such original jurisdiction as aforesaid is by this Our Charter vested in the said Supreme Court, and which the King's Advocate or Deputy King's Advocate shall elect to prosecute before such Supreme Court, and shall hear, try and determine all prosecutions which shall be commenced by the said King's Advocate or Deputy King's Advocate, against any person or persons, for or in respect of any such crimes or offences, or alleged crimes or offences.

And We do further direct and ordain, that all crimes and offences cognizable before any of the Courts constituted by these presents, or deriving authority from the same, shall be prosecuted; and that all fines, penalties and forfeitures recoverable therein to Our use, shall be sued for and recovered in the name of Our Advocate Fiscal of Our said Island, and by him, or by some Deputy Advocate Fiscal, by an information to be exhibited without the previous finding of any inquest by any Grand Jury or otherwise: provided nevertheless, that it shall be competent to the said Supreme Court, by such rules and orders of court as after mentioned, to make any other and more convenient provision for the prosecuting before the said District Courts breaches of the peace, petty assaults and other minor offences of the like nature.

And We do further direct and ordain, that all questions of fact upon which issue shall be joined at any such criminal sessions as aforesaid of the said Supreme Court, on any such circuit as aforesaid, shall be decided by such jury of 13 men as aforesaid, and that the verdict of such jury shall be pronounced in open court by the mouth of the foreman; and that if such jury shall not agree upon their verdict, then the verdict of the major part of such jury shall be received and taken as the verdict of the jury collectively.

And We do further direct and ordain, that all questions of law which shall arise for adjudication at any such criminal sessions as aforesaid of the said Supreme Court, in any such circuit as aforesaid, shall be decided by the Judge presiding at such Sessions, who shall pronounce his judgment thereupon in open court, and assign the grounds and reasons of such

judgment; saving nevertheless to every such Judge the right of reserving such questions for the decision of the Judges of the said Supreme Court collectively at their general sessions, in manner hereinafter mentioned.

And We do further appoint, declare and direct, that in every case where any person shall be adjudged to die by any sentence of the Supreme Court of Our said Island, at any such criminal sessions as aforesaid, the execution of such sentence shall be respite until the case of such person shall have been reported by the Chief Justice or Puisne Justice who shall have presided at such trial, to the Governor of the said Island for the time being, which report shall be made as soon after the passing of such sentence as conveniently may be.

And We do further appoint, declare and direct, that the Judge on any such circuit as aforesaid, holding the said criminal sessions of the said Supreme Court, shall and may issue his mandate under his hand, and directed to all and every of the Fiscals or other keepers of prisons within the limits of his circuit, to certify to the said Judge the several persons then in their or any of their custody, committed for and charged with any crimes or offences whatsoever; and the said Fiscals or other keepers of prisons shall and are hereby required to make, certify and transmit due returns to such mandate, by specifying in a calendar or list, to be annexed to such mandate respectively, the time and times when all and every of the said persons so in their custody was or were committed, and by whose authority particularly, and on what charge or charges, crime or crimes respectively, in writing; and to the said list or calendar shall also be annexed such information or informations upon oath as may have been taken against them or any of them, and be then remaining in the hands of the said Fiscals or keepers of prisons, or true copies thereof attested by the said Fiscals or keepers of prisons respectively; and if need be, according to the tenor and exigence of such mandate, such Fiscals or keepers of prisons shall bring the said persons so in their custody, or any of them, before the said Judge, where-soever the said Judge shall then be holding the criminal sessions of the said Supreme Court, together with such witness or witnesses whose name or names shall appear to be written or endorsed on the respective commitments, by virtue of which

such prisoners or prisoner were or was delivered into their custody respectively, in order that such prisoners or prisoner may be dealt with according to law: provided always, that wherever any party or parties shall, after the making out of any such calendar or list, and while such Judge shall be holding the criminal sessions of the said Supreme Court in the town or place wherein such calendar or list was delivered, be apprehended or committed on any criminal charge, it shall and may be lawful for the officer of such Supreme Court to insert the name or names of such person or persons in such calendar or list.

And We do further direct, declare and appoint, that any Judge of the Supreme Court remaining at Colombo, shall within the limits of the district of Colombo exercise the same jurisdiction, and hold such and the same civil and criminal sessions, as the said Judges of the Supreme Court are by these presents directed, appointed and ordained to exercise and to hold on their respective circuits within the limits of their respective circuits.

And We do further ordain and appoint, that whenever any question of law, pleading, evidence or practice, shall arise for adjudication at any civil or criminal sessions of the said Supreme Court, at any such circuit as aforesaid, or within the said district of Colombo, which shall appear to the Judge presiding at such sessions to be a question of doubt and difficulty, it shall be lawful for such Judge to reserve such question of law, pleading, evidence or practice, for the decision of the Judges of the said Supreme Court collectively, and to report any question so reserved to the said Judges at some general sessions of the said Supreme Court to be held for that purpose as hereinafter mentioned.

And We do further direct and appoint, that the Judges of the said Supreme Court shall from time to time, as occasion may require, collectively hold a general sessions at Colombo to hear and inquire of any questions of law, pleading, evidence or practice so reserved as aforesaid, and to decide the same according to law.

And We further authorize and require the respective Judges of the said Supreme Court on such circuits as aforesaid, and at the sessions so to be holden for the district of Colombo, to

inspect and examine the records of the different District Courts; and if it shall appear to them that contradictory or inconsistent decisions have been given by different District Courts, or by the same District Court upon different occasions upon any matters of law, evidence, pleading or practice, then and in every case the said Judges of the Supreme Court shall report to the Judges of the Supreme Court at Colombo, at such general sessions as aforesaid, any such contradictions or inconsistencies; and the said Judges of the Supreme Court shall, after due consideration of the matters so brought before them, prepare the draft of such a declaratory law upon any matter of law or evidence in respect of which such contradictory or inconsistent decisions shall have been given, as the occasion shall appear to them to require, and shall transmit such draft under the seal of the said Court to the Governor for the time being of Our said Island, who shall thereupon lay the draft of such declaratory law before the Legislative Council of the said Island for their consideration.

And We further direct and ordain, that the said Judges of the Supreme Court shall, in pursuance of the powers hereinafter vested in them, after due consideration of any reports so to be made as aforesaid by any such Judge, of any such contradiction or inconsistency as aforesaid, in any matter of pleading or practice, make or establish such general rules and orders of court for the removal or any doubts respecting any such matters as the occasion shall appear to them to require.

And We do further ordain and appoint, that the said Supreme Court, or any Judge thereof, at any sessions so to be holden as aforesaid on any such circuit as aforesaid, or in the district of Colombo, or at any general sessions of the Judges of the said Court collectively, shall be and are hereby authorized to grant and issue mandates in the nature of writs of habeas corpus, and to grant or refuse such mandates, to bring up the body of any person who shall be imprisoned within any part of the said island or its dependencies, and to discharge or demand any person so brought up, or otherwise deal with such person according to law.

And We do further direct and appoint, that the said Supreme Court, or any Judge thereof, at any sessions so to be holden on any such circuit as aforesaid, or in the district of Colombo, or

at any general sessions of the said Court collectively, shall be and they and he are and is hereby authorized to grant and issue injunctions to prevent any irremediable mischief which might ensue before the party making application for such injunction could prevent the same, by bringing an action in any District Court: provided always, that it shall not be lawful for the said Supreme Court, nor for any Judge thereof, in any case to grant any injunction to prevent any person from suing or prosecuting a suit in any District Court, or to prevent any party to any suit in any District Court from appealing or prosecuting an appeal to any court of appeal, or to prevent any party to any suit in any court of original jurisdiction, or in any court of appeal, from insisting upon any ground of action, defence or appeal.

And whereas it may be expedient that the Judges of the said Supreme Court at Colombo, previously to the commencement of any such circuits as aforesaid, should be enabled to inspect and examine the records of the said District Courts in cases upon which appeals may have been entered; and it may also be convenient that, with the consent of the litigant parties, the hearing of such appeals should take place before the Judges of the said Court collectively at their general sessions at Colombo, and not at such circuits as aforesaid; and it may also be convenient, that in certain cases the Judges of the said Supreme Court collectively, at such general sessions, should be authorized to decide in a summary way, and without further argument, questions arising upon any such appeals; We do therefore further will, direct, ordain and appoint, that it shall be lawful for the Judges of the said Supreme Court, by such general rules and orders as hereinafter mentioned, to require the said District Courts to transmit to them at Colombo the records of such District Courts in any cases upon which appeals may have been entered, and We do authorize and empower the Judges of the said Supreme Court collectively, at any such general sessions as aforesaid, with the consent of all the litigant parties, but not otherwise (save as hereinafter provided in cases appealed to Us in Our Privy Council), to hear any such appeals, or to decide the same, or any particular question or questions arising thereupon in a summary way, and without further argument, and to remit any such records, with such their final



decision thereupon, to such District Courts, to be by them carried into execution.

And whereas for carrying into effect the various provisions of this present Charter, and for the more prompt and effectual administration of justice in Our said Island, it is necessary that regulations should be made respecting the course and manner of proceeding to be observed and following in all suits, actions and criminal prosecutions, and other proceedings whatsoever, to be brought, commenced, had or taken within the said District Courts and the said Supreme Court respectively, which regulations cannot be properly made except by the Judges of the said Supreme Court; We do therefore hereby further declare Our pleasure to be, and do will, ordain, direct and appoint, that it shall be lawful for the Judges of the said Supreme Court collectively, at any general sessions to be by them holden at Colombo as aforesaid, from time to time to frame, constitute and establish such general rules and orders of court as to them shall seem meet, touching and concerning the time and place of holding any general sessions of the Judges of the said Supreme Court collectively, and any civil or criminal sessions of the said Supreme Court on any such circuits as aforesaid, or in the district of Colombo and the said several District Courts, as shall not be inconsistent with the authority hereinbefore granted to the Governor of Our said Island respecting the appointing of the times at which and the places to which the Judges of the said Supreme Court shall perform their circuits, together with such general rules and orders as to them shall seem meet, and touching and concerning the form and manner of proceeding to be observed in the said Supreme Court at any general sessions, and at such civil and criminal sessions as aforesaid on such circuits as aforesaid, or in the district of Colombo and in such District Courts respectively, and touching and concerning the practice and pleadings upon all actions, suits and other matters, both civil and criminal, to be therein brought, the proceedings of the Fiscals and other ministerial officers of the said Courts respectively, the process of the said Courts, and the mode of executing the same, the qualifications, summoning, impanelling and challenging of assessors, and the summoning, impanelling and challenging of jurors, arrest on mesne process or in execution,

the taking of bail, the duties of gaolers and others charged with the custody of prisoners, in so far as respects the making due returns to the respective Judges of the said Supreme Court of all prisoners in their custody, and respecting the mode of prosecuting such appeals as aforesaid from the said District Courts, the admission of advocates and proctors in the said Courts respectively, together with all such general rules and orders as may be necessary for giving full and complete effect to the provisions of this present Charter, in whatsoever respects the form and manner of administering justice in the several Courts hereby constituted, and all such rules, orders and regulations from time to time to revoke, alter, amend or renew, as occasion may require: provided always, that no such rules, orders or regulations shall be repugnant to this Our Charter, and that the same shall be so framed as to promote, as far as may be, the discovery of truth and economy and expedition in the dispatch of business of the said several Courts respectively, and that the same be drawn up in plain, succinct and compendious terms, avoiding all unnecessary repetitions and obscurity, and promulgated in the most public and authentic manner in the said island, as long before the same shall operate and take effect as to such Judges may appear practicable and convenient; and provided always, that all such rules, orders and regulations shall forthwith be transmitted to Us, Our heirs and successors, under the seal of the said Court, for Our or their approbation or disallowance.

And We do further grant, ordain, direct and appoint, that it shall be lawful for any person or persons being a party or parties to any civil suit or action depending in the said Supreme Court, to appeal to Us, Our heirs and successors, in Our or their Privy Council, against any final judgment, decree or sentence, or against any rule or order made in any such civil suit or action, and having the effect of a final or definitive sentence, and which appeals shall be made subject to the rules and limitations following; that is to say, First, that before any such appeal shall be so brought, such judgment, decree, sentence, will or order shall be brought by way of review before the Judges of the said Supreme Court collectively, holding a general sessions at Colombo, at which all the said Judges of the said Supreme Court shall be present and assisting, which

Judges shall by such rules and orders as aforesaid regulate the form and manner of proceeding to be observed in bringing every such judgment, decree, sentence, rule or order by way of review before them, and shall thereupon pronounce judgment according to law, the judgment of the majority of which Judges shall be taken, and recorded as the judgment of the said Court collectively. Secondly, every such judgment, decree, order or sentence from which an appeal shall be admitted to Us, Our heirs and successors as aforesaid, shall be given or pronounced for or in respect of a sum or matter at issue above the amount or value of 500*l.* sterling, or shall involve directly or indirectly the title to property or to some civil right exceeding the value of 500*l.* sterling. Thirdly, the person or persons feeling aggrieved by such judgment, decree, order or sentence, shall within 14 days next after the same shall have been pronounced, made or given, apply to the said Supreme Court at such general sessions as aforesaid, by petition for leave to appeal therefrom to Us, Our heirs and successors, in Our or their Privy Council. Fourthly, if such leave to appeal shall be prayed by the party or parties who is or are adjudged to pay any sum of money or to perform any duty, the said Supreme Court shall direct that the judgment, decree or sentence appealed from shall be carried into execution, if the party or parties respondent shall give security for the immediate performance of any judgment, decree or sentence which may be pronounced or made by Us, Our heirs and successors, in Our or their Privy Council upon any such appeal and until such security be given the execution of the judgment, decree, order or sentence appealed from shall be stayed. Fifthly, provided nevertheless, that if the party or parties appellant shall establish to the satisfaction of the said Supreme Court, that real and substantial justice requires that, pending such appeal, execution should be stayed, it shall be lawful for such Supreme Court to order the execution of such judgment, decree, order or sentence to be stayed pending such appeal, if the party or parties appellant shall give security for the immediate performance of any judgment, decree or sentence which may be pronounced or made by Us, Our heirs and successors in Our or their Privy Council, upon any such appeal. Sixthly, in all cases security shall also be given by the party or parties appellant for the

prosecution of the appeal, and for the payment of all such costs as may be awarded by Us, Our heirs and successors, to the party or parties respondent. Seventhly, the Court from which any such appeal as aforesaid shall be brought, shall, subject to the conditions hereinafter mentioned, determine the nature, amount and sufficiency of the several securities so to be taken as aforesaid. Eighthly, provided nevertheless, that in any case where the subject of litigation shall consist of immoveable property, and the judgment, decree, order or sentence appealed from shall not change, affect or relate to the actual occupation thereof, no security shall be demanded either from the party or parties appellant, for the performance of the judgment or sentence to be pronounced or made upon such appeal; but if such judgment, decree, order or sentence shall change, affect or relate to the occupation of any such property, then such security shall not be of greater amount than may be necessary to secure the restitution, free from all damage or loss, of such property, or of the intermediate profit which, pending any such appeal, may probably accrue from the intermediate occupation thereof. Ninthly, in any case where the subject of litigation shall consist of money or other chattels, or of any personal debt or demand, the security to be demanded, either from the party or parties respondent, or from the party or parties appellant, for the performance of the judgment or sentence to be pronounced or made upon such appeal, shall be either a bond to be entered into in the amount or value of such subject of litigation, by one or more sufficient surety or sureties, or such security shall be given by way of mortgage or voluntary condemnation of or upon some immoveable property situate and being within such island, and being of the full value of such subject of litigation, over and above the amount of all mortgages and charges of whatever nature upon or affecting the same. Tenthly, the security to be given by the party or parties appellant for the prosecution of the appeal and for the payment of costs, shall in no case exceed the sum of 300*l.* sterling, and shall be given either by such surety or sureties, or by such mortgage or voluntary condemnation as aforesaid. Eleventhly, if the security to be given by the party or parties appellant for the prosecution of the appeal and for the payment of such costs as may be awarded, shall in manner

aforesaid be completed within three months from the date of the petition for leave to appeal, then, and not otherwise, the said Supreme Court shall make an order allowing such appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her or their appeal to Us, Our heirs and successors, in Our or their Privy Council, in such manner and under such rules as are observed in appeals made to Us in Our Privy Council from Our plantations or colonies. Twelfthly, provided nevertheless, that any person or persons feeling aggrieved by any order which may be made by, or by any proceedings of the said Supreme Court respecting the security to be taken upon any such appeal as aforesaid, shall be and is hereby authorized by his, her or their petition to Us in Our Privy Council, to apply for redress in the premises.

Provided always, and We do further ordain, direct and declare, that nothing herein contained doth or shall extend to take away or abridge the undoubted right or authority of Us, Our heirs and successors, to admit and receive any appeal from any judgment, decree, sentence or order of the said Supreme Court, on the humble petition of any person or persons aggrieved thereby, in any case in which, and subject to any conditions or restrictions upon and under which it may seem meet to Us, Our heirs and successors, so to admit and receive any such appeal.

And We do further direct and ordain, that in all cases of appeal allowed by the said Supreme Court, or by Us, Our heirs and successors, such Court shall, on the application and at the costs of the party or parties appellant, certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and exact copy of all proceedings, evidence, judgments, decrees and orders had or made in such causes so appealed, so far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said Court.

And We do further ordain and direct, that the said Supreme Court shall, in all cases of appeal to Us, Our heirs and successors, conform to, execute and carry into immediate effect, such judgments and orders as We, Our heirs and successors, in Our or their Privy Council shall make thereupon, in such manner as any original judgment or decree of the said Supreme Court can or may be executed.

And we do further ordain and direct, that all laws, customs and usages now or at any time hereafter established or in force in the said islands, so far as such laws or usages are in anywise repugnant to or at variance with this present Charter, shall be and the same are hereby revoked, abrogated, rescinded and annulled.

And We do further declare, that for the purpose and within the meaning of the present Charter, any person lawfully administering for the time being the government of the said island, shall be deemed and taken to be the Governor thereof.

And We do further ordain and direct, that at the expiration of two calendar months next after the arrival within the said island of these presents, or at such earlier period as the Governor for the time being of the said island shall, by a proclamation to be for that purpose issued, appoint, this Our Charter shall come into operation within the said island; and from that time forward every suit, action, complaint, matter or thing which shall be then depending before any Court administering justice by original jurisdiction in the said island and its dependencies, shall and may be proceeded upon in the Court in which it ought to have been instituted, or to which it ought to have been carried up in appeal, if it had been instituted or carried up in appeal after the time when the provisions herein contained shall have come into operation; and all proceedings which shall hereafter be had in such suit, action, complaint, matter or thing respectively, shall be conducted in like manner as if such suit, action, complaint, matter or thing had been instituted or carried up in appeal in or to such last-mentioned Court; and all the records, muniments and proceedings whatsoever belonging or pertaining to any such suit, action, complaint, matter or thing, shall, when the provisions herein contained shall have come into operation, be delivered over by the Court in which such suit, action, complaint, matter or thing shall be then depending to the Court in or to which such suit, action, complaint, matter or thing ought to have been instituted or carried up in appeal, if it had been instituted or carried up in appeal after the time when the provisions herein contained shall have come into operation.

And We do hereby strictly charge and command all Governors, Commanders, Magistrates, Ministers civil and

military, and all Our liege subjects within and belonging to the said island and its dependencies, that in the execution of the several powers, jurisdictions and authorities hereby granted, made, given or created, they be aiding and assisting and obedient in all things, as they will answer the contrary at their peril.

Provided always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend, or be deemed or construed to extend to prevent Us, Our heirs and successors, by any other Letters Patent to be by Us or them from time to time for that purpose issued under the Great Seal of the United Kingdom, from revoking this Our Charter or any part thereof, or from making such further or other provision for the administration of justice throughout the said island and its dependencies at Our and their will and pleasure, as circumstances may require; We meaning and intending fully and absolutely, and to all intents and purposes whatsoever, to reserve to Ourselves, Our heirs and successors, such and the same rights and powers in and over the said island and its dependencies, and especially touching the administration of justice therein, and all other matters and things in and by these presents provided for, as if these presents had not been made; anything in these presents contained, or any law, custom, usage, matter or thing whatsoever to the contrary in anywise notwithstanding. In witness whereof, We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the 18th day of February in the year of Our reign.

By writ of Privy Seal.

(countersigned) BATHURST

## XIV

### *Instructions accompanying the Charter of Justice of 1833<sup>1</sup>*

[Viscount Goderich to Sir R. J. Wilmot Horton]



23 March 1833

SIR,

I have the honour herewith to transmit to you a Charter, dated the 18th of February last, which His Majesty has been pleased to issue under the Great Seal of the United Kingdom, for improving the Administration of Justice in the Island of Ceylon. I also enclose a printed copy of the Report addressed to myself by Mr. Cameron, one of the Commissioners of Eastern Inquiry, upon the Judicial Establishments of Ceylon, dated the 31st January 1832.<sup>a</sup>

It is with more than ordinary satisfaction that I find myself at length enabled to announce to you the completion of those reforms in the administration of justice in Ceylon which my predecessors in this office have so frequently, during the last ten years, acknowledged to be equally difficult and indispensable. If the mission of Colonel Colebrooke and Mr. Cameron to the Island had yielded no other result, I should have regarded the prospect, which now presents itself, of a greatly improved administration of the law throughout every part of that important country as a full compensation for the labour and expense attendant upon their inquiries. It would be unjust to withhold the distinct avowal, that it is to the advice of the Commissioners, as conveyed in Mr. Cameron's Report, that the public are indebted, not only for the general basis and design of the Charter which has been issued, but for all its more valuable details. My own duties, on this occasion, have

<sup>a</sup> Vide Paper presented to Parliament, 13th March 1832, No. 274. [See pp. 9, 121 above.]

<sup>1</sup> C.O. 54, 145.



been limited to an attentive review of the statements comprised in that Report, and of the advice founded upon them; to the endeavour to supply a few occasional omissions in the scheme of the Commissioner; and to the care of carrying it into execution by the accompanying Charter with the utmost attainable method and perspacity. I therefore find myself absolved from the necessity, which would otherwise have been incumbent on me, of explaining the motives of the changes which have been made, and the various causes which have contributed to render them necessary. For a full detail of those circumstances, I refer you to the first 76 pages<sup>1</sup> of the Report; and for a clear exposition of the chief of those motives, to the last 22 pages<sup>2</sup> of the same document. From the 76th to the 88th page,<sup>3</sup> you will find a recapitulation, under 25 distinct heads, of all the various specific measures which, on a review of the whole subject, Mr. Cameron found reason to recommend. Of those recommendations, a very large proportion have been executed by the Charter. Others remain to be carried into effect by the Judges, in the exercise of an authority delegated to them by the Charter for that purpose. In some instances, I have been compelled either to dissent from the opinions of Mr. Cameron, or to concur in them with mutual qualifications. I now propose to point out, with reference to each of his 25 recommendations, in the order in which they stand in the Report, which of them have been carried into effect, which remain to be yet accomplished, and which appear to myself of doubtful expediency.

I will however premise that the draft of the Charter, as originally prepared under my direction, was carefully revised by Mr. Cameron during its progress, and that I have the satisfaction of knowing that he was of opinion that the instrument was well adapted to the objects with a view to which it had been framed. That draft was also transmitted to His Majesty's Attorney and Solicitor-general for their consideration. They felt it their duty, while approving the draft itself, to express their joint opinion upon certain parts of Mr. Cameron's advice which were not embodied in the proposed Charter.<sup>4</sup>

1. The first recommendation in Mr. Cameron's Report is,

<sup>1</sup> Pp. 9-164 above.

<sup>2</sup> Pp. 121-88 above.

<sup>3</sup> Pp. 164-88 above.

<sup>4</sup> See p. 379 below.

• “that so far as regards the Judicial Establishment, and the procedure according to which its functions are performed, complete uniformity should be introduced throughout the whole Island.”<sup>1</sup> Acquiescing in this opinion, and in the truth of the remark, that in the case of Ceylon such an uniformity would not infringe on any habits or prejudices which may have taken a deep hold on the public mind. I have advised His Majesty to place the administration of justice throughout the Island on the single basis which the Charter establishes, and which will be the same in each of the districts into which the Island will be divided.

2. It is recommended that “every Court of original jurisdiction throughout the Island shall have exclusive jurisdiction over all causes civil and criminal, and over all questions of whatsoever kind, with which the intervention of judicial authority is necessary, and which arise within the limits of its district, except only causes or questions in which the party against whom the proceeding is instituted is a Court of Justice, or a person acting in the matter complained of under the authority of a Court of Justice, and except such criminal causes as by the 19th recommendation are to be tried by a Judge of the Supreme Court on circuit”.<sup>2</sup>

Referring to the reasons which Mr. Cameron has assigned in favour of this recommendation, in pages 77-78 of his Report,<sup>3</sup> I concur in it with a single qualification, which will be found in the accompanying Charter. Cases may arise in which though the offence imputed to the accused party may be trifling, and the utmost penalty which he could incur will be light, yet the questions at issue may be of great difficulty, or of peculiar importance. In such cases, it would be expedient to withdraw the decision from the inferior tribunals, partly as being less competent to the accurate solution of such problems, and partly as being less likely to obtain for their judgment the general respect and confidence of society. Accordingly, the Charter has given to the District Courts, and to the Supreme Court on the circuits, a concurrent jurisdiction for the trial of all crimes committed within the district, and cognizable by the District Court. It will be the duty of the public prosecutor to

<sup>1</sup> See p. 164 above.

<sup>2</sup> See p. 165 above.

<sup>3</sup> See pp. 165-7 above.

determine in which of the two tribunals any such crime shall be prosecuted.

3. It is recommended that each Court within the jurisdiction shall consist of one Judge and three assessors; "that when the parties have concluded their pleadings, evidence and arguments, the Judge shall sum up the evidence and state his opinion of the law to the assessors, who shall thereupon give such verdict as any two of them can agree upon; and which verdict shall be immediately recorded, but shall not prevent the Judge from giving a contrary decision if he thinks fit".<sup>1</sup>

Thus far the third recommendation has been adopted and carried into effect by the Charter, though with some qualifications. For example, care has been taken to ascertain what are those judgments or judicial orders, in the pronouncing of which the assessors are to participate; because, to have required their concurrence in every act, however insignificant, would have impeded, far more than it could have advanced, the great ends of justice. The Judge is also required to state to the assessors what are the precise questions both of law and of fact which have arisen for adjudication. Without this rule, a Judge, by proposing his questions in vague or inaccurate terms, might have reduced the functions of the assessors to little more than an unmeaning form. As an additional security that the real matters in debate shall be submitted to the assessors, a record is required to be made of the several questions proposed to them, and of the votes of the Judge and of each assessor on the question. This, however, will be necessary only when the assessors and the Judge disagree; because, in other cases, it may be fairly presumed that all parties were satisfied; that the real point in controversy had been correctly stated.

These regulations are not to be considered as departures from the Commissioner's advice, but rather as an expansion of the principle which he had laid down; it being obvious that, in the actual execution of such a plan, a place must be found for many subsidiary provisions, which in the general enunciation of it would have been superfluous.

The third recommendation further suggests certain rules as to the length of time during which the same individuals shall act as assessors, and respecting the privileges which, while

<sup>1</sup> See p. 167 above.

acting in that character, they are to enjoy. Those suggestions lead me to notice a general principle, to which I shall have frequent occasion hereafter to refer, and which will be found to pervade every part of this Charter.

No man can be unconscious of the difficulty of preparing in Europe an instrument of this matter, which is to be carried into execution in Ceylon, nor how easily any regulations comprised in such a Charter as the present, if descending into minute details, may be defeated by unforeseen exigencies or peculiar local circumstances. It was therefore unnecessary to advance no further than was requisite, in order to trace the great general outlines, and to prescribe the fundamental rules of the new judicial system. Much latitude of discretion was unavoidably to be left to the local authorities, to enable them to complete the design by subordinate and supplementary provisions. No diligence or research could possibly have anticipated all the exigencies which may at present exist, or which may be expected to arise hereafter. Even the Judges of the Colony will be unable to suggest arrangements which will not demand some future modifications, to meet the gradual changes of public opinion and of national habits, which the innovation itself is calculated to engender.

In considering into what hands the authority for adapting the Charter, by auxiliary rules, to the present or future wants of society should be confided, the choice was to be made between the Governor and the Council on the one hand, and the Judges of the Supreme Court on the other. It has been determined to entrust that power to the Judges for the following reasons. First, the subject is one with which they will be peculiarly conversant, and with which the Governor and Council could at best have but an imperfect acquaintance. Secondly, experience has shown that the interference of the executive Government with the judicial body, is eminently dangerous to the harmony and mutual respect which ought to subsist between them, and tends to destroy the efficiency of each. Thirdly, the delegation of powers of this nature to Judges is no new experiment, but is a course which has been pursued with the most remarkable success both in the colonies and in this kingdom. Under the old Ceylon Charters, the Judges in fact enjoyed this authority. Within the last 10 years, the

same measure has been adopted in no less than seven of the other British colonies, and has greatly improved the colonial administration of justice in method, economy and dispatch. A very recent Act of Parliament has, for the same purpose, much enlarged the corresponding powers of the Judges of the Supreme Courts at Westminster. If, however, it should be apprehended that the Judges of Ceylon would be tempted to make an indiscreet use of an authority so extensive, it is to be observed that the Charter provides a double security against any such abuse. In the first place, they will not be at liberty to establish any new rules of court repugnant to the Charter itself; and further, every rule which they may promulgate, must be transmitted through the Governor for His Majesty's approbation or disallowance; so that the utmost facility will be afforded to you for objecting to any of their regulations which you may consider as inexpedient.

Reverting now to the third recommendation of the Commissioner: I observe that it will rest with the Judges in the first instance to determine, by general rules of court, for what length of time the same individuals are to act as assessors, and by the same authority it will be determined how far those assessors shall enjoy the privilege of jurors. It is, however, to be noticed, that the Charter makes provision for the appointment of one permanent assessor in each District Court. The object of this regulation will be best explained in the language of Mr. Cameron himself, by whom that change in the original design was recommended, in a letter received from him at this Department, on the 10th day of August last. I enclose a copy of that letter for the information of yourself and the Judges.<sup>1</sup>

4. The fourth recommendation is, "that the pleading shall consist of an oral altercation between the parties in open court, and that a minute thereof shall be made by an officer of the Court under the direction of the Judges".<sup>2</sup>

In the Report of the Attorney and Solicitor-general, to which I have already referred, they have taken occasion to express their decided dissent from this recommendation. On this subject, I am satisfied to refer to the Judges of the Supreme Court the practical decision of the question in debate, desiring only that their attention may be carefully given to the argument

<sup>1</sup> See p. 374 below.

<sup>2</sup> See p. 170 above.

which will be found in pp. 80-85 of the Report,<sup>1</sup> and to the written discussion which it has since undergone. The objections of the Attorney and Solicitor-general, it will be observed, do not refer to the expediency of the plan, if capable of being executed, but rather to the practicability of such a mode of conducting a forensic litigation. It may, perhaps, be found to be one of those improvements which can only be accomplished by a series of tentative or experimental measures; and in which a great compromise of a sound general principle is rendered inevitable by the perversity or the ignorance of those who would be most benefited by the introduction of it.

5. The next recommendation is, "that at the time of pleading each party shall state the names of the witnesses whom he intends to produce at the trial, and the matters which he expects them respectively to prove; and shall describe the documents which he intends to produce at the trial; and a minute thereof shall be made by the officer of the Court, under the direction of the Judge".<sup>2</sup>

It will be the duty of the Judges, by their general rules of courts, either to adopt, or to modify, or to reject this proposal. I shall not, of course, repeat the arguments which Mr. Cameron has urged in its favour, but limit myself to the remarks, that in the attempt to exhibit by anticipation an epitome of the evidence which they propose ultimately to adduce, the most honest and intelligent suitors may readily be involved in unintentional errors; that any rules of court on the subject must carefully provide for the protection of those who might commit such mistakes in good faith, and that the consequences of such errors, and the mode in which they might be remedied, should be defined with much attention.

6. I entirely concur in the sixth recommendation respecting the mutual examination of the litigant parties by each other.<sup>3</sup> In our own Courts the principle is admitted, although the method by which effect is given to that principle is so circuitous and costly as to have deprived it of much of its real value. Suitors in our common-law tribunals can examine each other only by commencing new suits for that purpose in the courts of equity. If the object itself be desirable, I can discover no reason

<sup>1</sup> See pp. 170-82 above.

<sup>2</sup> See p. 170 above.

<sup>3</sup> *Ibid.*

why it should not be effected in the direct and simple form which Mr. Cameron has proposed.

7. The seventh recommendation is a necessary inference from the fifth.<sup>1</sup> If it should be determined that the suitor shall lay before the Judge an outline of his intended course of evidence, it follows that the Judge should indicate what parts of that evidence are relevant to the question to be tried. How far the judicial establishment of Ceylon would, without further augmentation, be adequate to the discharge of duties thus laborious, is a question which, though I cannot undertake to determine it, would seem to demand attentive deliberation from the Judges of the Supreme Court.

8. The object of the eighth recommendation is to substitute, in all interlocutory proceedings, the oral examination of the parties, for the use of affidavits.<sup>2</sup> No one can doubt the advantage of adopting, at every stage of a litigation, those methods of inquiry into disputed facts which best conduce to the discovery of truth. Nor can it be denied that written testimony is much more liable than evidence delivered *viva voce*, to be perverted either by deliberate falsehood or heedless inaccuracy. When, as is the case supposed by Mr. Cameron, the affidavit is made by a person who is to avail himself of it for the advancement of his own interest, the risk of perjury becomes far more urgent than in any other case. I can therefore perceive no motive which should induce the Judges to dissent from this part of Mr. Cameron's advice, unless it should be thought that such a change in the manner of proceeding would occasion such a pressure on the time of the District Judge as they might be unable to meet.

9. The first half of the ninth recommendation amounts to little beyond the declaration of the principle, that in all the successive stages of a suit no witness should be examined except under the sanction of an oath.<sup>3</sup> Without pausing to consider the very large and difficult question, whether the use of that religious solemnity in judicial proceedings does, on the whole, conduce to the disclosure of truth, but assuming that the popular opinion on that subject is well founded, I conceive there can be no adequate reason for receiving unsworn

<sup>1</sup> See p. 171 above.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

testimony or interlocutory applications, when the same description of evidence would be refused at the ultimate hearing of a cause.

Mr. Cameron proceeds to advise that, in those cases in which the suitors themselves are subject to examination, the oath should be dispensed with; but that for every wilful violation of truth, they should be liable to punishment. Considering how strong in all societies is the influence of self-interest, and how powerful is the temptation to a suitor to misrepresent the facts, upon the proof or disproof of which the success of his suit may depend, I cannot think it reasonable to expect that, in Ceylon, suitors admitted to give evidence in their own causes will usually be found deserving of much confidence. I therefore agree it is unwise to exact an oath from persons in that predicament. Such a rule would, in a great majority of cases, provoke men to violate one of the most sacred religious duties, and would thus tend to a general relaxation of moral principle. This is an evil for which no occasional facility in ascertaining facts upon a judicial inquiry could adequately compensate. I would therefore absolve the suitor himself from the necessity of being sworn. He must not, however, be punished for a false statement with the same severity as if he had sworn falsely. In common apprehension, which in this instance I think is correct, the demerit of falsehood is greatly enhanced by the violation of the religious sanction of an oath; and though in strictness it may not be the province of the penal law to punish actions with reference to their comparative immorality; yet any law which should be made with a total disregard of that distinction, would so revolt the ordinary feelings of mankind as to lose much of its proper efficacy.

10. It would be superfluous to comment upon the general rule suggested in the ninth<sup>1</sup> recommendation, that all oral examinations should, subject to certain particular exceptions, be taken in open court. The objections to the opposite mode of proceeding are as conclusive as they are obvious.

11. The eleventh recommendation is in the following terms: "I recommend that at the termination of the suit, the Judge taking and recording the opinion of the assessors, shall punish

<sup>1</sup> See p. 171 above.



by fine or imprisonment, or both, any party to the suit, who in his (the Judge's) opinion, whatever may be the opinion of the assessors, shall have been guilty of an attempt to pervert or obstruct the course of justice".<sup>1</sup> You will find in the accompanying papers a discussion on this subject, between the law officers of the Crown on the one hand, and Mr. Cameron on the other; within the limits of an official despatch it is impossible for me to express my own opinion upon this or any other of the many general topics brought under review on this occasion, in any other than a very imperfect manner. Yet in reference to this question, I think it right to say, that I cannot regard as oppressive or arbitrary the punishment of a suitor who has attempted unfairly to obstruct the administration of civil justice. Penalties are or ought to be inflicted with a strict regard to the magnitude of the evils which they are intended to prevent; and there are not many modes of injustice more injurious than that of converting the Courts into the unconscious instruments of oppression and fraud. An indulgence is too frequently felt for those who practise chicanery, and who dishonestly avail themselves of the rules laid down for the conduct of private litigation, to which such persons have no reasonable claim. The chief difficulty which I should apprehend, in confiding to the Judges the powers recommended by Mr. Cameron, is that such powers could scarcely be exercised without a loss of the public confidence. A Judge who is remunerated altogether by a salary, labours under the temptation to discourage litigation productive of great difficulty and fatigue to himself. If at the close of an obstinately contested suit, he should punish one of the parties for his unjustifiable perseverance, he would be suspected of having been governed by the wish to discourage controversies making so tedious a demand on his own attention. The opinion of the assessors when coinciding with that of the Judge, would to a certain extent shelter him from any such unmerited reproach. Yet even in that case it is difficult to suppose that such a result of a legal controversy would not carry with it the appearance of a vindictive feeling actuating the Judge to retaliate against a suitor by whose importunity his own leisure had been invaded. It seems to me, therefore, that it would be the more expedient course

<sup>1</sup> See p. 172 above.

to declare the perversion or obstruction of civil justice by a litigant party, an offence for which the offender should undergo a regular trial. If the punishment did not follow by a summary conviction at the close of the proceedings in which the malpractice had occurred, there would no longer be any reason for the single objection which I find to the infliction of it. I refer to yourself and the Legislative Council of Ceylon the consideration of that question.

12 and 13. The two recommendations next in order propose the total abolition of all stamps on legal proceedings, and of all fees of court, and the payment by the public of the expenses of the witnesses on both sides in all cases.<sup>1</sup>

In the accompanying written discussion between Mr. Cameron and the law officers of the Crown, you will find a full statement of their opposite views on this question. On this part of the subject I am compelled to dissent from the opinion of the Commissioner. He appears to me to take an inaccurate view of the subject in dividing the private suitors in courts of justice into two great classes, the first of whom he describes as "the dishonest suitor" and the "oppressor"; and the second as the "honest suitor", the "oppressed", and the "victim of oppression". Of course such is the relation in which suitors occasionally stand to each other; but as far as my information extends, the authority of the civil judge is usually invoked by persons who neither seek to oppress nor to resist oppression. The great mass of suitors is composed in all countries of those who have mistaken, or who are unable to ascertain by any other method, the real nature and extent of their own rights and liabilities. Nor is this uncertainty always or usually the result of defective legislation. The rules of law could not by any conceivable precision of thought or expression be laid down in terms so definite as to exclude misapprehensions of this nature, which have their foundation in prejudice, self-love, inaccuracy of information as to matters of fact, or confused habits of thinking. The Judge is, I apprehend, far less the redresser of wrongs than the authoritative arbitrator between parties mutually ignorant of their own rights. But if a want of good sense or a failure in temper, which may be imputable to both the litigant parties, has involved their pecuniary relations

<sup>1</sup> See p. 172 above.

towards each other in embarrassment, it would be impossible to punish the unsuccessful suitor as a criminal, by subjecting him to a fine. Where the blame is equally divided, or where there is no reasonable cause to censure either party, society at large could not be indemnified in that manner for the proposed first outlay; and on a great majority of occasions, such would probably be the result of the judicial investigation of the case. The burthen would therefore in all such cases rest without mitigation on the public treasury; that is, it would be sustained in part by each member of the collective society. But I can see no good reason why the irascible, the prejudiced, the obstinate or the thoughtless, when they have involved each other in the expense of judicial controversies, should not be left to divide the loss between them unaided by any contribution from the public at large.

Not having the advantage of Mr. Cameron's local acquaintance with Ceylon, I can look only to the examples of this kingdom and of the British colonies for an illustration of the preceding remarks. In England, and wherever the law of England prevails, it is notorious that the Courts are engaged in the investigation of disputed facts in a vast majority of cases, and in ascertaining disputed principles of law on comparatively few and infrequent occasions. Thus men are involved in litigation, chiefly because they have, by the ordinary influence of self-love, been led to take too favourable a view of all facts tending to sustain their own claims. In very many instances they have not accurate means of information, and for the first time learn the truth when they have it from the witnesses adduced on the side of their opponents. The unsuccessful suitor in the courts of common law pays the costs, although in a great multitude of cases an apportionment of them between both parties, as is the ordinary habits of our courts of equity, would be more just. To sentence a party failing in a suit to a direct penalty, as an oppressor or a criminal, would certainly in a vast proportion of cases in this kingdom, not only shock the ordinary apprehensions of mankind as an act of injustice, but would be really unjust. I can see no reason to suppose that the case would be substantially different in Ceylon.

If it were declared that the State would provide the means of

carrying on private litigation to any extent, subject only to the risk of a fine being incurred at the termination of a suit by either party, to whose misconduct the Judge might ascribe the origin or continuation of the litigation, the present amount of judicial controversies, and the demand on the time of the Judges, would be indefinitely increased. No man, who had persuaded himself that he was right in his own demands, or that his opponent was wrong in the demands made upon him, would have any reason to anticipate the fine. Unconscious of any dishonest meaning, he would not fear the penalties of dishonesty, nor would he in fact incur them. The Courts would be thronged by a never-failing succession of persons driven into litigation with each other by wayward humours, by exaggerated conceptions of their own rights, or by a determination to enforce them to the extremest point, without regard to the welfare or the feelings of their neighbours. I certainly do not adopt the crude notion that litigation is to be regarded as an evil which it is the duty of the Legislature to repress. The evil consists in the injustice, the infirmities and the errors which render litigation inevitable as the only means of maintaining the peace of society; yet, on the other hand, the multiplication of trivial suits might become a much more serious injury to the public at large than even a denial of justice in such cases could be. There will always be in every system of law extreme rights which it is unreasonable to enforce, and in all societies there will continually arise disputes which are best adjusted by mutual forbearance and concession: but if the State advances the first expenses of all lawsuits, every such extreme right will be asserted, and the majority of such idle disputes will ripen into inveterate controversies. The expense of the judicial establishments will at length become a heavier burden on society than any which could be induced from an occasional failure of justice. The exasperation which would be kindled in all directions by the multitude of suits for objects of little or of no real importance, would be a far greater evil than any which could flow from an occasional sacrifice of rights from an inability to sustain the expense of vindicating them. It is impossible to adjust questions of this nature by any other method than that of a compromise between opposing difficulties; and on the whole, I think the evils of the present system,

however formidable, are less serious than those of any scheme which could be substituted for it.

There are, however, two descriptions of suits in which I think it is reasonable that the expense should be borne by the public. The first is the case in which there is some real ambiguity in the general law, which has compelled suitors to apply to the tribunals for the interpretation of it. On such occasions the blame rests exclusively with the Legislature for having left their intentions in obscurity, and it is not reasonable that such an error should be remedied at the expense of individual suitors. I should propose, therefore, that the Treasury should defray the reasonable costs of any suit which the Judges of the Supreme Court should certify to have been properly brought and properly conducted, in order to ascertain the law upon some question which the Legislatures had left in an obscurity incapable of being otherwise dispelled. I am not, however, prepared to say how far it might be found practicable, in the present state of the law of Ceylon, to draw distinctions of this nature with the requisite accuracy.

The second case in which the expense should be sustained by the public at large, is that of criminal prosecutions. In this kingdom, usages of great antiquity, and the modes of thinking created or kept alive by them, have reconciled us to the custom of imposing in many cases upon the person who has been the immediate sufferer by a crime, the additional suffering of having to prosecute the criminal at his own expense. But as all such proceedings have in view the welfare of the public at large, and not the interest of him against whose person or property the offence was perpetrated, it scarcely requires any argument to show that the expense should be a public and not a private burden. The opposite system affords criminals the highest possible chance of impunity, while it selects for punishment the very person who has the best claim to compassion.

Here, however, a further distinction is to be made. Cases not unfrequently arise, of which libels and assaults are a common example, on which the violation of the criminal law has been provoked by the gross imprudence or misconduct of the immediate sufferer, and in which the public interest would be more injured by the expense of the prosecution than by the toleration of the particular offence. In such instances the public

prosecutor ought to be at liberty to decline all interference with the cause; yet the party libelled or assaulted might, for the vindication of his own character, think it necessary to enforce the penalties of the law against his opponent. The practice which I understand to prevail in Scotland upon such occasions appears to me not unreasonable: with the consent of the public prosecutor, but not otherwise, the injured party undertakes the prosecution, himself sustaining the entire trouble and expense of procuring the conviction of the wrong doer. It will be for the Judges of the Supreme Court to consider whether a similar rule could not be advantageously established at Ceylon.

In proposing to charge the public with the expense of criminal prosecutions, I refer only to the first outlay, because whenever the criminal has it in his power to defray such a charge, I think that a part of the sentence should always be, that he should relieve the public from the charge in which his offence and consequent prosecution had involved him.

The necessity of contracting within a narrow compass the remarks which I have to make upon the various questions suggested by Mr. Cameron's Report, compels me to pass to the general conclusion, that I cannot concur in the 12th and 13th of his recommendations, although I am not insensible that the arguments by which he has supported them would require for their complete refutation a much more copious inquiry. The Charter has therefore given to the Judges authority to promulgate tables of fees to be paid by suitors; and I will now state the general rules by which, as it seems to me, they ought to be guided in the exercise of that authority.

I have already had occasion to remark, that the expense of administering justice may, for the present purpose, be considered as resulting from three different sources. These are, first, the charges incurred for the investigation of imputed crimes; secondly, the charge incurred for obtaining the judicial interpretation of the law upon questions which the Legislature has left in obscurity; and, thirdly, the charge incurred for obtaining judicial decisions in cases involving no new or difficult legal question. The fees payable to the different officers and practitioners of the Court should be calculated at such an amount as may be equal to that part of the total expense which

is referable to the last of the three charges I have mentioned. Thus, for example, if it be supposed that one-half of the time of the Judges is usually devoted to the investigation of cases of the third class, the fees payable by the suitors in such cases should be calculated at such an amount as would indemnify the public for one-half of the salaries and allowances received by all the persons employed on the public account in the administration of justice. For that part of the expense incurred by the Treasury, which is referable to criminal procedure, or to the solution of obscure questions of law, the public have no right to demand an indemnity from individual suitors. I am aware that it may be extremely difficult, or even impossible, to follow out a general principle of this kind with great practical accuracy, yet in determining the amount of the fees payable towards the support of the various officers of justice, it is essential that the Judges should keep some sound general principle steadily in view, they might otherwise be tempted to relieve the Treasury unfairly, at the expense of the suitors, or to burden the public revenue unfairly for their relief. There are not wanting in the records of this office instances in which errors of this nature have been committed by Colonial Judges in either direction.

In the Schedule of the future judicial establishment of Ceylon, enclosed with my despatch of this day's date, the number of Judges and superior officers to be employed in the Courts, and the amount of the salaries to be allowed to each, are, with some exception, stated. Whatever fees may be paid by the suitors must be received by some officer appointed in each Court for that special purpose, whose duty it will be to account for his receipts to the public Treasury; and the sums thus collected will constitute a fund, which will be applicable in aid of the general expenditure to be incurred by the public for the judicial establishments of the island.

14 to 18. The recommendation from Nos. 14 to 18,<sup>1</sup> inclusive, relate to the constitution of the Courts which are to exercise an appellate jurisdiction from the District Courts, to the constitution of the Supreme Court, to the division of the island into circuits, and to the rotation in which the Judges of the Supreme Court will perform those circuits. On all these

<sup>1</sup> See pp. 182-3 above.

subjects the accompanying Charter will be found to have been made in strict conformity with the advice of the Commissioner. A change has indeed been made in the names by which he has designated some of those tribunals, the reason for which it is not unimportant to notice. It was represented to me that the habits of the last 30 years have created in Ceylon a peculiar respect and deference for the appellation by which the chief judicial tribunal of the island has been described during the whole of that period; and that the adoption of any other title than that of "The Supreme Court", would be destructive of certain associations and ideas which it is highly important to maintain in the public mind. It is for this reason that, in the Charter, the Judges on their circuits are still spoken of as holding the Supreme Court. To obviate as far as possible any confusion which might arise from the use of the same expression, as descriptive of different courts executing distinct duties at the same time in different parts of the island, the Supreme Court is spoken of as holding civil sessions, criminal sessions, and general sessions. By these various terms will be indicated with sufficient precision the functions of the Judges, whether separately employed on their circuits, or united together at Colombo for the dispatch of judicial business.

19. The Charter has executed the 19th recommendation respecting trial by jury with two alterations.<sup>1</sup> First, the Supreme Court on the circuit will possess a jurisdiction for the trial not only of such crimes as that tribunal has hitherto tried, but for the trial of all offences of whatever nature; secondly, the jurisdiction of the District Court is limited by reference to the amount of the punishment to which the accused party, if convicted, would be liable. The reasons for giving this concurrent jurisdiction to the Supreme Court have already been noticed. The definition of the powers of the District Court, by a reference to the highest possible amount of punishment, supposes the existence of a more perfect criminal code than at present prevails at Ceylon. It may therefore be said, that until the code itself is improved, such a definition of the powers of the District Court will raise numerous questions, of which it may be impossible to find a satisfactory solution. I do not hesitate to admit that some difficulty is to be anticipated from

<sup>1</sup> See p. 184 above.



the Charter having assumed the existence of laws, by which crimes and punishments are accurately apportioned to each other; but every other mode which occurred to me of defining the criminal jurisdiction of the District Courts, presented still greater difficulties. Regarding the Charter not as a temporary expedient, but as a permanent institution, it seemed to me that the penal code of Ceylon should rather be accommodated to the provisions of that instrument than that the Charter itself should be left incomplete, in deference to the present defective condition of the code. It will remain for the local legislature to determine the precise bounds of the jurisdiction of the District Courts in criminal cases, by defining the different crimes which may receive a greater punishment than those Courts are authorized to inflict. I trust that this will involve no very serious demand on the time of yourself and of the Members of the Legislative Council.

20. The next recommendation is as follows: "I recommend that the powers and duties of the Advocate Fiscal and the Deputy Advocate Fiscal shall be exercised in the Kandyan provinces, so far as regards the procedure, as they are in the Maritime provinces".<sup>1</sup> Upon this subject I have first to remark, that the titles of those officers are altered by the Charter: they will henceforth be styled the King's Advocate and the Deputy King's Advocate. It is not without some reluctance that I have consented to the departure, in this instance, from terms sanctioned by long use, and which are therefore not without their convenience and value; yet the motives for the change have appeared to me conclusive. In introducing for the first time, throughout the whole of Ceylon, one uniform judicial system, I was unwilling to employ expressions derived from the laws of Holland, and which have no proper place or definite signification in our own. The word Fiscal being used to designate the officers charged with the execution of the judgments of the courts, there would be some ambiguity and confusion in employing a very similar term to describe another class of officers whose duties are essentially different. Further, there is the substantial advantage in the adoption of the title of King's Advocate, that it will certainly suggest and recall to my mind the important principle, that he is charged by the

<sup>1</sup> See p. 184 above.

King with the duty of enforcing obedience to the laws, and is responsible to His Majesty for the faithful performance of that duty. It would be injudicious to sacrifice any opportunity of impressing on the minds of the people of Ceylon the relation in which they stand to the King, and the advantage resulting to them from it.

The Charter will be found to have executed the recommendation respecting the duties of the King's Advocate and Deputy King's Advocate, although for that purpose a few general words only are employed. It will remain for the Judges, by the general rules of court which they are authorized to promulgate, to give complete effect to this part of the Commissioner's advice, by reducing into proper order and method the forms of criminal procedure to be observed on the prosecution of persons charged with offences.

The same recommendation further suggests another subject to which it is necessary that your own attention and that of the Judges should be given. As the trials of persons charged with crimes will be proceeding at the same time in different parts of the island, it will of course be impossible that either the King's Advocate or the Deputy King's Advocate should be present on all such occasions. In the District Courts their attendance for that purpose would indeed be superfluous, because the offences inquired of there would usually be such as to involve no questions of peculiar difficulty, nor any consequences of unusual importance. In those tribunals a public prosecutor would, in the great majority of cases, be unnecessary. The party immediately injured by the offence would state his own grievance to the Judge, without any form of indictment, and the Judge would proceed to hear the defence of the accused party, without the intervention of any formal plea. In fact, the District Courts would, within the limits of their criminal jurisdiction, proceed very much in the same manner as justices of the peace in this kingdom. But even in this summary mode of administering the penal law, it is essential that the District Judges should keep a distinct record in each case, of the charge, the defence, the evidence and the adjudication.

On the circuits, however, when offences of a graver nature would be frequently in question, it seems indispensable to the effective administration of the law, that the prosecution should

be conducted through the agency of a public officer, by whom the evidence would be investigated, the charge preferred, and the proceedings in open court conducted. These duties would of course devolve upon the King's Advocate and the Deputy King's Advocate. To enable them to execute that part of their office rightly, it will be necessary that some method should be established for securing to the King's Advocate an intimation of all cases of crime occurring throughout the island which may be thought worthy of prosecution on the circuits. It would be the duty of the King's Advocate to consider whether such prosecutions could be sustained, and to determine with what specific offence the accused party could be most properly charged. For this purpose it will be necessary that he should carry on a regular official correspondence with the subordinate officers in each district, who would be responsible for the investigation in the first instance of all violations of the law.

If I am not misinformed, the Advocate Fiscal has hitherto been accustomed to carry on throughout the Maritime Provinces the correspondence of this nature, and the effect of the Charter would do little more than to extend the same system throughout the whole island.

Great difficulty must be anticipated from the absence of the King's Advocate from the seat of Government, if frequent or long protracted. It will be often necessary that you should avail yourself of his services in the ordinary administration of public affairs; and except in the immediate vicinity of the various public departments, it would be impossible for him to collect the information necessary for the guidance of his own judgment, or for the assistance of yours. Consequently, as far as may be practicable, the King's Advocate must be withdrawn from the duty of performing circuits; and in criminal prosecutions beyond the limits of Colombo, he must, as far as possible, be represented by the Deputy King's Advocate, or by some other officer specially appointed for that purpose. As often, however, as the King's Advocate can be conveniently spared from the seat of Government, and as often as cases of peculiar difficulty or importance may arise in any of the circuits, his personal attendance will be given on them. The Deputy King's Advocate will, on the other hand, habitually perform the circuits with the Judges during such a portion of the year as may

be compatible with the regard fairly due to the health and convenience of that officer.

21. For the reasons assigned in the Commissioner's Report, the Charter has adopted his recommendation, that the Judges of the Supreme Court should not exercise an original jurisdiction, except in a few specified cases.

22. The recommendations respecting the written communications which may take place between the Supreme Court and the District Courts is partly carried into effect by the Charter.<sup>1</sup>

It will be in the power of the Judges by rules of court to give to that principle a further and more complete application to any unforeseen exigencies.

23 to 25. I find no room for any particular remark respecting the three last recommendations, which relate to writs of habeas corpus and mandamus, to prohibitions and injunctions, and to the securing an uniformity of practice and principle in the administration of the law throughout all the tribunals of the island.<sup>2</sup> I have not found any reason to dissent from or to qualify the advice of the Commissioner upon any of these subjects.

Thus far I have followed the order observed in the Report, touching, as far as appeared to me necessary, on the different topics to which it relates. It would be unjust to quit this part of the general subject without expressing the high sense I entertain of the service which Mr. Cameron has rendered to the public on this occasion. The materials on which his advice is founded, have been collected with great diligence, and employed with equal ability. But his Report owes its chief value to the solidity and comprehensiveness of the general principles by which it is pervaded. If any errors in the practical application of them to the case of Ceylon have escaped my observation, I have at least the satisfaction to feel assured that the general basis of the new judicial system is so firm as to render comparatively unimportant any unobserved errors in the superstructure. These remarks are not made as a tribute due to the learning and talents exhibited by Mr. Cameron on this occasion, however well merited, but rather from my solicitude to impress on the Judges and on yourself the necessity of carry-

<sup>1</sup> See p. 186 above.

<sup>2</sup> See pp. 186-7 above.

ing his recommendations into effect with a steadfast regard to the spirit in which they are made, and the principle of jurisprudence on which they rest. Much has unavoidably been referred to the Judges, and they will, I doubt not, justify the confidence which His Majesty on this occasion reposes in them, by bringing all the subordinate details into harmony with the great outlines of the plan contained in the Charter.

It may not be unimportant to notice, that before I resolved upon the adoption of Mr. Cameron's proposals, I thought it right to compare his design with that which had been projected by Sir Richard Ottley, and which had received the general approbation of Sir Charles Marshall, subject to certain qualifications which that learned Judge had made in the form of notes upon Sir Richard Ottley's draft. Unwilling to confide entirely in my own judgment, or in the opinion of any persons who had not enjoyed the advantage of a personal observation of the administration of the law in Ceylon, I requested Sir Richard Ottley to favour me with his advice as to the expediency of substituting Mr. Cameron's plan for that on which he had bestowed so much labour. Sir Richard Ottley accordingly, after careful deliberation, with a candour which entitles him to the highest credit, reported to me his opinion that Mr. Cameron's views were better adapted to promote the welfare of the island, than those which he had himself previously entertained and recommended. I enclose a copy of the latter in which Sir Richard Ottley's ultimate opinion was conveyed to me,<sup>1</sup> which I gladly record in this manner, not only as honourable to Sir Richard Ottley himself, but as superseding the doubts which the supposed oppositions of so high an authority might not unreasonably have cost upon the wisdom of the measures actually adopted.

I have already referred to the Schedule of the future judicial establishment of Ceylon. To this Table you will adhere with the utmost practicable precision.

It is not without regret that I find myself constrained, by the pressure of circumstances, to depart, in some degree, from the general rule of confiding the administration of justice only to persons who have been trained to the study and practice of the law as a profession; but as many gentlemen have hitherto been

<sup>1</sup> See p. 376 below.

employed in judicial offices in Ceylon, who have not enjoyed that advantage, I am reduced to the necessity of either continuing to employ them as District Judges, or of dispossessing them of their employments without any real or imputed demerit.

Such removals would give birth to claims to compensation which could not be resisted without manifest injustice, nor conceded without a charge on the public revenue to which it is at present unequal; you will therefore select the District Judges, in the first instance, from the gentlemen who have hitherto been acting in any judicial offices which the Charter will abolish. As vacancies may hereafter occur, lawyers by profession will be appointed to fill them; and any persons who may be appointed without the qualification of having been regularly educated in the study of the law, must distinctly understand that the appointment is merely provisional, and is to be held only until another choice can be made.

You will find in the Charter frequent mention of the Executive and of the Legislative Councils, as distinct institutions. This language is of course inapplicable to the system of government which has hitherto prevailed. On this subject, however, I refer you to the supplementary commission and additional instructions under the royal sign manual with which you have been furnished.<sup>1</sup>

I cannot with propriety omit to call your attention, and that of the Judges of the Supreme Court, to the frequent proofs afforded by the recent history of Ceylon, of the danger of collisions between the Executive and Judicial Authorities, and of the formidable evils resulting from such dissensions. It has been my object, by the measures announced in this dispatch, to obviate, as far as possible, the recurrence of such unseemly controversies. Both as the head of the Executive Government, and as exercising a legislative authority in Ceylon, you will rigidly adhere to the rules by which the Charter separates the functions of the Judges from your own. His Majesty will expect from them a similar observance of those regulations.

The Charter will take effect in Ceylon within two months after it shall have arrived there, unless you should think fit to fix an earlier day for that purpose. It has not been possible

<sup>1</sup> See pp. 303 and 305 above.

to entrust you with any more ample discretion as to the time at which this instrument should come into operation. You will however perceive, that from the time appointed for that purpose the existing tribunals, civil and criminal, will be abolished, and that all prosecutions instituted in them, and all punishments which they might inflict at a later period, would be illegal, and might subject the parties engaged in them to the heaviest penalties. The promulgation of the Charter by the appointed time will therefore be not a matter of choice, but of strict necessity.

I have, &c.

(Signed) GODERICH

## XV

### *Correspondence on the Charter of Justice*



1. *Letter from C. H. Cameron to Viscount Goderich*<sup>1</sup>

19, Chester-Street  
August 10th, 1832

MY LORD,

In the Report I had the honour to address to your Lordship on the 31st January last, I recommended that each court of original jurisdiction in Ceylon should consist of one Judge and three assessors, and that the assessors should be chosen as the jurymen now in the Maritime provinces.<sup>a</sup>

I stated to your Lordship at some length in that Report the reasons which appeared to me to justify the scheme of judicature described in it. But it has since occurred to me, that by a slight modification, that scheme may be made subservient to the very important and beneficial purpose of giving to a class of Native functionaries the skill and integrity necessary to render them fit for becoming Judges of original jurisdiction.

If this object can be accomplished, a very great saving of expense will ensue. For the salary with which a Native Judge would be amply remunerated is quite trifling in comparison with the amount necessary to tempt a competent European to undertake so laborious an office in so warm a climate, and in so distant a region.

But independently of the economical question, it is of the utmost importance with a view to the future stability of our dominion in the East, and the improvement of our Native subjects in general, that the higher classes among them should be rendered morally and intellectually competent to fill offices of trust.

What I now propose is, that one of the three assessors in

<sup>a</sup> Page 78, Ceylon Reports. [See p. 167 above.]

<sup>1</sup> C.O. 54, 145.



each court of original jurisdiction should be a permanently official person, receiving such a moderate salary as will be necessary to remunerate a Native of respectable station for giving up his whole time to the public.

It would be scarcely worth the while of any suitor to attempt to bribe or intimidate a functionary having so little power to affect the fate of the cause, except by reasons founded in law and justice; and as all the functions of the official assessor will be performed under the eye of the European Judge and the public, an attempt on his part to sacrifice justice to his private interests could hardly end in anything but detection and disgrace.

Here, then, will be a public servant, obliged by his office to revolve constantly in his mind the maxims of law and morality, and to assist, by his opinion and advice, in the application of them to the real business of life, who will at the same time be removed, by his peculiar position, from all temptation to pervert those maxims to purposes of chicane, fraud or oppression.

It seems difficult to imagine a situation better calculated to strengthen the principles of morality, by exercising them in the solution of real and practical questions, and at the same time to avoid the mischiefs which might result from the insecure hold which those principles have hitherto acquired over the minds of the Natives in general.

A Native who has for some years been subjected to this discipline, and who has gone through his noviciate with credit, may, I think, be very safely placed in the more arduous and responsible office of a Judge of original jurisdiction, and by such an appointment four-fifths of the salary necessary to remunerate a European Judge will be saved to the public, the honourable ambition of the upper classes of Natives will be safely gratified, and the great mass of the people will be bound by ties of affection to a Government which ceases to withhold offices of power and emolument from its Native subjects, as soon as they become qualified to fill them with advantage to the Native community.

I have, &c.

(signed) C. H. CAMERON

2. *Letter from Sir Richard Otley to Viscount Goderich*<sup>1</sup>

MY LORD,

Exeter, 3rd November 1832

I had the honour to receive Mr. Hay's letter of October the 22nd, in which he communicated to me that your Lordship had been pleased to express a wish to have my opinion on the following question, as connected with the intended Charter for the Island of Ceylon, namely, "Whether I consider the Charter as prepared by myself, or the Charter as projected by Mr. Cameron, as affording the more convenient basis on which to proceed".

In order to render my answer to the question which your Lordship has done me the honour to propose, more clear and intelligible, I beg leave most respectfully, and with great deference, to make a few preliminary observations.

In the first instance, I am desirous to state, that I consider the scheme of Mr. Cameron as completely to agree in principle, and almost to coincide in all material points, with my own, except in two points.

Those two points are, "1st, The introduction of Native assessors, to assist in the administration of justice in every court of original jurisdiction; and, 2ndly, the abolition of the original jurisdiction of the Supreme Court of Judicature in all civil matters".

And I am desirous further to state, that, even on those points, I agree with Mr. Cameron to a very great extent.

First, I fully concur in opinion with him on the propriety of employing Native assessors in all cases in which the litigating parties are Natives, and I think that not only great advantage may be expected to accrue to the Native population, but that material improvement will arise in the administration of justice in Ceylon generally from the introduction of assessors in such cases.

I likewise concur in opinion with him as to the propriety of abolishing the original jurisdiction of the Supreme Court of Judicature in civil cases; but I think an exception ought to be made in the following cases: "First, those cases which are now cognizable by the Supreme Court of Judicature in its Equitable Jurisdiction";

<sup>1</sup> C.O. 54, 145.

“Secondly, those which are cognizable by that Court in its Matrimonial Jurisdiction”;

“And, thirdly, those cases in which the subject in litigation arises within the district of Colombo, and in which the suit is now cognizable either by the Supreme Court of Judicature in its local jurisdiction, or by the Provincial Court of Colombo in its civil jurisdiction”.

And I further agree with Mr. Cameron in thinking, that in all those cases in which the Supreme Court of Judicature shall continue to exercise an original jurisdiction, the Judges of that Court should be authorized and required to call in assessors to assist in the trial and to enforce their attendance; but I think that the Judges ought to be allowed to decide upon the particular description of persons to be employed as assessors in each particular case, and to determine whether Natives or Europeans should be summoned; and if Natives, what particular sect or denomination of Natives; namely, whether Mahomedans, Singalese, or Gentoos, & should be selected for that purpose.

My reasons for objecting to the scheme of Mr. Cameron upon the subject of the Equitable Jurisdiction and the Matrimonial Jurisdiction, are, first, that I consider the questions arising within the former as much too difficult to be decided upon by any persons but experienced lawyers; and that the nature of the contract of marriage between Europeans, and the questions arising upon its dissolution, are too intricate and too delicate to be entrusted to the decisions of any persons likely to hold judicial situations in Ceylon, except the Judges of the Supreme Court.

I object to the introduction of Mr. Cameron's scheme in the district of Colombo (except in as far as I have qualified that objection) for the following reasons: First, that the Supreme Court of Judicature has long exercised a civil jurisdiction in that district (though from the jealousy of the Local Government, the limits of its jurisdiction have been very much confined), and that such exercise of its jurisdiction has been found to be highly beneficial, has given the most complete satisfaction to the suitors, and from time and experience has been reduced to such a system as very far to excel any other system which, with the limited means possessed by the Island of Ceylon, is likely to be now introduced.

Many of the questions arising within the district of Colombo originate in contrasts between Europeans, or in matters in which some of the parties are Europeans. Many of the cases also arise upon the validity or upon the construction of wills and other testamentary matters, or upon the administration of the property of intestates. And I beg leave to state that, according to the best information which I have been able to procure, the testamentary jurisdiction, and the jurisdiction over the property of intestates, as now exercised by the Supreme Court of Judicature, are administered in a manner better calculated to promote the ends of justice and to secure the interests of the inhabitants, than the like species of jurisdiction is administered either in England, or in any part of the British empire with which I am acquainted. And I feel fully satisfied that every change in these matters will operate to the disadvantage of the suitors and others whose rights are submitted to the decision or are under the protection of the Court.

Should these observations appear to your Lordship to have weight, the Provincial Court of Colombo will be suppressed. By which measure a considerable diminution of expense will result; a Court, in which Judges of the greatest experience and best education in the settlement preside, will be established at the principal seat of Government, as is the case within the territories of the East India Company; a model for the practice of the other Courts in the Island will be exhibited for their example, and no violent or unnecessary change will be made.

A great change will certainly be introduced into the mode of administering justice to the Natives, but no alteration will be made, except such as is absolutely necessary for securing the purposes of justice.

Whereas if the jurisdiction of the Supreme Court be abolished within the district of Colombo, and the jurisdiction of any other court be extended to that district, a less efficient and a much less respected tribunal will be substituted for one whose competency has long been experienced, and which has acquired, and still continues to possess, the confidence both of the Native and European population.

To conclude, I would beg leave to recommend that the scheme of the Charter, as projected by Mr. Cameron, be adopted in all points, except in the following:

First, The abolition of the Equitable Jurisdiction of the Supreme Court, which I think ought to continue, and to be extended to all the inhabitants of Ceylon and its dependencies.

Secondly, I recommend that the Matrimonial Jurisdiction of the Supreme Court be, in like manner, extended over the whole island, in all suits in which either of the litigating parties is an European, or commonly known by the name or description of European in India.

And, lastly, as the most important of all the subjects on which I have ventured to express an opinion, that the Provincial Court of Colombo be suppressed, and that the Supreme Court shall exercise an exclusive jurisdiction within the limits of the district of Colombo.

In all other points, if any difference exist between the scheme of Mr. Cameron and that proposed for your Lordship's consideration by myself, in the draft of a Charter which I had the honour to prepare, and which was transmitted to the Colonial Office, I recommend that Mr. Cameron's scheme be preferred and adopted.

I hope that in making the foregoing remarks I have not deviated from your Lordship's wishes, nor appeared improperly to obtrude my opinions on your notice; and if I have entered into a longer discussion than might have appeared necessary, I have done so from an anxious desire to supply all the information which my experience, arising from long residence in Ceylon and in other colonies, has enabled me obtain.

I have, &c.

(signed) RICHARD OTTLEY

3. *Letter from the Attorney and Solicitor-General to Viscount Goderich*

Lincoln's Inn,<sup>1</sup>

23rd January 1833

Right Hon'ble Viscount Goderich,  
MY LORD,

We have had the honor to receive your Lordship's letter of December 18th 1832, transmitting to us a copy of a charter, which it is proposed to issue for the improvement of the administration of justice in Ceylon, together with a report on that

<sup>1</sup> Dispatches from the Secretary of State, January-March 1833, C.G.A. 4/18. This letter and the following statement were not printed along with the Charter of Justice.

subject by Mr. Cameron, one of the Commissioners appointed to enquire into the State of the Settlement, and directing us to report our opinion thereupon to your Lordship.

We have now the honour to report to your Lordship that, in our opinion, the proposed charter is well adapted to the purpose in view, although it varies from the precedents usually followed on similar occasions.

It appears to us, that, the regulations for introducing complete uniformity into the judicial establishment throughout the whole Island, and for giving every court of original jurisdiction, with the specified exception, exclusive jurisdiction over all causes civil and criminal, which arise within the limits of its district, will be a great improvement in the administration of Justice. The appointment of Assessors, we also think will be a salutary check upon the Presiding Judge, and cannot fail to have a favourable influence upon the native population.

The constitution of the Supreme Court with three Judges, the Appellate jurisdiction vested in a circuit Court of appeal, and the arrangements of the Circuits all appear to us well calculated for the expeditious and satisfactory administration of Justice.

There is nothing expressed in the Charter which we consider objectionable.

But we deem it our duty to draw your Lordship's attention to recommendations in Mr. Cameron's Report, which are not introduced into the charter and which we presume it is proposed to carry into effect by Rules of Court or by the proclamations of the Governor. Notwithstanding our unfeigned respect for the learning, research and talent which that gentleman has displayed, we are bound to say that, in our opinion, some of those recommendations are questionable and others highly objectionable.

We very much doubt the expediency of enacting that the pleadings shall consist of an oral altercation between the parties in open Court, with a power to each party to cross examine his adversary as to the statements made by him. The parties themselves must often be incompetent to state properly their complaint or their defence and must often be very unequally matched in point of intellect and dexterity. Giving the utmost credit to the Judge for patience and clearness of perception it is hardly possible that from the statement of the

parties he should be able to get at the real merits of the controversy: and the personal collision of the litigants must lead to ebullitions of passion which it will hardly be possible to restrain. When pleadings were on terms in England, they were conducted by retained advocates, and they were replaced by the more convenient practice of statements in writing.

We would suggest that, in Ceylon an attempt should be made similar to that which is now going forward in England to render the written pleadings more simple and appropriate, and that although it may be very expedient to subject the parties to examination, a better opportunity should be provided for this purpose than the commencement of the suit.

The abolition not only of all stamps but of all fees of Court we cannot sanction. The administration of justice is not a legitimate source of revenue, and the exaction of fees from suitors to be paid to the holders of sinecure offices is most iniquitous. But we conceive that the administration of justice may fairly support its own expenses, if the tribunals are properly constituted and a reasonable compensation only is paid for efficient services. This is cheap justice, as a general rule the losing party must be supposed to have been wrong and to have blameably occasioned the litigation. The costs of that litigation ought to fall upon him and not upon his fellow citizens.

We must for the same reasons still more object to the recommendation that the expenses of the witnesses on both sides in all cases should be paid by the public. The abuses to which such a practice would lead would not we fear be prevented by the proposal that the Judge should first ascertain whether witnesses are material before they are subpoenaed. The Judge must try the cause before he can determine upon the materiality of all the witnesses. The proper check upon summoning unnecessary witnesses is to provide that they shall not be obliged to attend till their expenses are paid and that these expenses shall be paid in the first instance by the summoning party, who is to be repaid, if he succeeds in the suit, and shews that they were material. The alleged grievance of postponing trial on account of the absence of witnesses may easily be remedied by requiring proof that their evidence is material, and that reasonable endeavours have been used to procure their attendance.

To guard the public against the abuses of litigation to be carried on entirely at the public expence it is recommended that at the termination of the suit the Judge shall punish by fine and imprison, or both, any party to the suit who in his opinion shall have been guilty of an attempt to pervert or obstruct the course of Justice.

To vest such a discretion in any Judge, we consider wholly inconsistent with the principles of a free Government. Supposing that no outrage has been committed amounting to a contempt of Court and requiring immediate and summary punishment, the legitimate authority of the Judge, who has pronounced his decree upon the matter in controversy, is limited to a controul over the costs of the suit. If a party has been guilty of forgery, or perjury, or any other crime in the course of the suit, he ought to be prosecuted for it in due form, and have the means of defending himself, a law that no person should be permitted to commence or to resist any action unless at the peril of being both fined and imprisoned at the discretion of a Judge, would, we apprehend, often amount to a total denial of Justice.

I have the honour to be &c.

(Signed) W. HORNE.

I. CAMPBELL.

4. *Statement by C. H. Cameron*

19 Chester Street,<sup>1</sup>

March 7th 1833

It is highly gratifying to me to find that so many of the recommendations contained in my Report on the Judicial Establishments and procedure in Ceylon, are justified by the concurrence of such high authorities as the Attorney and Solicitor General, and where these gentlemen have felt it their duty to combat my opinions, I am much indebted to them for the tone and manner with which they have conducted the discussions.

When I say that I am not convinced by their arguments, I trust I shall escape the imputation of unreasonable pertinacity: because however wide may be the interval which separates

<sup>1</sup> Dispatches from the Secretary of State, January-March 1833, C.G.A. 4/18.



their professional station and acquirements from mine, it has been my duty, for a considerable time, to devote my whole attention to this one subject, whereas theirs has been necessarily occupied with many others of equal or greater importance.

It is my wish to gratify all the propositions I shall lay down in the following reply to the Attorney and Solicitor General with those expressions of respect and deference which are due from me to them, and, if I have abstained from doing so, it is only because I am satisfied that they would not themselves desire that an argument of this nature should be lengthened and encumbered by a repetition of the same phrases, and they will allow me, on this occasion, the same freedom as I should enjoy, if I happened to be opposed to them as counsel in a cause.

The objections of the Attorney and Solicitor General to my recommendations may be conveniently considered under two heads.

1. Objections to the method of pleading, recommended by me.
2. Objections to the arrangements recommended by me for casting the burthen of expense to be borne by the suitors, upon that class of them only on whom it can justly fall in the shape of punishment.

From some of the expressions used by the law officers of the Crown, I am apprehensive that on both subjects I have not always succeeded in my printed Report in making my own meaning perfectly clear. This apprehension however is accompanied with the hope that, when I shall have explained myself more fully, the differences of opinion between them and me will appear considerably less than they do at present. They say "We very much doubt the expediency of enacting that the pleadings shall consist of an oral altercation between the parties in open Court, with a power to each party to cross examine his adversary as to the statements made by him. The Parties themselves must often be incompetent to state properly their complaint or their defence, and must often be very unequally matched in point of intellect and dexterity. Giving the utmost credit to the Judge for patience and clearness of perception, it is hardly possible that from the statements of the Parties he should be able to get at the real merits of the

controversy and the personal collision of the litigants must add to ebullitions of passion which it will hardly be possible to restrain. When pleadings were on terms in England they were conducted by retained advocates, and they were replaced by the more convenient practice of statements in writing."

It will be seen by my 6th recommendation that I have no intention of depriving the parties of the benefit to be derived from legal assistance whenever they can obtain it.

I am perfectly sensible how inconvenient it is that parties should conduct their own case, and heartily wish that the suitors in Ceylon were never driven to the necessity of doing so. What I desire is that the pleadings should be an official note made under the direction of the Judge of the statements which have been elicited from each party by an examination in chief carried on by his own advocate, and a cross examination carried on by the advocate of his adversary.

The Attorney and Solicitor General think that it is hardly possible that from the statements of the parties the Judge should be able to get at the real merits of the controversy.

I am far from wishing to deny the difficulty of accomplishing this end by any means, but I still think the mode I have proposed is the one by which that difficulty is reduced to a minimum. In Ceylon the written pleadings when not drawn by the Proctors who practice in the Capital, are frequently mere nonsense and impertinent. I have already quoted in my report p. 81<sup>1</sup> the statement of Mr. Brieberg that they are sometimes so unintelligible that the Judge on the day of hearing, not being able to comprehend them takes down the verbal statement of both parties and then enters into evidence. That is to say, enters into evidence which has been prepared by either party, not to meet the real merits of the case, but to support his own unintelligible statements, or to refute the unintelligible statements of his adversary.

Add to this, that no means are taken to ascertain whether the party has any reasonable ground for believing his own statements, or for disputing those of his adversary, and it will be seen, I think, that the pleadings, instead of helping the Judge to arrive at the merits of the controversy, serve in general the purpose of preventing him from ever reaching them.

<sup>1</sup> See p. 174 above.

The Attorney and Solicitor General suggest that "in Ceylon an attempt should be made similar to that which is now going forward in England to render the written pleadings more simple and appropriate".

I submit that the defects of the Ceylon pleadings are quite different from those of the English pleadings. The English pleadings are so incumbered with needless technicalities that they are unintelligible to the suitors, and frequently so general as to convey little information to the initiated, of the real matter to be tried. But these are defects in the system itself, and there is no want of skill in those who apply it.

In Ceylon the defects are 1st. that there is no system of pleading. 2nd. that there are no practitioners, except in the Capital, who could apply it, if there were one.

The remedy of the first defect by drawing up and publishing a system of pleading would be of no avail so long as the second remains unremedied. To supply a body of learned and practised pleaders is impossible, but to impose upon the Judge the duty of dictating the form in which the statements of the parties shall be officially recorded, when he has discovered by a careful examination what it is they really have to allege against each other, is only to impose upon him a duty which, however onerous in itself, cannot fail most materially to lighten those which he must necessarily sustain in the subsequent stages of the cause. Even if the want of qualified pleaders did not render the English system impracticable I confess that, legislating for a people having no attachment for the existing forms of procedure, I should not hesitate to make the same recommendation. Because I am satisfied that by this mode of proceeding the question of law and fact, which the parties have substantial ground for raising, will be separated from those which, when the Judge does not intervene, they raise for the sole purpose of embarrassing each other.

The Attorney and Solicitor General go on to say that "although it may be very expedient to subject the parties to examination, a better opportunity should be provided, for this purpose, than the commencement of the suit" and here I have the misfortune to differ *toto coelo* from those high authorities.

I beg it may be remembered that the majority of the natives of Ceylon do not scruple to support their own statements and

to rebut those of their adversary by forgery and perjury where their means fail, and that it may be considered how much of these dreadful mischiefs will be prevented by the cross examination of the parties at the very beginning of the suit in the presence of an impartial and enlightened Judge, and then I do not hesitate to say that there is no one my recommendations that I am more anxious to see adopted than the 4th explained as it is by the 5th and 6th.

I wish the parties could be examined at the very moment when it enters into the head of one of them to become a Plaintiff, and before he can have devised any fraudulent means of enforcing his real or pretended rights, and I would therefore institute this examination as soon as possible after the intention to sue becomes known to the Court, from the moment that a party has been made, by examination and cross examination, to state the particulars of his own case and of the evidence by which he means to support it, from that moment it becomes almost impossible for him to invent any new fraud with a chance of success. In most cases the party will be compelled by this proceeding to disclose the real truth, but even where he succeeds in imposing a fiction upon the Court, he must still confine his future endeavours to the support of that particular fiction, instead of choosing among all the various frauds by which the case of his adversary might be rebutted.

I feel the deepest conviction that a Court of Justice in Ceylon will be converted by this reform, coupled with some others, from an arena in which the more skilful villain triumphs over the less skilful, into a school of practical morality which will do more to correct the prevailing vices of an oriental population than any other human institution, and, feeling that conviction I feel also the most ardent desire to become the humble instrument by which such an object may be accomplished.

That part of the passage quoted from the Letter of the Attorney and Solicitor General, in which apprehension is expressed, that the personal collision of the litigants must lead to ebullitions of passion, seems more particularly to be founded upon the misconception that I intended the discussion to be conducted by the parties themselves, instead of by professional Advocates, whenever they can be had, and I fear that the expression used by me "an oral altercation between the

parties" may have given rise to this misconception, and also to the supposition that I contemplated an uncontroled and disorderly contest.

I borrowed the phrase "oral altercation" from Mr. Sergeant Stephen's excellent treatise on pleading p. 31 and meant by it only, as I suppose him to have meant, that the parties, or their advocates, should address the Court alternately, not that they should do so irregularly and in the way of mutual interruption, which is perhaps the more usual meaning of an altercation and I used the expression "between the parties", not as distinguishing them from their professional Advocates, but in the same sense as is given to the term when we speak of written pleadings, as the statements of the parties.

Notwithstanding this explanation, however, I am bound to admit that, even in such an altercation as I contemplate, unseemly ebullitions of passion may have place, especially where no advocates are employed. But I can extenuate the force of the objection, by pointing out that, in the East, the respect usually shewn to superiors is so great that such an ebullition is not likely to occur in the presence of an European Judge. An artful and fraudulent statement or one enforced with the appearance of passion assumed for effect, is much more to be guarded against than an involuntary burst of genuine feeling.

By this consideration, I say, I extenuate the force of the objection, and I think that I entirely get rid of its effect upon the practical conclusion by pointing out that the ebullitions of passion which do sometimes occur in England when the prosecutor and the accused are confronted before a Magistrate, are not considered evils of such weight as to counterbalance the great advantage to truth and justice which results from such a proceeding. I now pass on to the second class of objections made by the Attorney and Solicitor General, viz, objections to the arrangements recommended by me for casting the burthen of expense to be borne by the suitors, upon that class of them only upon whom it can justly fall in the shape of punishment.

They say "we conceive that the administration of justice may fairly support its own expense".

Before I discuss the question in the abstract, I wish to observe that an attempt to make the administration of justice in Ceylon,

under the British Government, support its own expenses, would assuredly produce a total denial of justice, an abandonment of the first duty of Government and a reduction of society to a state of nature, this however depends on the peculiar circumstances, that the Judicial Functionaries belong to that country, in which of all others the value of money is lowest, and which is the richest in the world, while the people to whom justice is to be administered, inhabit a very poor country and one which the value of money is extremely high.

Having adverted to these circumstances, I now dismiss them for the purpose of considering the question upon general principles.

Although I strongly recommend that litigation should be a pecuniary burthen upon those whose conduct makes it necessary, yet I cannot agree, that the amount necessary to keep up an efficient Judicial Establishment is a criterion by which the amount of that burthen can be adjusted.

The principal effect of a good Judicial Establishment, both in its civil and criminal capacity ought to be preventive. The ideal perfection of such an establishment is, that the certainty of obtaining immediate justice through its intervention should prevent the causes of litigation from coming into existence. Let us suppose for a moment this ideal perfection attained. There would be Courts of Justice with doors always open, but no suitor would have occasion to enter them. The expense of keeping them open must ~~also~~ be defrayed entirely by that public, which would derive such inestimable benefits from them.

This perfection is of course unattainable, but the supposition of it illustrates the principle I am considering, and though it be unattainable it is not unapproachable. No man can doubt that in every country possessing a civilized Government a considerable quantity of injustice is prevented by the existence of Courts of Justice, probably the quantity thus prevented is much greater than the quantity redressed, and I acknowledged myself sanguine enough to believe that a much nearer approach to this supposed perfection may be made, than we have ever yet seen in practice.

It follows from this view of the subject that the amount of pecuniary burthen to be imposed upon the culpable suitor is not to be regulated with references to the expenses of the

Judicial Establishment, in other words, than the notion of making the administration of justice support its own expenses, must be abandoned.

The amount of pecuniary burthen to be imposed upon the culpable suitor, might however be regulated with reference to those expenses which arise out of the particular suit, leaving the expense of maintaining the judicial establishment in a state ready for action, to be defrayed by the public. According to this principle the burthen of paying the expenses of witnesses ought to fall on the culpable suitor, but the question still remains, on whom ought the burthen to fall in the first instance and before it has been ascertained who is the culpable suitor? and on whom ought it to fall, supposing the culpable suitor is unable to pay? On the public or the blameless suitor? I answer on the public, because if it falls on the blameless suitor, it operates to deter him from asserting his just rights, it is a penalty upon seeking redress, and an impediment in the way of that preventive effect of the judicial establishment which is its most important result. This preventive effect depends entirely upon the efficiency which the judicial establishment is believed by the public to possess in redressing wrongs, and the belief of the public in this respect depends upon its actual efficiency in redressing wrongs whenever they are committed. It will sometimes happen that both parties are culpable and then the burthen should be distributed accordingly. It will sometimes happen that neither party is culpable, but this will recur generally when the suit has been instituted to decide a disputable question of Law upon admitted facts, and when consequently the expense, I am now considering, is not incurred. It may occur, however, in a case of disputed facts, but so very easily that although according to the principle the burthen should in that case be borne by the public, yet it is hardly worth while to make such cases an exception from the general rule that the expense of proving facts should fall, if the proof is given, upon the party who requires them to be proved and if the proof fails upon the party who undertakes to produce it.

From these considerations it is clear that the amount of pecuniary burthen imposed upon culpable suitors, ought to be sufficient to defray those expenses which arise out of the

particular suit, But it does not follow from these considerations that it should not be more than sufficient for that purpose. There is in truth another most important principle, according to which the amount of this burthen ought to be regulated, and according to which it ought frequently to be much more than sufficient to defray the expenses which arise out of the particular suit, I mean the principle that culpable litigation is an offence from which men must be deterred by the fear, of punishment. The punishment of this offence (fine, enforced by imprisonment) is to be inflicted, according to the scheme of judicature I have proposed for Ceylon, not indirectly nor under a feigned name, but expressly as a punishment for the offence. The nature of the offence is to be declared openly by the Judge, the opinion of the Assessors is to be taken and recorded, and the quantity of punishment is to depend upon those considerations which determine it in respect of all other offences.

Whether or not the specific money with which these prices are paid, should be paid over to the Judges as part of their salary, whether or not the sums so raised should be set in the public accounts against the expenses of the judicial establishment, seem to me to be questions of mere fiscal arrangements with which we have no concern in this discussion.

The imposition of fees and stamps can only be justified, I apprehend, upon the ground that they operate as a punishment upon culpable litigation. The only other imaginable ground of justification is that they are a good tax, which is so manifestly untrue, that I need not waste argument upon it. They have indeed when considered as a tax, nothing to recommend them even to the fancy, but the circumstances they are levied in Courts of Justice, and usually applied to defray the cost of those establishments.

Considered as a punishment fees and stamps appear to me in all respects less efficacious than the fines which I have proposed to substitute for them.

The actions from which it is contended that men should abstain through fear of this punishment are those which may be described generally as dishonest, or vexatious or frivolous litigation. In one word culpable litigation.

The penalty intended to be the consequence of those actions, when it assumes the shape of fees and stamps, falls, in the first



instance, upon every body who may by possibility have incurred it or be about to incur it. Afterwards indeed it is shifted on to the person who has actually incurred it, if any such person there be, and provided he happens to be of ability to pay it. But otherwise it is suffered to remain where it first alighted.

Where neither of the parties to a suit is justly abnoxious to any penalty, as where they are merely applying to judicial authority for the solution of a question of law, which the legislature has not adequately expounded, the effect of the penalty is pure gratuitous mischief. The money taken from these innocent men for the performance of an innocent action, may indeed be employed for some beneficial purpose, but this attribute belongs to fees and stamps considered as a tax, not as a punishment, and is common to this with the worst tax that can be imagined.

Where one party only is chargeable with culpable litigation, the exaction of a penalty from the party who is not so chargeable with a right to recover it, if he can, from his antagonist, produces as in the case last supposed pure and gratuitous mischief, but of a more aggravated kind. It tends to deter the innocent party from maintaining his just rights, and not only does not tend to deter the guilty party, but actually encourages him in his malignant purpose by making an oppressive or vexatious lawsuit a sharper instrument of torture than it otherwise would be.

The penalty, even when by the adjudication of costs, it has been at last directed upon the right party, is still not at all proportioned to the nature of his offence, and being mixed up with the real costs of suit, loses the appearance and with the appearance half the efficacy of a punishment.

I cannot myself perceive that the Judge will have any extraordinary difficulty in deciding whether either or both of the parties has conducted the litigation in such a manner as to justify the implication of a penalty, but whatever the difficulty may be, it is the same and no other than that of deciding which of the parties is to pay the costs of each step taken in the course of the suit, which is imposed upon every Equity Judge in England.

The Attorney and Solicitor General say "supposing that no outrage has been committed amounting to a contempt of Court

and requiring immediate and summary punishment, the legitimate authority of the Judge who has pronounced his decree upon the matter in controversy is limited to a controul over the costs of the suit." But in the costs of the suit are included the stamps and fees, so that in this legitimate authority is included the power of directing on whom they shall ultimately fall, and what I ask is that they should be suspended until the Judge is in a condition to say who that is. I further ask indeed that the Judge instead of imposing a fixed amount of penalty beyond the real costs of suit as he in fact does when he decrees that a party shall pay the stamps and fees upon the whole proceeding, shall have the power to graduate the penalty according to the degree of the offence, and to abstain from inflicting it altogether, when no offence has been committed. This seems so reasonable in itself that I know not how to make it appear more so. If it be objected that this is to punish a man without a separate trial for the supposed offence, I answer, that when the supposed offence is the misuse of legal proceedings in the course of a cause. The Judge and the Assessors who have tried that cause are more competent to adjudicate upon this incidental question, than any other Judge and Assessors assembled at some future period to try it as a separate cause, can be. and it seems to me that, whoever denies this must also contend that there should be a separate trial before the question of cost can be properly adjudicated, and as the question of costs must also arise in the second investigation, every suit would generate suit after suit ad infinitum.

In our own irregular and complex system, the Court sometimes finds means of punishing a party who misuses legal proceedings besides condemning him in costs.

Many applications are made in the progress of a suit which it is in the discretion of the Court to grant or refuse, and the Court is constantly guided in the exercise of this discretion by the conduct which the party applying has observed in the use of legal proceedings if he has abused them as for example, if having the choice of two forms of action he has adopted one with the view of unfairly embarrassing his adversary the Court will tell him that he is not entitled to any indulgence. Upon the same principle too, the Court will stipulate, as the price of its Judicial favors, for the future good conduct of the applicant.

Now all this seems to me to be only a mode of enabling the Judge to do that clumsily, indirectly, clandestinely and occasionally, which I propose he should do appositely, directly, openly and constantly.

The whole doctrine I wish to enforce on the subject may be well illustrated by a particular example.

I remember hearing Lord Tenterden at Guildhall refuse to let a Plaintiff have judgement of the Term because he had brought an action of debt instead of an action of Assumpsit. The facts of his case were capable of being stated in either form, consistently with the rules of pleading, but the form he chose was the most burthensome to the Defendant, and his Counsel was unable to suggest any other reason for its adoption.

Now Lord Tenterden did in this case, because it so happened that the rules of Procedure permitted, what I wish the Judge should be enabled to do in a more effectual way, in every case of the kind. The Plaintiff had used his strictly legal rights in a way needlessly oppressive to his adversary, and was therefore a fit subject of punishment. The facts of the case and the form of action in which Plaintiff chose to allege them, were all before the Court, and his Counsel could give no other explanation of his conduct than the one which admitted the impropriety of it. No one will say that in such a case the law ought to require that a man should be indicted for havin sued in Debt instead of in Assumpsit nor yet that he ought to escape with impunity when he has done so with no other object than that of unjustly harassing the Defendant.

I am not myself afraid of trusting a Judge sitting in public and checked by Assessors with the most unlimited discretion in this matter, but I see no practical objection to the fixing a maximum beyond which the fine or the imprisonment by which its payment is to be enforced, shall not extend.

I did not recommend this course in my Report because I do not think there is any real necessity for it. The discretion of Judges in punishing contempts of Court by fine and imprisonment is unlimited, and I never heard of a case in which it was even alleged that this discretion was abused and yet a contempt of Court may assume a form far more irritating to a Judge than abuses of legal proceedings, by which the parties seek to oppress each other.

(Signed) C. H. CAMPBELL





