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Present and future land systems

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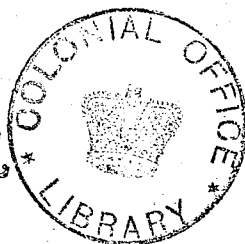


STRAITS SETTLEMENTS.

PRESENT AND FUTURE LAND SYSTEMS.

BY

W. E. MAXWELL,
COMMISSIONER OF LANDS, STRAITS SETTLEMENTS.



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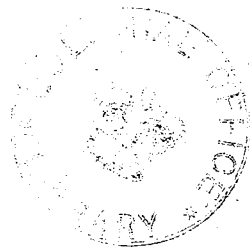
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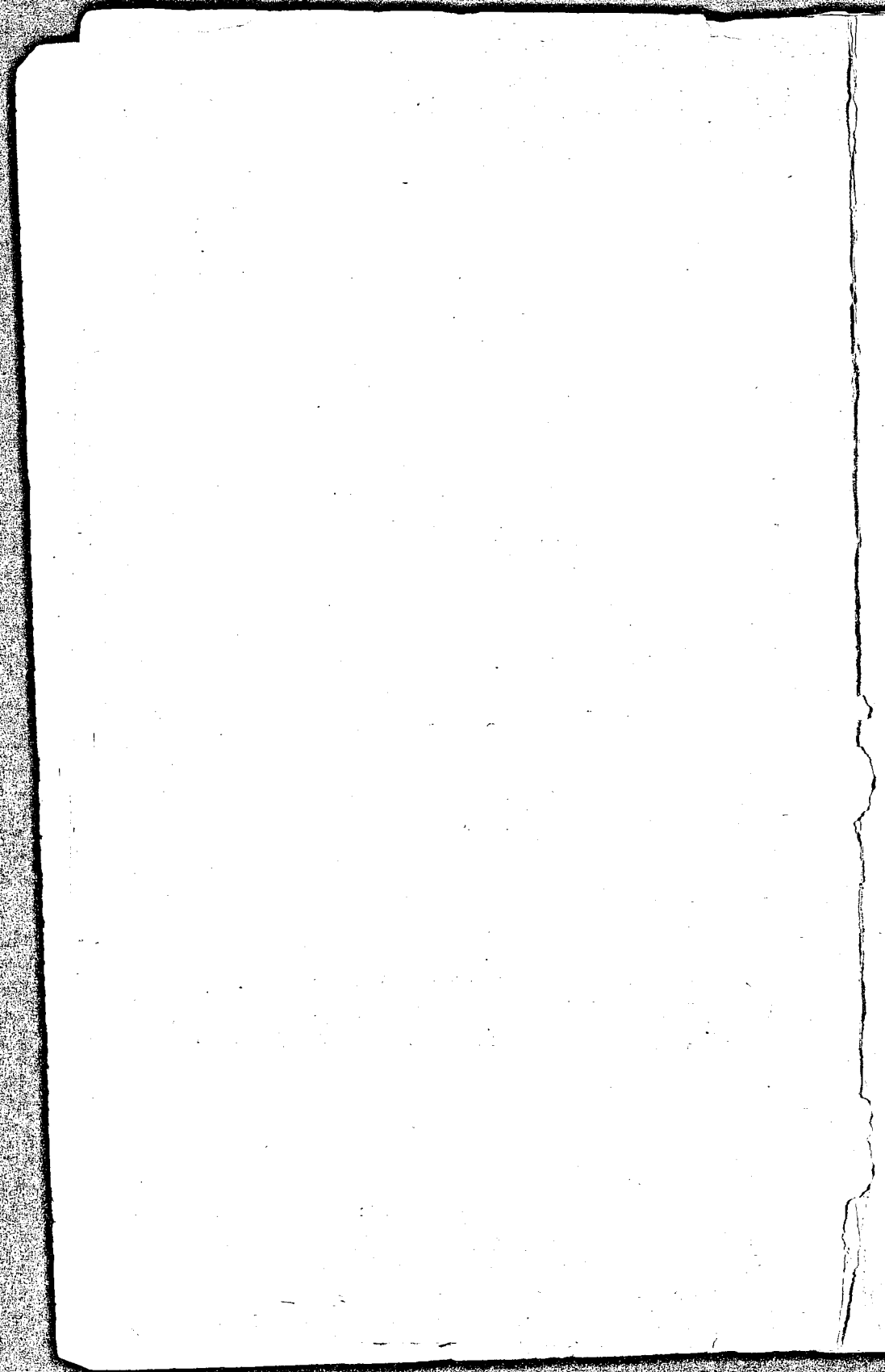


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THE settlements in the Straits of Malacca,—Penang, Singapore, and Malacca,—which have formed a Crown colony since 1867, were originally offshoots of the great Empire of India. Penang was colonised from Bengal in 1786; Malacca was taken from the Dutch by an expedition sent from India in 1795; and Singapore was established in 1819 under orders from Lord Hastings, then Governor-General of India. Penang, at one period in her history, was a fourth presidency of British India, having a Governor and Council on the model of the presidencies of Bengal, Madras, and Bombay. The affairs of the Settlements were administered from Bengal up to the time of the transfer to the Colonial Office in 1867; Bengal regiments in early days, and Madras regiments later, formed the garrison; the officials, civil and military, were appointed from India; local malefactors were transported to Bombay; and the presence in the towns of each settlement of a large number of Indian convicts hinted emphatically at the existence of an invisible *raj* on the other side of the Bay of Bengal. Under these circumstances it would be natural to expect that the institutions of these Indian colonies in the Straits of Malacca should be deeply tinged with Indian influence and, in that case, no department of administration would be more likely to show unmistakeable evidence of it than the land-revenue system. But, as a matter of fact, there is very little about the system under which Indian administrators formerly raised a revenue from land in the Straits Settlements which is at all suggestive of the land-revenue system of British India, and for this there is a very good reason. There was absolutely nothing in common between an Indian province with a teeming population accustomed, by centuries of Native rule under their own princes and chiefs, to hold their lands on

well-recognised principles as to revenue, services, powers of alienation, &c., and an island like Penang, clothed with forest, destitute of inhabitants and therefore of cultivation, and having no past history. The first thing to be done was to encourage population, and this was done by promises of land on easy terms. But as the colony grew, and as gradually the processes of clearing and cultivation extended over the island, the settled population which was formed was not such a one as would present many of the aspects of village life, in an Indian province. There was no cohesion among the miscellaneous immigrants of several nationalities,—Malays, Chinese, and Natives of India,—followers of different religions, owning no allegiance to any common chief or Native headman, and united only by the fact of having selected land in the vicinity of each other. Each landholder depended for his title upon the written grant, or license, or verbal permission, of the official in charge of the Land Office and was independent in this respect of any village headman or accountant.

Those who have watched the rise and development of a new settlement must have remarked how seldom its progress is foreseen and its growth provided for by its founders. The visible and tangible are usually the basis of policy and action, and it requires foresight of no ordinary kind to take into calculation the state of things which may be expected to have existence in the yet distant future. The land administration of the Government of India in the Straits was not marked by any genius or ability. No one provided for the time in future generations when Penang should have a settled rural population, by establishing a district organisation by means of which the Government could deal with the people through properly appointed and instructed headmen. Roads were made and the country was opened up; Courts and police were organised, and life and property were protected; but no lesson was taken from India or Java as to the relationship of the cultivators of the soil with the representatives of the ruling powers. This is no reflection upon individual officials in the service of the Indian Government, for, owing to the peculiar circumstances of the settlements in the Straits of Malacca, it was almost impossible for any one to design and carry out any particular line of policy. There was no legislative body in the Straits Settlements while under the Indian Government, and laws had to be made in Calcutta after tedious references backwards and forwards across the Bay of Bengal and, perhaps, after delay caused by communica-

tion with the Directors of the East India Company in London. The Government was not always furnished with a legal adviser, while the Recorder's Court kept a watchful eye on any proceedings of the Executive which went beyond the letter of the law. Difficult problems of administration were allowed to drift, for it was almost beyond any man's powers to put them on paper in such a shape as would enable others, at a distance from the Settlements and unacquainted with local circumstances, to take legislative action on them.

Everything connected with land-revenue administration drifted from an early period in the history of the Settlements. The terms upon which land was disposed of to the public were altered from time to time as the Settlements grew, it being discovered sometimes that the terms were too liberal and at others that cultivators would not take up tracts of jungle except upon liberal terms; but this was almost the only detail which received much consideration. An imperfect system of registration of deeds was set on foot, but the Supreme Government in Calcutta never carried out a proposal made in 1837 to pass a comprehensive measure on the subject. A survey of the Settlements was begun in 1840, but no legislative authority was taken for it under any special enactment of the Governor-General in Council and the sum of money devoted annually to survey was too small to be of real benefit. Terms were fixed on which people might acquire land, but the staff kept up in the Land and Survey Departments was never able to keep pace with the applications. Finally, the instruments of title issued to Native cultivators by the Government Land Officers were grants and leases in English, printed forms being used, couched in legal language and full of legal technicalities; but the blanks in these were filled up in writing by clerks, more or less ignorant of the importance of the insertion or omission of particulars as to parcels, &c., and when the Native cultivator wanted to sell his land he was obliged to have recourse to some one who could write out a conveyance for him, while not unfrequently the amateur conveyancer was more unskilled than the Government clerk who issued the original document.

The result of all this has long been apparent to the officers of Government who have successively administered the Land Departments in each of the Settlements, but it has not been easy to propose a remedy for a state of things which has grown up with the colony and which is not due in particular to any blunder of recent years. The state of the Land Office does not

and cannot give satisfaction to the people, but the details in which the interests of the landholder are prejudiced are so various that it may be doubted whether any one landholder can say exactly what it is that the public wants.

Reform in the Land Department has now been recognised by the Government to be necessary, and a section of the land-owning public is waiting with some anxiety to see what direction that reform will take. Blue-books and official reports are not however popular reading and, in default of any expression of public opinion in pamphlets, in the newspapers of the colony, or in the Legislative Council, it has been suggested to me that it may be useful to put before those interested in land in the colony a brief explanation, in language divested of technicalities, of the situation of affairs and the remedies proposed for acknowledged evils.

I will first of all enumerate the chief of the reforms which seem to be needed to put the Land Offices in a position to give satisfaction to the public and then I will put a series of questions which will, I think, bring home to landholders the disadvantages to them attendant upon the present state of things.

In the Straits Settlements the public wants, I think,—

- (1) uniformity of title, *i.e.*, a title in perpetuity, instead of leases for all sorts of terms and upon all sorts of conditions. The Native has an idea that every "grant" is alike, and a variety of leases and grants of varying terms cannot but be perplexing to the Native mind ;
- (2) a survey of the colony according to present occupation,* so that every man may be secured in what he has got and may not run the risk of litigation because his holding does not agree with his title plan. Purchasers will then know what they are buying, which the present deeds cannot tell them ;

* "There is, as it appears to me, but one effectual mode of ascertaining accurately under what circumstances the various lands in the Settlements are held, and it is plain that, without this indispensable information, no satisfactory determination in respect to doubtful claims or defective titles can be come to ; neither can the right of the revenue to a quit-rent, which has invariably been reserved to it in all cases of alienation of land by the State, but which is now, in numerous instances withheld, be enforced. That mode is to proceed to a systematic survey of the whole Settlement, district by district, laying down with accuracy each occupancy, requiring the occupier to show by what title he holds his land, and exacting the dues of the State where payments have hitherto been eluded."—Mr. Young to the Government of India, 1887. *Correspondence relating to the Land-revenue System, S. S.*, page 13.

- (3) a properly conducted Registry Office, at which it will be possible for an intending purchaser of land to ascertain exactly the state of the title ;
- (4) the simplification of conveyancing, which, by abolishing the elaborate English system so inappropriate to a rural Asiatic community, shall make it impossible that the Malay or Chinese peasant shall be prejudiced by technicalities which are somewhat unmeaning even to the lay English mind ;
- (5) an efficient Revenue and Survey Department for dealing with applications for grants of land, so that applications may be dealt with promptly, and, if favourably entertained, survey and issue of land-grant may follow without delay.

UNIFORMITY OF TITLE.

The following are some of the questions which I should like to put to landowners and occupiers and intending purchasers of lands in the colony. First, as regards *uniformity of title* :

1. To a Native a 'grant,' as he calls every instrument of title issued by Government, is sufficient evidence of his absolute right to his land though the purport of the document may show that the right is qualified by conditions or has expired. The neglect of Government in former years to assert and enforce its rights and to demand the performance of covenants and conditions has perhaps strengthened this idea. But this neglect has of late years given place to vigilance. You are the holder of a Government lease of a land in a town issued 30 years ago. In that lease there is a condition that if a substantial house is not built on the land within two years it shall revert to Government. No house has ever been built, though the land has changed hands several times. Purchasers now look askance upon land held upon a title which may perhaps be held to be no title at all. Would you not like to see a system introduced under which you could exchange on certain terms your imperfect title for a grant in perpetuity ?

2. You are the owner of a piece of land covered with forest or brushwood. It is not your intention to clear or cultivate it, because it adjoins your sugar or tapioca plantation and serves either as a place within which to cut firewood or as a useful barrier between your property and that of your neighbours. But if you look at your lease, you will find that it was issued at a time when it was the policy of Government to insist that a proportion of the land described in a Government lease should be cleared and cultivated within a given time, say five years. That period has elapsed and your land is still jungle though you are cultivating a large extent of other land adjoining. Would not your property be enhanced in value if you could get a grant in perpetuity substituted for the lease burdened with an unfulfilled condition ?

3. You are in possession of a piece of land in the town of Singapore. It belonged to your father before you and has a house upon it, which you would like to rebuild on a better plan. But your lease is for sixty years only and in fifteen years it will expire. No purchaser would give you much for the residue of your term. You do not know on what terms the Government will extend your lease. Would not a general scheme under which men in your position could get grants in perpetuity on proper terms be welcome to you?

4. You are a lessee of land in a town for 99 years. Twenty or thirty years of your term have elapsed, and you begin to find that the Chinese, who have a practical way of looking at things, put a very different value upon your land and that of your neighbour, who has got a lease for 999 years. You would like, would you not, a lease like his, or a grant in perpetuity and would not be unwilling to pay an increased rental for the privilege?

5. You have inherited from your father an estate in Province Wellesley and, having made up your mind to sell it, you proceed to examine the title-deeds. You find that the Government leases which were for a term of 20 years, renewable, on the application of the lessee, for a second term of 30 years, expired 20 years ago and were never renewed. You have no legal title to your estate, which might be sold by Government to the highest bidder. No one will purchase from you, or look at the security you offer on mortgage. Would you not hail with satisfaction a declaration on the part of Government that it will grant to occupiers of land in possession a title in perpetuity to such land upon equitable terms?

These are *bona fide* illustrations of the positions in which many landholders find themselves placed at the present time owing to the varying conditions upon which Crown land has been alienated in times past. The Land Office has not maintained a vigilant surveillance over these different kinds of titles, and the rights of Government are in abeyance. But the duplicates of Crown titles, which are preserved in the Land offices, enable all these qualified titles to be identified, the land to be traced, and, if necessary, the rights of the State to be insisted on where they have been prejudiced. This of course affects the value of land held on short leases, or on unfulfilled conditions, while adding enormously to the work of the Land Department. I do not think therefore that I err greatly in putting *uniformity of title* as one of the first wants of the public, though it must be subsequent in order of time to *accurate survey*. Uniformity of title is moreover essential to the simplification of conveyancing. It is idle to talk of conveyancing by registration of title upon the system introduced in South Australia by Torrens, while the grantees and lessees from the Crown hold upon ten or twelve different kinds of instruments.

It must not be supposed that an individual who finds himself in any one of the positions indicated in the questions just put can at once obtain attention to his individual case upon application to the Land Office. His case is only one of a class, and it is for his interest therefore that the principles on which the whole class will be dealt with should be declared as early as possible, so that his land, now depreciated in value, may be raised in public credit.

SURVEY.

Next as to a new survey of the colony. It may be safely laid down—

- (a) that the existing general maps of the settlements, showing allotments, so far as they have been completed, are in general untrustworthy;
- (b) that very few holdings (except those quite recently demarcated) are marked by boundary marks; and
- (c) that very few holdings will be found to agree in dimensions and area with the diagram or title plan usually found endorsed upon Government grants and leases.

It is also a fact that the only lithographed public maps of any part of the colony showing allotments are the maps of Penang and Province Wellesley published in 1854-55 from Moniot's surveys. These are of course in some respects out of date. There are no published allotment maps of Singapore or Malacca.

Here I resume my questions to the persons interested:—

6. You are the owner of a piece of land in Singapore. Are you satisfied with the absence of public lithographed maps in which your allotments among others would be found duly recorded?

7. You have to pay a fee of one dollar in order to inspect the general map of the settlement in the Surveyor-General's office when you want to identify the whereabouts of your holding. When you have done so, and have also paid for a tracing of it, you have no guarantee that it accurately represents your land, for the Government admits that many of the old surveys cannot be depended upon. Does not this state of things involve you in perplexity and loss?

8. You are the lessee for 999 years of a piece of land under a Government lease. You are about to cut up the land and sell it in small blocks for building purposes, and for this purpose you are anxious to surrender your existing lease to Government and to take up as many new ones as you propose to make subdivisions. The land of which you are in possession is found to differ altogether in dimensions and area from the land described in your lease, and you appear

to have 1,000 square feet of land less than you ought to have. The Land Office is willing to accept your surrender, but declines to prepare fresh titles except on the basis of a new survey of the land of which you are actually in possession. The new plan on the back of your new lease will not agree in any way with the title plans of your neighbours, who have not surrendered but who are no doubt as far out in their occupation as you have been. Is not the remedy a re-survey and re-issue of titles for the whole block, recognising long possession as the basis of settlement?

9. Your land is not demarcated by permanent landmarks and you are rather doubtful as to what your exact boundaries are. You employ a private surveyor for the purpose. He surveys the land as you point it out to him, aided by the diagram endorsed on your lease, but he tells you that he cannot identify the points marked in the diagram since there are no points of departure in or near the spot corresponding with any points marked in the general plan in the Survey Office. Your neighbour disputes your claims and employs another private surveyor with different results, the want of fixed points of departure making certainty impossible. Is it not better to get questions of this kind settled once for all by a re-survey by Government than to leave individual cases to be settled every now and then by legal proceedings, and will not a trustworthy survey raise the price of land very much?

10. You wish to purchase a piece of Crown land and you wish to describe it in your application to Government. You have no map to refer to unless you go in person to the Land Office and pay one dollar for permission to inspect the general map. Is not this unsatisfactory?

11. You go to the Land Office and consult the general map, but, even if you are able to ascertain and point out the exact position of the land you wish to acquire, with reference to contiguous holdings, you cannot mark it off, or point it out with precision on the ground, for there are no definite boundary marks to show the limits of the adjoining alienated land. Therefore, before a surveyor can measure off the land you have applied for, he may, perhaps, have to survey your neighbours' holdings in order to get a starting point. Does not this occasion waste of time and money?

For every reason for desiring a new and accurate survey of the colony which may be put forward from the point of view of the landholder, several may be advanced from the point of view of the Government.* Two will suffice here: first, nothing but an accurate survey, under a system which will compel the attendance of persons to point out their boundaries and which

* "In order to collect a land-tax properly, a general and correct survey should in the first instance be effected in all the districts belonging to us."—SIR STAMFORD RAFFLES; *History of Java*, I, 155, n.

"I come now to the remedial measures. The first and most obvious is to increase the surveying staff and to push forward surveys."—SIR F. WELD TO LORD KIMBERLEY, 1880.

will require the production of titles, will enable the State to ascertain correctly the rights of individuals, or to obtain the payment of dues now eluded; second, accurate survey must necessarily be the forerunner of the issue of fresh titles in perpetuity and of the simplification of conveyancing. To issue new titles by following plans and surveys acknowledged to be inaccurate would be an operation which no administrator in his senses would propose. You cannot simplify conveyancing on the Torrens system unless you substitute a uniform grant, or certificate, in perpetuity, for the numerous kinds of titles now in existence; you cannot recall the old titles and issue new ones unless you have an accurate survey to guide you* ; and, finally, you cannot identify subdivisions, unauthorized occupations, and other instances in which payment of revenue is eluded, except by the same means, namely, careful and accurate mapping by surveyors working under special powers given to them by an Ordinance of the Legislative Council.

REGISTRATION OF DEEDS.

I come now to the subject of registration of deeds. The Native landholder looks upon a system of registration of transfers, &c., as a machinery devised solely for the purpose of putting a fee of two dollars for each transaction into the treasury of the "Kumpani." The imperfect and almost useless system of registration which has been in practice in the Straits Settlements for the last forty years justifies perhaps to a great extent the Asiatic explanation of its *raison d'être*.† It has been optional with a transferee to register his deed or not, the only disability he incurs by non-registration being that the document is not admissible in evidence. But no limit of time being prescribed within which a transfer of land must be re-

* "In fact the survey question is the practical difficulty in the way of indefeasibility. Many of the older surveys of the colony, though sufficient for primary purposes of settlement, are dangerously defective and unreliable as the basis of a system to which accuracy in this respect is essential."—New Zealand. *Bluebook* (House of Commons) on *Registration of Title* (British colonies), May 10, 1881, p. 98.

† "A great drawback in this colony is the inaccuracy of early surveys. In the country districts the landmarks have in many cases disappeared, while in the town sites for the most part no starting point was taken, so that one allotment has to rely upon its neighbour for position."—Western Australia. *Idem*, p. 101.

† "It may be accepted as an axiom that any system of registration not based upon the principle that registered instruments shall have priority amongst themselves according to the date of registration, and over all unregistered instruments whatsoever, is worse than useless."—*Essay on Transfer of Land by Registration*, by SIR R. TORRENS, p. 10.

gistered in order to be valid, the disability alluded to is very simply cured. When circumstances arise which require the production of the document before a Court, what can be easier than to go to the Land Office and get it registered? It is not uncommon in the Land Office to register deeds executed twenty years before and even longer.

Now the real object of registration is to protect the public and to guard against fraud by preventing secret and fraudulent transfers of property. If every man who deals with his property by deed is obliged to lodge particulars of the transaction at a Government office within a given time, and if the records of that office are open to the inspection of the public on the payment of a small fee for search, intending purchasers and mortgagees have within their reach a means of satisfying themselves that the person to whom they are about to pay money is really in a position to sell or mortgage his land, as he professes to be. If he should have already sold or mortgaged, or otherwise dealt with it, the document by which the transaction was effected will be found duly recorded in the registry; if the register shows no such transaction, the purchaser or mortgagee may proceed with confidence, for he will, if properly advised, register his deed as soon as it has been executed, and that registration will give him priority over any secret purchaser or mortgagee who has not registered.

It would not be unreasonable to surmise, even if proof were wanting, that a vast amount of fraud and villany is fostered in the Straits Settlements by the inefficiency of the system of registration of deeds. The registration now practised, such as it is, consists in an entry in a book kept by a clerk in the Land Office and a corresponding number and endorsement on the deed itself. But the book, or series of books,—for in each Settlement the register now extends to many volumes,—is not indexed, and who can say whether the meagre note which the clerk has entered really conveys the purport of the formidable document which was handed to him? Will a solicitor, who searches for the entry some day in the interests of a client, be able to get much satisfaction out of it; or will he not regard such a search as labour lost, knowing that the entry, if found (no easy task without an index), can tell him little or nothing, and that, for want of a compulsory system, there may be other deeds in existence, unregistered, but not on that account the less valid?

In 1838 a Commissioner sent from Bengal to the Straits Settlements to investigate the defects in the land system

reported that he was satisfied "that the necessity which has heretofore existed of registering conveyances of lands has been of very great service in checking fraudulent transactions and in protecting the simple and ignorant classes of the community from designing and expert swindlers." *Crescit in orbe dolus*; the rogue of 1883 is not likely to be less expert or designing than the swindler of 1838, and few will doubt that the opinion of Mr. Young, that a comprehensive system of registration of deeds is necessary for the protection of persons dealing with land, is as true in respect of the colony at the present day as it was when first expressed 45 years ago. It seems incredible that such a measure, the necessity for which was shown so many years back, should have been so long delayed. How much fraud and injustice, how much suffering to innocent people, how many lawsuits and quarrels might have been prevented had secret and fraudulent conveyances been then rendered difficult or impracticable! In what a different position would landowners in this colony be if we could truly say with the Registrar-General of Land, New Zealand,— "The system of registration of title-deeds, which has been in force almost from the foundation of the colony, greatly facilitates the investigation of titles, rendering the preparation of abstracts of title, which is so cumbrous and costly an incident of English conveyancing, wholly unnecessary!"*

There may of course be in the community persons to whom the necessity of registering (by the deposit of a duplicate) every instrument of sale, transfer, or mortgage of land will not be welcome.† The owner of land heavily encumbered will no doubt suffer in credit when his apparent solvency is qualified by the easily-proved fact that his estate is mortgaged up to its full value. But the persons who give him credit will no doubt view the matter in a very different light. The advantage of, nay the absolute necessity for, a system of registration of deeds is beyond the requirement of proof or argument. If persons interested in land should doubt this, let them consider the following questions and judge of the position in which they stand under the existing law:—

12. You are the administratrix of the estate of your deceased husband and find yourself obliged to bring an action against a person

* Blue-book (Registration of Title, British Colonies), 10th May 1881, page 98.

† "It is a mistake to represent publicity as indispensable to registration. If the policy of secrecy be approved, nothing would be easier than to limit the privilege of search to beneficiaries and their agents. But the opposite policy has been thoroughly tested and has produced none but beneficial results as applied to wills and estates and interests under the various systems of registration."—*Essay on Transfer of Land by Registration of Title* by SIR R. TORRENS, page 10.

who has taken possession of a piece of land which belonged to the deceased in his lifetime. At the trial the defendant confidently produces a conveyance alleged to have been executed by the deceased some years before his death. It is a forgery, but there are no means of proving this. Suborned witnesses are forthcoming to prove execution, and you lose your case and your land. If, as in India, the law required that such a conveyance to be valid must have been registered within four months of its execution, this fraud could not have been perpetrated. What do you think of a state of things under which you are liable to be plundered in this way?

13. You are the creditor of a bankrupt whom you have always supposed to be the owner of a large estate which goes by his name. When the trustee in bankruptcy comes to take possession of the assets it is found that this estate is not the property of the bankrupt, but was settled many years before on his wife. Would you not like to have had the means of ascertaining this fact sooner?

14. An agent to whom your father entrusted his title-deeds for safe custody has, by fraudulent personation, raised a large sum of money by mortgage of the land. He pays interest to the moneylender for several years and the fraud is unsuspected. Your father dies, the fraudulent agent ceases to pay interest, and the moneylender proceeds to notify his intention to sell the land under a power-of-sale in the mortgage-deed. There being no law in the colony requiring the registration of deeds of mortgage of land, application at the Registry results in no information; the moneylender refuses to permit inspection of the deed-of-mortgage; and your father's death has made it difficult, if not impossible, to prove beyond doubt that the fraudulent mortgage was not executed by him. Contrast your position with what it would be if it had been necessary by law to register that mortgage-deed within a given time of its execution by the deposit of a duplicate in the Land Office. Would you not in the latter case be materially assisted in exposing the fraud by the evidence obtainable in the Registry, the date of and circumstances attending the registration, the names of the attesting witnesses, &c., &c.?

15. The owner of a piece of land in a town, held by him under a lease from the Crown for 99 years, on which he has to pay an annual quit-rent of 30 dollars, subdivides it into one hundred lots which he sells to as many persons. You are the purchaser of one of these lots and are the holder of a deed-of-assignment from the Crown lessee. None of the assignments are registered and the Land Office knows nothing of the subdivision of the land until the rents, formerly paid regularly, fall into arrears, and the fact is then elicited that the lessee has parted with his interest in the land and is now represented by 100 assignees, purchasers of small subdivisions, no one of whom will admit his liability for the quit-rent of thirty dollars per annum. The whole land, or any part of it, is liable to be seized and sold for non-payment of rent, but will you not think it very hard if the Land Office authorities proceed to seize your allotment and to sell it in order to realise the full sum? Had it been necessary to register all transfers in the Land Office, the necessary apportionment

of the rent would have been settled at the time and your individual liability for a small annual payment, instead of joint and several responsibility for a large one, would be beyond question. Are not your interests prejudiced by the want of a proper registration system?

16. You are an execution-creditor and the sheriff at your request has seized a piece of land belonging to the judgment-debtor. A person comes forward and claims the land as his property by virtue of a deed-of-conveyance which he produces. The deed is fraudulent and has been antedated, purporting to have been executed before the cause of action arose. But how are you to prove this? Does the present system of optional registration assist you in the least? But would not a compulsory system make such a fraud almost impossible?

17. You are an Advocate of the Supreme Court. An intending purchaser of land asks you to investigate the title, the deeds being lodged with you for the purpose. You tell him that, as far as you can judge from the deeds themselves, the title is clear, and he may safely conclude the bargain. But are you not bound also to tell him that, owing to the want of an efficient system of registration, it is impossible, by means of any search in the registers in the Land Office, to ascertain anything about the title, and that accordingly there may be undeclared transactions qualifying or vitiating the title which he is asked to accept?

I need not pursue this subject further: the registration of deeds is an unsatisfactory system as compared with the registration of title, but, as I shall show, the latter system can only be introduced in the colony after a re-survey of the whole of the occupied land, the recall and cancelment of the present grants and leases, and the issue of new grants or certificates. It has been necessary to explain how essential it is, for the protection of the more ignorant portion of the community, to reform the registry of deeds in the meantime. If the public once understand that for the present registration fee of two dollars they get no value whatever, whereas a register of deeds conducted on recognized principles will afford great protection against fraud, they will support in every way a reform which will tend to diminish the facility with which the more weak and credulous of the Native cultivators may be swindled by crafty and unscrupulous persons.

SIMPLIFICATION OF CONVEYANCING.

Among the *desiderata* required for the completion of a reformed land system, I have included *the simplification of conveyancing*. It surely is an extraordinary anomaly, a monstrous growth resulting from the unreasoning acceptance of inapplicable theories, this planting of the English system of conveyancing among Malay and Chinese peasants in the Straits Set-

tlements! I have never spoken to an Indian official on the subject who did not express the greatest wonder and astonishment at such a result of Anglo-Indian colonisation.

I have shown in the early part of this essay that tenure by a grant or lease in writing from Government was adopted in Penang from the foundation of the colony. The Native (Malay) system of tenure was no doubt unknown to the founders of that settlement, though it still exists in Malacca; otherwise it would have been easy to reserve a site for the town within which lots might be alienated by grant or lease, leaving the country lands to be gradually taken up and cultivated on the Native system, which may be summed up as follows:—The right to take up, with the authority of the headman of the district, as much land as the occupier can bring into cultivation and to hold the same in perpetuity (with the right of alienation) as long as the land is cultivated, the Government dues paid, and the customary services (if any) rendered. Abandonment for three years, or refusal to pay revenue, operates as a forfeiture. These terms closely resemble the conditions on which the Native population hold their lands in British Burma. There is no difficulty in registering and assessing, for the purposes of revenue, the fields and gardens held in this way by the cultivators of a district; nor does the want of a written title from Government interfere in any way with the facility with which such lands may be sold or mortgaged. However, as has been explained, no distinction as regards tenure has ever been made in the Straits Settlements between town and country lands and, except in parts of Malacca, where the Native tenure is respected, all landholders hold under formal grants or leases from the State.* Tenure by a legal document in English involves all the incidents attendant on the complicated system of English real property law: the Chinaman's patch of land in the interior of Singapore island, just rescued from the jungle, is held and disposed of on the principles which have descended from feudal times in England; and all the refined technicalities about the transfer of the legal estate to a mortgagee, equities of redemption, trusts and settlements, have found a home in the Colonial Courts. In Malacca, where the Native system might have been carried

* It is only as to Malacca that the concluding words of Lord Kimberley's despatch, dated the 20th January 1882, hold good:—"Agricultural lands appear to have been held of former Sultans on terms similar to those that prevail in the greater part of the Indian Peninsula, and the practice of the East India Company, when it governed the Straits Settlements, was actually the same in those Settlements as the practice adopted in the rest of its possessions."

out in its entirety, infinite trouble and confusion have been caused by the introduction of the theories of English real property law and the working of two systems of tenure side by side.

It was in vain that the Indian Commissioner sent to the Straits in 1837 declared that he was fully satisfied "of the total inapplicability of the fictions and refinement and pedantries of English law practice to the circumstances and usages of the Straits population,"* and that the Governor-General in Council expressed (in 1844) his opinion that "in settlements like those of the Straits useless English legal technicalities ought not to be inserted in writings, and that the deed-of-sale should be drawn up with the utmost conciseness compatible with clearness and the insertion of the requisite conditions."† It was not apparently seen that the alternative presented was to abide by the English system of tenure, or to adopt a different one, say the Native customary tenure or some other; that the Government, by issuing grants and leases couched in English legal language, rendered the adoption of legal technicalities necessary in subsequent conveyances, and that therefore any simplification of terms must emanate from themselves; and, finally, that no one but a lawyer could safely say what amount of "conciseness" was compatible with safe conveyancing.

The result is that all old titles in the Straits Settlements are represented by bundles of documents, many of them drawn by insufficiently instructed persons, to use a mild term, and being somewhat grotesque illustrations of the art of conveyancing as practised under English law.

Now it would be exceedingly unsafe and undesirable at the present day to do away with the system of holding by written grants from Government, however expedient it might have been, in the early days, to initiate a system in keeping with Native customs and mode of thought.‡ But there need be no difficulty in simplifying conveyancing if, after a re-survey of the colony, existing titles are recalled and new ones issued on a uniform principle.

Adopting the method which I have already pursued let me indicate some of the inconveniences of the present system by a few questions to landowners and others interested in land:—

18. You wish to buy a piece of land and the vendor, when the bargain is made, exhibits his title-deeds for your inspection. You

* *Correspondence relating to the Land-revenue System, Straits Settlements, 1837—1844*, p. 25.

† *Idem*, p. 92.

‡ "It is in my opinion of paramount importance that the regulations that may be laid down should be, as far as possible, in harmony with the practices, habits, and ideas of the inhabitants."—LORD KIMBERLEY TO SIR F. WELD, 1882.

find that there have been a great many devolutions at different times and the number of documents is considerable. If you are a Native, ignorant of English, all English documents are of course unintelligible to you; and if you are English, or well acquainted with the English language, you are still perhaps unequal to the task of forming an opinion as to the scope and validity of legal documents. Must you not therefore, in the first place, consult and pay a lawyer in order to be satisfied that you may safely conclude the transaction?

19. Your lawyer decides that the title is satisfactory and you pay, in addition to the price of the land, a considerable sum for his opinion and for the conveyance which is made out in your favour. Is not this a serious tax upon transfers of land, and is it not likely to grow more serious as time goes on and documents multiply?

20. You have been in possession of your land for some time. When you desire to raise a sum of money upon mortgage, perhaps the mortgagee may not be satisfied with your title without fresh investigation by *his* lawyer, and in that case you may have to pay legal expenses again, as well as the cost of making out a deed-of-mortgage. Are not unreasonable delay and expense likely to be the result of all this?

21. By an ancient and curious fiction, the effect of the deed-of-mortgage which you sign is to convey your land to the mortgagee, subject to a right of redemption. When you pay back the money you have borrowed, your land is not free without further legal formalities. It is necessary, in order that you may be in the same position that you were before the deed-of-mortgage was executed, that the mortgagor shall, by another deed, re-convey your land to you. Does not this involve fresh application to a lawyer, further delay, and fresh expense?

22. Instead of going through the formality of re-conveyance, you (a Native) receive back from the mortgagee (a Native moneylender) the deed-of-mortgage, with a receipt endorsed upon it, for the money which you have repaid: this you immediately destroy.* Under the proposed system of registration of deeds there will be ample evidence in the Registry Office of the mortgage, but none of the payment. A blot is therefore established on your title and the value of your land may be diminished. Is not this rather an inconvenient result of the application of English law?

23. You agree to sell your piece of land and, being quite ignorant of the mysteries of conveyancing, you imagine that there is no difficulty about the matter and sign an ordinary sale-note for it. The blot on your title, owing to the want of a re-conveyance after mortgage, is objected to by the purchaser's solicitor; the moneylender, who was the mortgagee, has left the colony, and you are put to great expense in communicating with him in a foreign country and in procuring the necessary document from him before the purchaser will accept your conveyance. What is to be said of an artificial system of this

* Mortgage deeds returned after payment by the mortgagee are very commonly torn up by the Native mortgagor and re-conveyance is seldom resorted to.

sort as applied to the daily transactions of a very ignorant body of Asiatics? *

Land owned by Natives in the colony frequently changes hands without much investigation of title. Printed forms of conveyance are filled up, the stamp duty paid, and documents are executed without much formality or care. But this is simply playing with edged tools, and the state of many titles, if investigated by gentlemen trained to the study of conveyancing, will sufficiently illustrate the danger of such a course should it be sought to maintain that the present system is moderately simple because legal difficulties are ignored.

LAND OFFICE RE-ORGANISATION.

I have left for discussion last of all the necessity which exists for putting within the reach of persons desirous of acquiring Crown land available for disposal to the public *an efficient Land and Survey Office* which will deal promptly with all applications for grants and leases.† At present, in consequence of the meagreness of the official establishment, no time can be fixed within which land applied for can be surveyed and the application finally dealt with. This arises in a great measure from the fact that the Survey Office and Land Office are two distinct departments under independent control and that no proper system exists under which the separate duties and responsibilities of each are defined, and it is ascribable also to the fact that no district organisation exists by means of which, through successive grades of Native headmen and district officials, the wants of the peasant may be made known and attended to.

* "If a man having a piece of land rashly concludes that he can deal with it as he can with a horse or cow, agrees to sell it, and signs an ordinary sale-note for it, he has laid himself open to a possibility of endless annoyance. His title may be absolutely perfect, but even in that case he can be called upon not only to produce his title-deeds but also to provide, at his own expense, an abstract of his title. Frequently, however, his title is one of that numerous class known as good holding titles, that is to say, titles which, although not technically perfect, are practically secure against disturbance. If so, the seller can be compelled by the purchaser to make good, at his own expense, every technical defect, and if the purchaser's solicitor should insist on the title being made absolutely perfect, the seller will have to spare no expense to make it so. If he attempts to shirk, he is brought up with the threat of a suit for specific performance. The seller will have lost time, money, and temper in the affair, and will have acquired in return some knowledge of the law of real property which will not prevent him from including the law and its ministers in a general condemnation."—*Handy Book of the Land Transfer Acts, New Zealand, page 2.*

† "What we have wanted has been a Land Department strong enough to work the laws. A good deal has been attempted of late years and something effected, but a very great loss to the revenue and an extreme injury to the public has accrued, and is accruing, from the insufficiency of the means placed at the disposal of the Land and Survey Departments."—SIR F. WELD TO LORD KIMBERLEY, 1880.

The difficulty and delay experienced by the people in procuring survey and grant of a piece of land selected for cultivation has led in past years to wholesale appropriation of Crown land by unauthorised persons. The unlawful appropriation of Crown land will henceforth be punishable by fine and imprisonment: the public is therefore entitled to demand that a proper machinery for the disposal of the available waste land of the colony shall be maintained.

An explanation of the procedure which is followed at present will show clearly the weak points of the system and help to indicate the direction which reforms should take:—

You are a Malay inhabitant of Province Wellesley and you are desirous of taking up a piece of Crown land for the purpose of cultivation. It is either forest or waste land: you have selected the tract you want and are ready to commence to clear it. How do you proceed?

There is a so-called (unpaid and irregularly appointed) *Penghulu*, or Malay headman, in your district and you go and consult him as to the means of obtaining the land you want. He accepts your little offering, whatever it may be, but tells you that he has no authority to deal with land in any way and that your only plan is to make a personal application at the Land Office in George Town, Penang. This involves a long journey by land and then a boat journey across the strait which separates Province Wellesley from the island of Penang. You are unaccustomed to towns and to interviews with English officials, so you get some one to accompany you who has the reputation of knowing all about the ways of the Government offices. You have to pay for his transport and for his meals and perhaps to give him a small *douceur* into the bargain. After some delay you penetrate to the Land Office and have an interview with a clerk or with the Collector of Land Revenue. You make known the nature of your application, describe as well as you can the position and extent of the land you ask for, and various particulars are then and there entered in a book. You are then told that if the land is granted to you, you will have to pay certain specified sums and you are directed to come again to the office to ascertain the success or otherwise of your application in the course of a week or fortnight. You go away and this is what happens in your absence:

The Collector of Land Revenue, who lives in Penang and knows little personally of the district where you live and nothing of the land which you wish to acquire, has no power himself to grant or reject your application. He has to submit it to the Resident Councillor for his instructions. But, first he has to make certain enquiries in order to be in a position to inform his chief as to the advisability or otherwise of granting the land applied for. Clearly the natural course would be to get the necessary information from a Native revenue official in the district, or to visit the locality in person. But there is no local Native revenue official anywhere in the district, and if the Collector

goes to the spot in person the Registry of Deeds must be closed, for he is Registrar as well as Collector. In perplexity he sends across to the Survey Office to enquire if the land is available for alienation (he has no modern map of the district in his own office, the lithographed map of Province Wellesley is nearly thirty years old, and there have been two accessions of territory in that period). The answer is that as far as can be gathered from the application, which is perhaps wanting in particularity, the land is available. If the Collector is satisfied with this he passes on the application to the Resident Councillor for his sanction. If not, he perhaps despatches a Land Revenue Officer, called a forest-ranger, to view the land and report upon it. But, if applications are numerous, it may be a considerable time before the forest-ranger (of whom there are very few) can find time to visit the land in question.

In the meantime you, the applicant, have called again and again at the office and have been told each time that the matter is under consideration, that the Survey Office has not yet sent an answer about it, that the Resident Councillor's order has not yet been obtained, or that a forest-ranger will be sent shortly to inspect the locality. At last you are told that the Resident Councillor has approved of the issue of a lease and that the necessary document will be prepared when the land has been surveyed. Then commences a fresh period of delay, for there is no surveyor available and your land is in rather an out-of-the way district. In despair, and without authority, you take possession of the land and proceed to clear and cultivate it. You still continue to apply from time to time for your lease, but are told invariably at the Land Office that they are waiting for a plan from the Survey Office. At the Survey Office you are told that it is impossible to say when a surveyor can be spared. You have done your best to get a legal title but none the less you are in possession without one, and some day when the district has been surveyed, perhaps in your absence, you may find that the land you have cleared has been disposed of to some one else.

The faults exposed in the preceding account of an applicant's difficulties seem to be—

- (1) the want of local Native officials through whom applications for land may be made and from whom Land Revenue Officers may obtain detailed information about land applied for in the localities placed under their charge;
- (2) the want of a resident revenue official in Province Wellesley in charge of the Land Office of the district;
- (3) the insufficiency of the establishment of the present Land Offices and the necessity which exists of appointing separate Registrars of Deeds so as to leave the revenue officials free to move about in the district;

- (4) the want of new lithographed maps showing the progress of the survey up to date ;
 (5) the insufficiency of the survey establishment.

These faults and deficiencies are not confined to Province Wellesley: that district has been taken merely by way of illustration. The description above given will be found to be applicable in the main *mutatis mutandis* to Singapore, Penang, and Malacca.*

So much for the present system of land administration in the Straits Settlements. Let us now see what it may become in the future and the means necessary for its regeneration. It should be stated, however, at the outset that I am now writing as one of the public, not as an officer of Government, and that the views expressed here, though I am prepared to recommend them to the Government for adoption, are at present merely the opinions of an individual.

Let me recapitulate the objects to be kept in view. We want to ascertain the circumstances under which the occupied lands of the colony are held (and, owing to the absence of boundary marks and proper registers of subdivisions, this information is now out of our reach); to obtain an accurate survey of the lands of the colony by holdings; to establish a system of registration of deeds which will protect the public against fraud and give full information to the Revenue Officers of all changes in title; to organise a district machinery by means of which the Native population may be brought in more regular communication with the officers of Government; and to simplify the existing cumbrous system of conveyancing.

DEMARCATIION.

The first stage must be *demarcation*† and the establishment of fixed boundary marks, and for this special powers must be given by law to the officers employed. The procedure would be more or less as follows:—

The Executive Government having decided that all the lands within certain limits shall be demarcated, a notification

* "In Malacca 14,227 allotments, containing nearly 37,475 acres have been surveyed, but no leases issued, owing to the want of draughtsmen to plot the surveys."—SIR F. WELD TO LORD KIMBERLEY, 1880.

† "The immediate completion of the revenue survey is essential and would be self-repaying at once, but your Lordship will see that before a revenue survey can be carried out the areas to be surveyed must be fixed."—SIR F. WELD TO LORD KIMBERLEY, 1880.

to this effect is published and a Boundary Officer is appointed. He may or may not be a surveyor, but it is quite clear that the duties of Boundary Officer cannot be performed by any one who has other work to attend to; his time will be fully occupied with the demarcation of the holdings in the district taken up and he must be allowed a reasonable establishment of Native assistants and, if possible, two or three Native surveyors or land-measurers. It will probably be found useful to attach to his party several selected candidates for the office of *penghulu*, or headman. The headman ultimately appointed to the charge of a particular circle will thus have had the advantage of learning all about the boundaries of the holdings included in it and of knowing, what is expected of him, as to the maintenance of marks, &c. The Boundary Officer commences by issuing a general notice to the owners of land within the district requiring them to demarcate the boundaries of their respective lands. The marks may be either brick pillars, granite posts, or earthen drain pipes sunk in the ground so that the top of the pipe is flush with the surface. There must be a depôt of granite posts and earthen pipes in the district at which landowners may purchase the number they require at a prescribed price. In towns land covered with buildings will be best demarcated by granite posts set in or against the walls; for lands in towns not covered with buildings, and for small holdings in the country, earthen pipes are the most suitable marks; and for large properties brick pillars may be appropriately employed. Under the Boundary Officer each of his Native assistants will, in a locality assigned to him, superintend the setting up of the marks by the persons concerned. If landowners fail to comply with the general notice, the Boundary Officer may set up the necessary marks, charging a sum over and above the actual cost, and he may at any time, by a special notice, require any person interested to attend before him to point out boundaries, or to clear lines, or to give information, or to produce documents. A careful list of all boundary marks will be prepared and will be handed over to the headman of the circle (if one is appointed), whose duty it will be to see that they are kept up and not removed or damaged.

Disputes will of course arise from time to time during the progress of the demarcation of a district, especially where land is very valuable. The Boundary Officer's decision must be liable to be reviewed by the Commissioner of Lands in Singapore and by the Resident Councillors in Penang and Malacca, with, perhaps, the right of appeal to the Supreme Court.

SURVEY.

All the holdings in a district having been demarcated, it is ready for survey. The demarcation party will work about a year in advance of the surveyors. The survey which I advocate is nothing less than an entire re-survey of the whole colony, and this will best be carried out by a survey party specially formed in India under an officer belonging to the Survey of India. It will be expensive, but it will be thorough.

The disadvantages under which European field surveyors have hitherto laboured in the Straits Settlements have been almost insurmountable: they have arisen from two causes,—first, the want of trained Native assistants and, secondly, the want of the requisite statutory powers to compel the attendance of the owners and occupiers of land to point out boundaries, and to produce documents relating to their lands. The first difficulty is a very serious one. Men accustomed in Ceylon, or elsewhere, to have the assistance of skilled Native assistants find themselves sent into the field with a few Tamil flagholders and chainbearers, who have no intelligent knowledge of the work in hand. The whole of the work consequently falls upon the European surveyor and progress is very slow and very expensive. Surveying is not taught in the schools in the Straits Settlements and there has been little effort to train boys from any section of the Native population, though Chinese, one would think, would make excellent surveyors.

To employ, in all the detail drudgery of surveying, a European surveyor, who is competent to direct the labour of 50 Native field surveyors, if he only had them, is sheer waste of power. At the end of a season what impression has he made upon the district assigned to him and at what cost? Look at the results of this hand-to-mouth system as exemplified in this little colony, the whole area of which is little more than 1,300 square miles: a survey, begun in 1840, still unfinished; much of it untrustworthy, even when boundaries can be identified; no fixed marks, scarcely any published maps. And what has been the expenditure in the last 40 years?

Division of labour is the only economical plan. A district surveyor may be able, with the assistance of a few coolies to carry his chain and flags, to survey his district, and to superintend the erection of marks; he may be competent on his return home to plot his own work from his field books and to produce a fair map for record in the office. But at what rate will he proceed if he does all this?

The second difficulty is one which makes all the work done in the past, including the work done during the last two or

three years (since increased expenditure has been sanctioned), more or less untrustworthy. Except in Malacca, where surveyors have special powers under Act XXVI of 1861, a surveyor in the colony cannot require the attendance of persons to point out the boundaries of their lands, to clear lines, or to produce documents of title. He has to depend upon the voluntary compliance of the persons interested, and he is not assisted by Demarcation or Settlement Officers, for there are none. This is not only unjust to the surveyor employed, whose work is delayed, and its value impaired, but it introduces an element of untrustworthiness into the maps produced. How can you regard with confidence a map prepared after a survey executed without the concurrence or assistance of the persons most interested and without access to the documents in which the boundaries of holdings are mentioned? May not some fraudulent person have represented himself as the owner of land to which he is not entitled, or may not some one have pointed out boundaries which give him a slice of his neighbour's land without the latter knowing anything about it? May not a survey executed by a surveyor, who is without the requisite statutory powers to call for all the necessary assistance and information, do absolute mischief, since it places upon record facts which may be incorrect?

The old surveys and maps contain a body of information which will be of general use to an Indian survey-party (if one can be formed for service in the Straits) in carrying out a new cadastral survey, but, for all revenue purposes at present, they are almost useless. Nothing has been done towards keeping them up to date, subdivisions of holdings, having been neither notified nor registered, are of course not shown, and there are heavy arrears of revenue in respect of these last, which nothing but a new survey will enable the Revenue Officers to collect.

It may be confidently urged therefore, that an entirely new survey of the whole colony (commencing with the towns) must be undertaken. As district by district is completed, we shall have data upon which to collect arrears of revenue of all kinds, and the new registers of titles which will be made will secure every man in his rights, while placing the Land Revenue Offices on an efficient footing.

THE INDIAN CADASTRAL SURVEY.

The Department of the Survey of India is, in the completeness and elaboration of its details, as perfectly organised as an army. It is the outcome of a century's experience of

survey work in the East, and every detail of organisation, equipment, and distribution of duties has stood the test of actual operations in the field. Under the administrative staff (the Surveyor-General, the Deputy Surveyor-General, and three Assistant Surveyor-Generals) there are Deputy Superintendents of three grades and then Assistant Superintendents of three grades. These form the senior department. The junior branch includes surveyors of four grades and assistant surveyors of three grades. Under these are Native sub-surveyors, writers, draftsmen, computers, levellers, tindals, measurers, hospital assistants, *burkundazes* (watchmen), &c.

A survey-party is a regiment of this army. Each party is complete in itself and is composed of the necessary number of officers, subordinates, and men of each grade. It will comprise, for instance, in Burma a Deputy Superintendent in charge, two surveyors, five assistant surveyors, a permanent Native establishment of perhaps 150 men of all grades, and a temporary Native establishment (cadastral) of 700 or 800 sub-surveyors, measurers, &c. Field operations commence in November and go on till May, when the camps are broken up, the temporary establishment is discharged, and the work of the "recess" is undertaken, the rainy season rendering field-work impossible. A party thus composed has surveyed in a year, in British Burma, 700 or 800 square miles at an average cost per acre of 5 annas 5 pies (about 15 cents of a dollar). Three parties employed there in 1881-82 surveyed cadastrally 2,096 square miles, of which the cultivated area was 638,720 acres. The total number of fields surveyed was 1,435,297, the average size of a field being about half an acre. The average cost of one party for the year was Rs. 1,52,473, or about 68,350 dollars.

The disposition and procedure of a survey-party in the field is something of the following kind:—

The party is divided into several camps, or sections, each under the immediate charge of an European officer. Supposing that it is found convenient to have four camps of this kind, the distribution will be as follows:—

- No. 1.—Boundary camp.
- No. 2.—Cadastral do.
- No. 3.— Ditto do.
- No. 4.—Revision do.

The boundary surveyors belonging to camp No. 1 survey the outer boundaries enclosing the district which is to be

cadastrally surveyed during the season and the subdivisions and kwins* into which it is divided. These boundaries have been previously demarcated by a Boundary Officer and rough sketch-maps have been supplied by the Settlement Department to the officer in charge of the survey party. Where there are no natural boundaries, such as creeks and roads, the boundary surveyors are guided by posts having a ring of white paint, which have been set up under the direction of the Boundary Officer at every bend of the boundary.

Boundary surveyors work with the theodolite: they traverse the boundaries and permanently demarcate all theodolite stations by means of drain-pipes sunk in the ground so that the top is just visible. The traverses are computed out and the field-sheets plotted in camp No. 1, assistance being given, if necessary, by computers and draftsmen from the other camps.

The work of camps No. 2 and No. 3 (cadastral) is identical. The sub-surveyors and field surveyors belonging to these camps survey and insert on the plotted field-sheets which have been made over to them by the boundary camp all the interior details, field and open ground, gardens, village sites, and all roads, streams, creeks, &c. Draftsmen and estimators complete the original maps, calculate the areas, and prepare traces of the maps and one copy of the area statement for the Settlement Department.

The revision camp (No. 4) is constituted in much the same way as camps 2 and 3, but it is not so strong in surveyors and rather stronger (in proportion) in draftsmen and estimators. This camp surveys all extensions and re-arranges the boundaries of circles, kwins, fields, &c., in fact revises the work whenever it becomes necessary to do so in order to fall in with the Settlement Officer's decisions in the operation of settlement. When the maps finally leave the camp for publication they show exactly how the land is parcelled out at the time of settlement and the area statements of course correspond.

The strength of the establishment necessarily varies according to circumstances, but it is approximately as follows during the field season:—

Boundary camp.—Two Europeans, 12 to 20 sub-surveyors, 6 or 8 computers and draftsmen, and 250 to 300 menial establishment (tindals, khalasis, line-clearers, &c.).

* A group of holdings corresponding nearly with the Malay *kampung*.

Cadastral camp (each).—Two Europeans, 3 or 4 sub-surveyors, 4 or 5 inspectors, 30 to 40 field-surveyors, 10 to 15 draftsmen and estimators, and 200 to 250 menial establishment.

Revision camp.—One European, 2 inspectors, 10 field-surveyors, 15 to 20 draftsmen and estimators, and 60 to 80 menial establishment.

During the "recess" the surveyors are reduced by being sent on leave and the office establishment is increased.*

SETTLEMENT.

To return now to the sketch of the procedure proposed as applicable to the colony, which I interrupted a few pages back to contrast surveying as carried on in the Straits with surveying by Native agency as practised in India:—

The Survey Department having completed the survey of a district, previously demarcated under the superintendence of a Boundary Officer, supplies to a special officer called a Settlement Officer tracings or photo-zincographed copies of the plan of each convenient section into which the district has been divided.

An area statement showing the exact area of every holding accompanies the plan. With this information at his disposal, the Settlement Officer will proceed to ascertain the nature of the title upon which each occupier holds his land. This will be a most important duty and will require the whole time of a competent officer, who must have a sufficient staff of clerks, bailiffs, notice-servers, &c. He may or may not be the same officer who carried out the demarcation as Boundary Officer.

The Settlement Officer must have power to call upon every owner or occupier to produce all the documents upon which he relies as evidence of title. He will move out into the district under settlement and will have to live there in camp while the work is going on. His Native assistants will serve all the necessary notices, and he will also have the assistance of the newly-appointed headmen, or candidates in training for the office. The titles produced to him will be of various kinds and must all be classified separately, and he will receive separate instructions regarding each kind.

For instance there will be—

- (1) occupiers without title: it will have to be decided what terms the Settlement Officer may offer to these;

* I am indebted for the foregoing details to Major J. R. McCullagh, R.E., Deputy Superintendent, Survey of India.

- (2) grantees in fee-simple ;
- (3) grantees or lessees subject to a condition which is unfulfilled : there must be special instructions in these cases ;
- (4) lessees for terms which have expired : the Settlement Officer must be instructed what terms he may offer ;
- (5) transferees whose transfers have not been registered : registration will have to be insisted on and arrears of quitrent recovered and sent to the Land Office to the Collector of Land Revenue ;
- (6) occupiers under grant, lease, or permit, who have more land than the area described in the document under which they claim : here again it will have to be decided on what terms the excess is to be held ;
- (7) Permit-holders, whose rent is in arrear : arrears will of course have to be recovered :

The Settlement Officer will have to make a tabular statement of all the holdings in each circle giving all the particulars to be included in the new grant or certificate, the preparation and issue of which will be the next step.

It will probably be necessary also to take a "statement of claim" from each person who professes to have a title to land. This, with the supporting title-deeds, must be examined by an Examiner of titles, assisted by a draughtsman, under whose orders a new land grant or certificate on the Torrens system will be prepared. It can probably be arranged that these certificates shall be engrossed, and the necessary diagrams put on them, by contract, at a fixed rate.

Let us now see how far we have got towards the attainment of the objects summarised at the outset. Boundaries have been demarcated, disputes settled, the holdings surveyed and mapped, and a Settlement Officer has been through the district calling in all the old titles, tabulating every man's claim, and settling, as far as possible, the terms on which the new title is to issue ; headmen have been selected and have received some instruction, and arrears of revenue have been collected in some cases, while in others the rights of Government in respect of land held without title have been discovered and a settlement offered to the persons in possession. New registers or rent-rolls have been prepared for the guidance of the Revenue Officers who will be in charge of the district, the old titles have been examined and cancelled, and new certificates of title of uniform tenor have been prepared.

We must assume also that all this time a compulsory system of registration of deeds has been in operation under separate Registrars of Deeds* and that the officer in charge of the Land Office has been set free to attend more closely and exclusively to revenue duties in his district.

All is now ready for the introduction of the system of conveyancing by registration of title in the place of the cumbrous system hitherto in force.

THE TORRENS SYSTEM.

The certificate issued to each landowner in the place of the title-deeds which he delivers up to be cancelled will be in duplicate; one copy will be bound up for record in the Land Office and will in this way form one page or folio of a volume of 200 pages or certificates. The series of volumes thus formed is the register of titles. The form of certificate, following the forms in use in Australia, would be to the following effect:—

CERTIFICATE OF TITLE.

REGISTER BOOK.

STRAITS



SETTLEMENTS.

Volume folio.

CERTIFICATE OF TITLE.

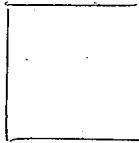
A. B. of [*Here insert description and reference to the statement of claim or memorandum of transfer pursuant to which the certificate is issued*] is now seised in an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorial underwritten, or endorsed hereon, in that piece of land situated in the district of _____, division of _____, being the allotment No. _____, containing _____ or thereabouts, and bounded as appears in the plan in the margin hereof and therein coloured green and in the plan deposited in the Land Office, No. _____, which said allotment is delineated in the public map of the said division deposited in the Survey Office and was originally granted on the _____ day of _____ 18____ under the hand and seal of _____, Governor of the said colony to

* The registration of deeds would of course be discontinued as soon as registration of title has been introduced throughout the colony, but for some time it would be necessary to have both systems working side by side.

In witness whereof I have hereunto signed my name and affixed my seal
 this day of 188 in the presence of

Commissioner of Lands, S. S.
 or
Resident Councillor.

Plan.



At the foot of this document, underneath the signature and seal of the officer by whom it is issued, there is ample room for the entry of such memoranda, or memorials, as may qualify the title. It will be requisite to enter carefully upon each certificate before issue, as well as upon the duplicate which is embodied in the register, a memorandum of every mortgage or encumbrance, in order of priority, the existence of which has been intimated to the officer who examined the title-deeds. The title-deeds, for instance, have been surrendered by a Native moneylender to whom they have been mortgaged. The certificate of title will, when ready, be issued to him and at the foot of the document, as given on the preceding page, there will be found this memorandum:—

Deed-of-mortgage, No. , dated the day of 1884, from the within-named to of , moneylender. Principal sum secured, dollars . Rate of interest, 12 per cent. Date appointed for redemption, day of 188 . Interest to be paid monthly on the day of the month.

Registrar.

Thenceforth every change of ownership and every dealing with the land must be notified at the Registry Office and must be entered upon the face of the certificate, and of the duplicate embodied in the register-book, before it can take effect. There will be no necessity to get a lawyer or a lawyer's clerk to draft an elaborate conveyance. Simple forms will be provided which can be filled up with little formality, and special

clerks will be told off at the Registry Office to whom Natives may apply to have their transfers or mortgages or leases drawn up and registered, very moderate fees being charged.

You are the purchaser of a piece of land, you have completed the bargain, and you want to have your name brought on the register. You go to the Land Office with the vendor who takes his certificate of title with him, and you explain the nature of your errand to the clerk whom you find there. He fills up a short printed form of "memorandum of sale," which the vendor signs. This is lodged in the Registry Office and then a short memorial is written on the face of the certificate (and on the duplicate in the register-book) to the following effect:—

Memorandum of sale, No. _____, dated the _____ day of _____ 188____, produced the same day at _____ o'clock in the forenoon, from the within-named _____ to _____ of _____ . Consideration money paid, _____ dollars

Registrar.

The certificate then becomes your property and thus on the face of one piece of paper you have all that any one can want to know about the state of your title; namely, the original certificate that the land is the property of A. B. and the subsequent memorial showing that on a certain date A. B. sold the land to you. Every subsequent dealing with the land must appear on the face of the certificate in the same way,—sale, lease, mortgage, discharge of mortgage, extension of mortgage, transfer of mortgage, transmission by death, &c. On making a search at the Registry Office therefore, any one can see at a glance on a single page of the register-book the whole of the recorded dealings with any given property, and you, as the person interested, can see, by reference to the one document which you hold, the precise extent of your interest.

But perhaps you buy a portion only of the land of A. B. as described in his certificate. In that case, on handing in the memorandum of sale for registration, you receive a new certificate for the piece of land which you have acquired, while A. B.'s certificate is cancelled as regards the portion sold and then returned to him as his title for the portion still remaining in his possession.

It is by no means necessary that the vendor should proceed to the Registry Office to get the memorandum of sale made out; the clerks employed there to draw up such documents will be intended mainly for the assistance of poor and illiterate persons and to keep down charges. The forms will be so

simple that any person with sufficient knowledge of English will, with very little trouble, be able to learn how to fill them up. Professional assistance may be employed or not as parties like. But if the vendor does not himself go to the Registry Office, either he or the attesting witness must go before a Justice of the Peace, Magistrate, or Notary, who will certify that the party executing the instruments appeared before him and voluntarily signed it, or else that the attesting witness appeared before him and declared that he personally knew the party executing the instrument and saw him sign or put his mark to the same. This will tend to put a stop to per-sonation and fraud.

Land-owners will soon learn that registration is essential to the validity of every dealing with land and that no transaction is of any effect which does not appear on the face of the certificate. In regard to this it will be very desirable to arrange some more simple method of the transmission of property by inheritance than the grant of probate and letters-of-administration by the Supreme Court, which is now necessary. It will probably be possible to give the Registrar power to bring upon the register, after a regular enquiry conducted by himself, or by the District Revenue Officer, or Magistrate, the person or persons entitled to succeed to the ownership of land, without the present inconvenient and tedious proceedings in the Supreme Court.

For lands alienated by the Crown in future a very short form of grant will be issued, not longer than the certificate printed on page 28, and, as in the case of certificates, all subsequent transactions will be evidenced by memorials written on the blank space at the foot and back of the grant and similarly entered upon the duplicate bound up in the register-book.

This is the system of conveyancing by registration of title which is known throughout the Australian colonies as the Torrens system, and there seems to be no reason why it should not come into operation in this colony as soon as a new survey has put it into the power of the Colonial Government to issue uniform titles to the owners of land. When, after survey, the Settlement Officer commences his duties described above, it should be declared by law that no conveyance of any land in the district under settlement shall be valid, but that every transfer or other dealing with land, to be valid, must be made in accordance with the system of registration of title briefly sketched here.

“ Under this method accumulation of instruments of title with voluminous indexes, the fatal objection to other systems, is avoided, as each separate estate or interest in each parcel of land is represented by one instrument only, which instrument is held by the registered proprietor, and discloses all that it may concern a party dealing with him to be cognisant of. The duplicate being filed in the Registry Office, searches are needless except to ascertain the non-existence of caveats or inhibitions, and even that is accomplished without reference to an index, as each registered instrument bears a number or symbol indicating the volume and folium of the register where the history of the title is recorded, charges and leases are created, transferred, released, or surrendered by brief endorsement on the certificate of title and entry in the register as above described. This duplicate method has the further recommendation that, in the event of destruction by fire, or otherwise, of any instrument evidencing title, the duplicate remains available for every purpose.

“ In mortgage and encumbrance, the old fiction of transferring the legal estate is abolished and the object is attained by a direct instead of a circuitous procedure. The usual remedies are declared by the Act to be secured to the mortgagee or encumbrancee. The mortgagor retains his certificate of title bearing endorsement notifying the mortgage. He can thus deceive no one, yet he retains full facilities for a second mortgage; and when all such charges are cleared he may, if he desire it, obtain a clean certificate freed from all record of the past. It is no uncommon thing for a mortgage to be completed in an hour at a cost of 10s. to 20s. No portion of the system has worked so beneficially for the community.”*

In this little pamphlet I have sketched briefly, but I trust clearly, the inconveniences and irregularities now existing and the lines of the great reform which was foreshadowed in the despatch of His Excellency Sir Frederick Weld to Lord Kimberley in December 1880. The errors of years cannot be put right in a day or without considerable expenditure. Those to whom the task of reform is entrusted must ask for patience and confidence on the part of the public and for liberal supplies from the Legislative Council. No Government measure can be mentioned which more closely affects the prosperity of the colony and its inhabitants, and the immediate outlay, though it will be heavy, is likely to be

* *Essay on the Transfer of Land by Registration*, by SIR R. TORRENS, page 23.

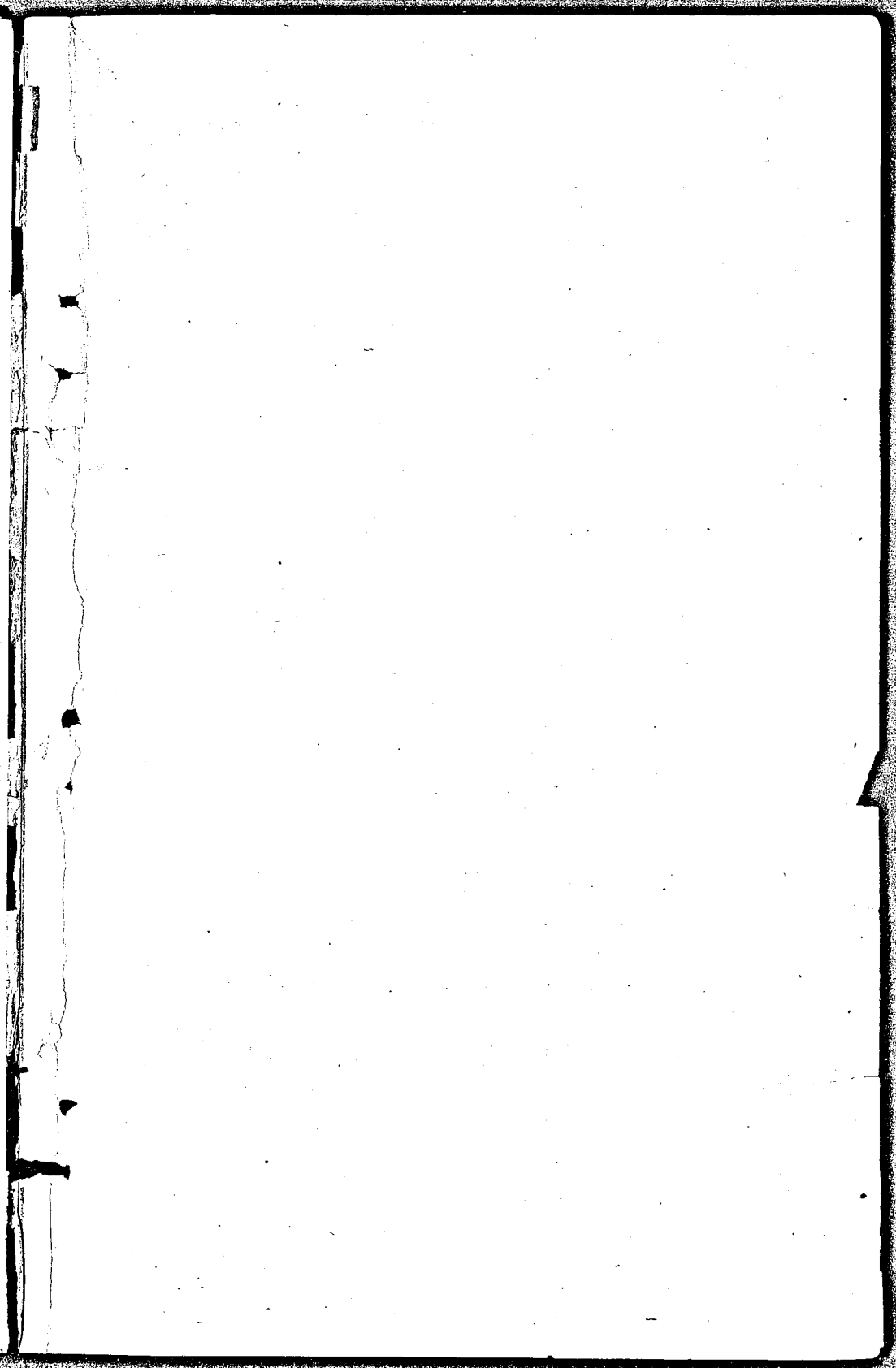
covered wholly or in part by the arrears of revenue which a new survey will enable to be collected, and by the increased annual receipts which may be expected after settlement. Even if the undertaking were not certain to be remunerative, still it is clearly impossible to leave things in their present state, and the objects in view would well justify the expenditure, without hope of return, of a large sum to realise them. In the estimates for this year 90,000 dollars have been voted for survey purposes, namely, 30,000 dollars for trigonometrical survey and 60,000 dollars for revenue survey. I have endeavoured to show how these votes may be best applied, and I am confident that a new survey of the colony by a survey party from India will be more economical, as well as in every respect more thorough and satisfactory, than any attempt to revise or complete old surveys by local agency. It cannot be too often repeated that accurate survey is the pivot on which the whole machine turns and that without it everything must remain at a standstill. To expect that extensive survey operations can be superintended by an officer who is weighted by other important duties (the duties of Surveyor-General are now imposed upon the Colonial Engineer) is to expect impossibilities, and the colony must either organize a Survey Department under an officer who can give his whole time to the subject or ask for the good offices of the Government of India. It cannot, I think, be doubted that the latter course offers the greatest prospect of efficiency and economy.

There would, perhaps, be no hardship in imposing in the towns a charge for survey, according to the area occupied, payable by every landowner. This would go far towards covering the expense of the survey of the towns and would not be grudged by the persons interested, who will be enormous gainers by a system calculated to make tenure more certain and land more easily marketable. With respect to country lands, especially the small allotments of the poorer class of cultivators, it may well be doubted whether any charge can equitably be demanded; in many cases a survey fee has already once been exacted and paid.

And here I will add a word of warning to colonists in the Straits Settlements. Is it generally known that the opening up of the Native States on the west coast of the peninsula is having a marked effect upon the Malay agricultural population of Province Wellesley and Penang, and that the establishment of a settled Government, with security for life and property, in Perak and Salangor has resulted in the emigration of many

cultivators from British territory to those States where large tracts of land are available? Agricultural land in Province Wellesley has steadily decreased in value of late years and is likely perhaps further to decline. The towns of the colony, on the other hand, are likely to grow and spread with the increased trade which the prosperity of the peninsula is bringing about. From this state of things two lessons are to be learnt,—first, that injury to the colony will arise if the land policy of the Native States is more liberal, and if, for want of an efficient organization, the collection of land revenue there is less regularly exacted, than in the colony; second, that country lands in the colony will not bear much in the way of additional imposts and that charges like the survey fee, which may be legitimate enough in the towns, should not be applied ⁱⁿ generally to land already alienated, the country.

In bringing these remarks upon the reform of our land-system to a close, I ask for attentive consideration by the persons interested of the various recommendations and suggestions which have been made. I trust that the year 1884 may see reconstruction initiated upon a sound basis, in which case there seems to be no reason why in four or five years the whole occupied land of the colony should not have been brought under the new system, regularity substituted for confusion, certainty for uncertainty, the risk of fraud reduced to a minimum, and the nucleus of a system of district government successfully established.





STRAITS SETTLEMENTS.

PRESENT AND FUTURE LAND SYSTEMS.

BY

W. E. MAXWELL,
COMMISSIONER OF LANDS, STRAITS SETTLEMENTS.



“ A fruitful cause of evil in laws is that when they are discovered to be bad the matter is not probed to the bottom, but feeble remedies are often applied which scarcely touch the surface of existing evils and lay the foundation of new evils for the future.”—LORD SHERBROOKE : *XIXth Century for August, 1881.*

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