

Hongkong & Government



GAZETTE.

NEW SERIES.

VICTORIA, TUESDAY, 22^D APRIL, 1856.

VOL. I. No. 43.

GOVERNMENT NOTIFICATION.

The Contract for publishing this *Gazette*, entered into on the 24th September, 1853, was terminated on the 30th ultimo; and notice is hereby given, that a New Series of this *Gazette* will be published hereafter, to commence from the 7th instant, under a New Contract, and that

“THE HONGKONG GOVERNMENT GAZETTE”

will, as before, be the only Official Organ for PROCLAMATIONS, NOTIFICATIONS, and PUBLIC PAPERS, of this Government.

By Order,

W. T. MERCER, *Colonial Secretary.*

Colonial Secretary's Office, Victoria, Hongkong, 2d July, 1855.

No. 50.

GOVERNMENT NOTIFICATION.

With reference to Government Notification No 23, of 25th February last, His Excellency The Governor is pleased to direct, that the authority for the Constitution of the Bowring Praya Commission, together with the Report now delivered in by the Members of that Commission, be published for general information.

By Order,

W. T. MERCER,
Colonial Secretary.

Colonial Secretary's Office, Victoria, Hongkong, 16th April, 1856.

WHEREAS for the furtherance of the works projected by my Government in and about the formation of the Bowring Praya, certain preliminary enquiries are necessary, and whereas such enquiries will be most conveniently and expeditiously prosecuted by means of a Commission: Now therefore know ye, that I, SIR JOHN BOWRING, Knight, LL.D., Governor and Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-Admiral of the same, do hereby, under my hand and the Seal of the said Colony, appoint you, Thomas Chisholm Anstey, Esquire, Her Majesty's Attorney-General for the said Colony,—William Cowper, Esquire, Captain of Her Majesty's Royal Engineers, and Acting Surveyor-General for the said Colony,—and Julius Charles Power, Esquire, or any two of you, to be a Commission for instituting and prosecuting all needful or proper enquiries in that behalf, and to take evidence (but not upon Oath) in the premises. And to report to me all evidence so taken by you, and also your opinions thereon. And I do hereby require you to commence your said enquiries forthwith, and to proceed therein continuously, and to make your Report to me as aforesaid with all reasonable despatch. And I do further require you, in executing this your Commission, to address yourselves particularly to the questions specified in the Schedule hereunto annexed; And I do hereby empower you, during the course, and for the purposes of your said Commission, to demand and obtain access at all times to all and all manner of Papers, Records, and Documents relating to the subject matter of the said Commission, and in the custody or under the control of the several Public Departments within this Colony. And from time to time to call before you and examine all persons superintending or employed in or under any of the said Departments. And I do hereby charge all persons in the Public Service to be aiding and assisting unto you herein.

Given under my Hand and under the Seal of the Colony of Hongkong, at Victoria in the said Colony, this Twenty-fifth day of February, A.D. One Thousand Eight Hundred and Fifty-Six.

JOHN BOWRING.

THE SCHEDULE IN THE ABOVE COMMISSION REFERRED TO.

- I. Whether the Government of this Island ought or ought not to undertake the entire construction of the said Praya, or of any and what part thereof?
- II. After what rate or rates ought the present holders of Marine Lots to be admitted into the possession and occupation of the ground lying between their proper boundaries and the Praya, where the construction shall have been undertaken by the Government?
- III. In the event of some of the holders of Marine Lots being willing, and others of them being unwilling, to undertake the construction at their own expense, ought or ought not the Government to undertake the construction of so much of the said Praya as shall lie to the front of the lots of the unwilling holders, and to allow the willing holders to undertake or proceed with their proportion of the work in respect of their own lots?
- IV. Ought or ought not the Bonham Strand portion of the said Praya to be commenced together with the other portions thereof, or when else?
- V. What provision ought to be made for the shipping and landing of goods, and the embarking and disembarking of passengers at and along the said Praya when completed?

REPORT

OF THE

BOWRING PRAYA COMMISSION.

May it please Your Excellency,—We, the Commissioners appointed by Your Excellency's Commission under Seal of the 25th day of February, A.D. 1856, for instituting and prosecuting certain preliminary enquiries in furtherance of the works projected by Your Excellency's Government in and about the formation of the Bowring Praya, particularly addressing ourselves to the Five Questions specified in the Schedule to the said Commission annexed,—

Have considered the matters referred to us, and have agreed to the following Report:—

The Five Questions above specified appear to us to have embraced every substantial matter of enquiry; and it will be seen from the Minutes of Evidence contained in *Appendix I*, that the witnesses whom we called in and examined also entertained that opinion. There is but little to be found, either in their evidence, or in the body of documentary evidence compiled in *Appendix II*, which does not range itself under one or other of those Five heads of Enquiry. In reporting our opinions, together with the evidence taken, as required by our Commission, we shall therefore follow the order of arrangement suggested by those questions, taking care of course to specify, in their appropriate places, all such matters as came incidentally under notice in the course of the enquiry, and did not necessarily arise out of either of those Five Points.

Appendix II. (No. 16.)

Evidence of the Hon. Mr Edger, G. Duddell, Esq., Y. J. Murrow, Esq., R. C. Antrobus, Esq., and Andrew Shortrede, Esq., in Appendix I.

Evidence of Mr Pustau, in Appendix I.

I. The reasons assigned in Mr Rienaecker's Letter of the 8th January, 1856, to the Colonial Secretary, and corroborated by all but one of the witnesses (unless we also except another witness, who admits the duty, but appears to doubt the readiness of the Government), appear to us conclusive in favor of the opinion which we ourselves have formed, that the Government of this Island ought to undertake the entire construction of the Praya, and that in no other way can the purposes, which have urged the Government to propose the work, be accomplished. The state of the shore, so alarming to the public health, calls for immediate measures of prevention. The crimes and disorders which occur daily and nightly amongst the dense Chinese population of this city, demand that whatever measures can facilitate the approach and action of the police, ought to be commenced and executed with all possible despatch. The danger of conflagration, so terribly recalled to our apprehension last month, must be considered as normal amongst a population inhabiting tenements constructed of fragile and inflammable materials, and nearly destitute of the means of access to the water. The necessity to commerce of an uninterrupted and a public communication with the sea are pressing and obvious. But whilst all these considerations demonstrate that it is the duty of Government to take the shortest and speediest way to the completion of the project, they seem also to impose the condition that the work shall be done efficiently and securely, and with an inflexible regard to uniformity in the execution. The solitary witness, who thinks that some saving in the contract price may be effected by substituting the Marine-Lotholders as Contracting Parties in the place of the Government, and investing them with all the powers and rights of Government for the purposes of such contracts as they shall be able to make, is himself so strongly impressed with the force of the above mentioned objections, as to admit that, even if his suggestion be adopted, it will still be necessary that the work should be commenced at the time, and completed in the manner, which the Surveyor-General may direct—that the Surveyor-General's eye should be constantly directed to it whilst in progress—and that "if it be left to the Marine-Lotholders themselves, it will never be done at all." It is obvious that the variance between Mr Pustau's evidence and the great body of the evidence taken by us upon this First Point of Enquiry, is more apparent than real. A work so conducted as Mr Pustau proposes is, at least, a work undertaken on the part of Government, and differing from a work directly undertaken by Government, only in respect of a certain want of unity in the initiation of the work, and in the division of the expense of it; and in both of these respects, we think, the preference is clearly due to the latter—an opinion which we have the satisfaction to find is unequivocally confirmed by the great body of evidence before us.

II. Some difference of views amongst the Marine-Lotholders was naturally to be anticipated upon the question as to the conditions of tenure of lands reclaimed or to be reclaimed from the sea. In one respect only they appeared to be unanimous,—in ignoring the fact that at present the Crown alone has title to all such lands, whether already reclaimed, or unreclaimed, and that the Crown will continue to have title to the latter after the same shall have been reclaimed by the Crown itself, or by persons not having title to those lands against the Crown, or authority under it. This common error was the source of the numerous fallacies to be detected in their evidence on the subject of their claims, real or supposed, to the equitable consideration of Government. The jealous eye of the law scans a grant from the Crown with great rigor, and reads it in quite another light from that of a grant made by subject to subject. In the latter case the rule is, that "a deed shall be taken most strongly against the grantor," i. e., the subject; in the former case the rule is, that "a deed shall be taken most strongly for the grantor," i. e., the Crown. This is the principle upon which that other well settled doctrine is grounded, that "in the construction of its deed of grant nothing shall be implied against the Crown," and again, the doctrine that, "unless where expressly provided to the contrary, the Crown retains all its prerogative rights in respect of the thing granted."

5 Bac : Abr : Pressy F. 2.

17 Vin : Abr : Abr : Pressy, O. c. and O. c. 2.

17 Edw : II, st : 2, c. 15.

"Public notices and Declaration, &c." of the first land sales that were ever effected in this Colony, the community were not suffered to be ignorant that no 1st May 1841. *Appendix II. (No. 1)*; and "and practice of British Law, upon tenure to the Crown," and, before all, "pending Her Majesty's further pleasure." see *Laws of Hongkong, Before a foot of land was put up for sale here, the intending bidders were further informed, that "no title would be valid, and no occupancy respected," until evidenced by the execution of a Crown Grant, and perfected by Registration of the Grant "in the Government Office."*

Extract from 'Terms of Sale, &c. *Appendix I, (No. 3)*; and see 'Laws of Hongkong,' p. 4.

We have it in evidence that even at the time of the first notification of the intentions of Captain Elliot to hold lands would be allotted here but with "a general reservation of all Her Majesty's rights according to the principles of British Law, upon tenure to the Crown," and, before all, "pending Her Majesty's further pleasure." Before a foot of land was put up for sale here, the intending bidders were further informed, that "no title would be valid, and no occupancy respected," until evidenced by the execution of a Crown Grant, and perfected by Registration of the Grant "in the Government Office." The first land sale took place on the 14th June 1841. The "Terms of Sale" were read to the bidders before the commencement of the proceedings, and they were expressly informed by that document that whilst the sea-frontage of each lot was "nearly ascertained, the depth from the sea would necessarily vary considerably," and "the actual extent of each lot" being still unascertained, "the parties would have the opportunity of observing the extent for themselves." They were further informed, that the Crown Grant, the sole evidence of title, would not be issued to any purchaser until "the precise measurement and registration of the lots should be completed," and that, on his side, the purchaser would not, until delivery of his Crown Grant, be called on to pay the rent for the first year, "reckoning from the date of Sale" of his lot.

Append : II, (No. 4) see the reference to it in the evidence of the Hon. Mr Edger, *Appendix I.*

Sir Henry Pottinger, the first Governor of this Colony, and with whom we find that the wise and far-reaching project of a Praya first originated, was even more careful than Captain Elliot to preclude the possibility of all popular error as to the rights and intentions of the Crown in this matter. Referring to the important "Government Notification" of the 22d March, 1842, we learn that, at that early date, whilst as yet not a Crown Grant had been issued, the Allottees of Marine-Lots already sold, and the future bidders for such as remained to be sold, were distinctly apprised that "the reclaiming of land beyond high-water mark must be deemed an infringement on the Royalties of Her Majesty, (and it is therefore positively prohibited) by any private persons."

The Honorable Mr Edger, in *Appendix I.*

During the whole of the period intervening between the date of that paper and the first issue of Crown Grants to the occupants, we have failed to discover any trace whatever of the revocation of that Public Announcement, or even of any connivance being extended by the Authorities to encroachments or purpures upon the domains of the Crown, seaward or landward. A highly respectable witness, however, whose principal establishments being at Canton and Macao during that time imposed upon him the necessity of spending the greater part of his time at those ports, intimated his very strong impression that there was some distinct encouragement held out to himself and other purchasers during that period, and even after the delivery of their Crown Grants, 'to reclaim as much and as far as they pleased towards the sea,' subject however to "the risk of the reclaimed land being resumed by Government, if wanted for public purposes," and without any promise of compensation for it, if resumed. It is obvious that, even if the recollection of this gentleman were so far supported by documentary or other evidence, as to establish against the Crown and in favor of himself and those particular occupants who may have acted upon the alleged encouragement, a case of royal conscience and equity, the reservations appended would reduce the case to an almost infinitesimal value. But we must observe,—(1.) that we can find no vestige of any "Notification," or "Circular," printed or in manuscript, bearing on this point, except those already cited, which bear altogether the other way; (2.) that it is an error to suppose that, in 1844, or at any period however early in the history of this Colony, a "Government Gazette," and the printing of Government Notifications did not exist, or that such Notifications, if made, were not printed; (3.) that if even the Queen's representatives were under the necessity of reserving "the Queen's further pleasure" in their official and authoritative announcements on the subject of tenure, the community ought to have known that the Land Officer, Captain Mylius, and his successor, Captain Meik, could not possibly be authorized to hold out encouragements, private or public, in derogation at once of those Notifications of the representatives of the Crown, and of the prerogatives of the Crown itself; and (4.) that the reference to a supposed stipulation in an early Crown Grant to the same effect, a reference afterwards admitted tacitly to have been made in error, makes it very probable that the entire impression which Mr Edger entertains on this subject may, at this distance of time, be very easily accounted for, if we remember that the form of the Crown Grant, a form which has never varied since the first issue, does contain a kind of "stipulation" or "encouragement" to reclaim or improve, and indeed to build upon the lands granted and lying within the boundaries of the registered lot (but not beyond them), subject of course to the usual right of the Crown to resume the whole or any portion of the lot upon three months' notice, and equitable compensation, to be determined by the Surveyor-General; and that it is very likely that the witness, speaking from memory, may have erroneously supposed that the clauses in question applied also to the sea-shore lying beyond the boundaries of the Lot.

Extracts from Form of Crown Grant in *Appendix II, (No. 5.)*

The form of Crown Grant to which we have just alluded was first settled in 1844; and, in that year, the first issue and registration of Crown Grants took place. The Crown Grants continued to be issued and registered during the whole of that year and the next, and thus the titles of the occupants, under the old 'acknowledgements' of their biddings, were at length made perfect. We perceive in the circumstances which ensued upon this promulgation of the form of Crown Grant another proof that, down to this time at least, no Marine-Lotholder had felt himself in any way encouraged to encroach upon the sea, or had doubted in the least the precariousness of a tenure from the Crown subjected since its origin to "the Queen's pleasure, the reservation of all Her Majesty's rights, the British Law

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practice, and the positive prohibition of reclaiming land beyond high-water mark by any private persons as an encroachment of the Royalties of the Crown." We find that the terms of the "title" now about to be exchanged for the acknowledgment," did, in 1844, excite complaints on the part of the Marine-Lotholders. But we also find that these complaints had no reference to the limitation of "boundaries" seaward or landward, as contained in the Statute, nor to the right of resumption thereby vested in the Crown, nor to the paramount claims therein asserted on behalf of "public purposes" over personal privileges, nor even to the absolute powers in respect of those reservations bestowed upon the Queen's Surveyor-General, nor indeed to any matter bearing upon the present question of the slightest degree. We find that a former letter of Captain Elliot was made the groundwork of complaint. But we also find that in that letter only one subject is discussed, and that one entirely foreign to our enquiry. Captain Elliot had there held out some "encouragement" for the hope that "the Queen's further pleasure" might operate to the advantage of the first buyers of lots, Inland and Marine, in the way either of reduction of Quit Rent, or of commutation into a fee simple tenure. The promulgation of the form of Crown Grant had dissipated those hopes. It was of that disappointment that the Thirteen firms of Marine-Lotholders complained, and only of that one. "On the faith of that pledge," as they termed it, they told Sir Henry Pottinger that they had, down to that date, (the 4th March, 1844,) expended "on sea-walls, warehouses, and dwellings, very considerable sums." Expressio unius est exclusio alterius. If encouragements of any other kind had been held out to them, either "to build sea walls," or to any other work seaward of their Northern boundaries, it is clear from this document that they had not thought themselves safe in relying upon those encouragements, and in commencing those works. The personal testimony of the Marine-Lotholders themselves confirms the inferences which we have deduced. The Honble. Mr Edger, whose reflections go back to a period anterior to the formation of the Colony, "thinks that no land at all was reclaimed (from the sea) before Leases were issued," and that indeed "sea-walls were made before the issue of leases, but in general between the limits of the land that was measured off;" and Mr Antrobus, whose own encroachments on the sea-shore date but from 1854, states that "he is not aware whether any land was reclaimed from the sea before his arrival here, rather more than five years ago." Such being the case before the issue, what was to result from a "title" so onerous that which was now to be forced upon them? If any regard be had to the strength of language, we must suppose that the Crown Grant was viewed, from its first promulgation, not only as no "encouragement" to costly and unauthorized encroachments upon the Marine domain of Her Majesty, but as the utter bar to all improvements whatsoever, even within the surveyed and registered boundaries of the grantee's own Lot. "Had they been previously aware," say the Thirteen Firms of Marine-Lotholders, "of the conditions now proposed, they certainly should not have expended one farthing on buildings at Hongkong."

On the other hand, every one of Sir Henry Pottinger's acts and words at this very juncture is utterly inconsistent with the notion that he entertained any doubt himself, or had led others into any doubt, as to his line of conduct with respect to the rights of the Crown to the sea-shore in front of the Marine-Lots. His Excellency's decision on the subject already cited was notorious to the whole community. Among the principal works which, at his request, the Land Officer, Mr Gordon proposed to undertake, and which Sir Henry Pottinger referred home with approbation, but for lack of the means could not undertake without the authority and assistance of Her Majesty's Imperial Government, a prominent place was given to the following project: "a space of land to be reclaimed from the sea in front of Government Hill, to form a Public-Landing-place, with an Esplanade or Public Walk; a Praya to be carried out in front of all the buildings, both Eastward to the Point, the property of Messrs Jardine & Co., and Westward as far as Navy Bay, or four miles between the two extremities,—the land thus reclaimed to form a number of Marine Lots; a public roadway close to the sea, of fifty feet in width to be left on the Praya, and the space between that and the houses to be the private property of the possessors of the Lots assisting in carrying out the plan paying a proportion of the expenses, and for whatever land they gained of course charged at the same rate as for the rent of the Lots."

That the fact of such a proposal having been made,—and the details of it were no secret to the community at the time, or even long afterwards,—may be very fairly inferred from Mr Montgomery Martin's once celebrated Report, compiled by him within six weeks of his arrival here in the following year, when Sir John Davis had succeeded Sir Henry Pottinger in the Government of this Island. That Report contains a direct but sneering allusion to the Praya, amongst other valuable projects of Sir Henry Pottinger, all of which are ridiculed by Mr Martin, little dreaming how many of his sarcasms were soon to be refuted by the literal fulfilment of the projects. Whilst the notoriety of the fact is proved by the boldness of the sarcasm, the mild and temperate rebuke which is contained in the observations of Sir John Davis in reply, and which, together with the attack, will be found in the Appendix, is, on its side, a proof that his Government and that of his predecessor were agreed in their opinions as to the policy to be followed with respect to Crown rights to the sea-shore, and the propriety of commencing the Praya, as projected by the latter, so soon as the finances of the Colony would permit, but without impeding the construction of the other public works and improvements enumerated in Mr Martin's Report.

Nothing indeed but the financial difficulties under which, even in Sir Henry Pottinger's time, the Colony had been laboring, and which were greatly and notoriously aggravated in later years, appears to have led to the delay in carrying his project into execution. The formation of such a work had been strongly urged upon the Admiralty by Commodore Sir Edward Belcher, R.N., then commanding a squadron in the China Seas. It had been notified by Government Circular to all the leading mercantile firms,—perhaps to all the mercantile firms without distinction,—then carrying on business, and many of whom we perceive, now represent themselves to be hostile to the formation of a Praya, except on the condition of being allowed to monopolise the whole benefit so far as their sea-frontage extends, with an entire exemption from Quit Rent, and without being called upon to defray any portion of the cost. Yet the project of those days had the remarkable fate of being received by them with an almost unanimous adhesion. Out of eight firms, themselves Marine-Lotholders, whose replies have been recorded in the Land Office, only one (that of Messrs Holliday, Wise & Co.) hesitated "to add to their already heavy expenditure," and to incur the loss of privacy and convenience, "to say nothing of the profits of wharfage," privileges which they were nevertheless "ready and willing to forego for the public advantage." All the rest signified their consent and preferred their co-operation. They were willing to do it at their own expense—to renounce the formation of private wharves, in favor of the common advantage. They had the welfare of the community at heart, not their own individual profit. One highly respectable firm, to whom the Circular was sent, but who do not appear to have returned a direct answer, nevertheless took the opportunity, in reference to another question then at issue between themselves and the local Government on the subject of an alleged encroachment by the Land Officer upon their Southern frontage, to express their highly creditable repugnance to all purprestures and encroachments whatever. Messrs Dent & Co. Co., to the Land Officer, say that "the boundary marks (granite blocks) on their Water-front Lots, marked Nos. 3 and 4, and 4 and 5, were at that time in the exact situation where they were placed by the Officers of Government, and also on the spot where the pickets were placed on the day of public sale, when they made the purchase." They remark,—that "the quantity of water-frontage which they purchased was not a matter of speculation in land, but that they confined their purchase to what was strictly and indispensably necessary for their establishment, and had not sought to increase their interest in such land elsewhere. Nothing short of such reasons," they conclude, "would have induced them to solicit the consideration of Government to their case, it being far from their wish or intention either to ask for anything more than (sic) what they had considered to be their actual right, or in the most remote manner to stand in the way of public improvement." It is, we think, impossible better to describe the relative positions of Crown, Crown tenants, and the public.

This general concurrence of the Government and Community of Hongkong on the subject of the Praya, did not fail to impress the Secretary of State very strongly in favor of the measure. But the project required some consideration, and His Lordship's friendly feeling towards it was at first evinced only by privately transmitting to Sir Henry Pottinger some corroborating testimony from another quarter in favor of the project. In the following year, however, his decision was officially announced. The utmost approbation was bestowed on the works projected, especially the Praya—the Governor was invited to send home the necessary Reports and Plans;—but the question was asked "whether there were the necessary funds for the execution," and a clear intimation was given that to the Marine Lots, rather than to the Imperial Treasury, His Excellency must be prepared to have recourse for the means whereby the Praya might be executed at the least possible "cost to the public." The matter of necessity rested there until the pecuniary difficulty could be overcome. Owing to circumstances too well known to need recapitulation, it was not fully overcome until the end of our last financial year. Your Excellency is the first Governor who has been able to decline the Parliamentary Grant, and this is the first year in which you have been able to decline it.

Correspondence of the 4th and 6th March 1844,—between the local government and Messrs Jardine and twelve other firms of Marine-Lotholders, in Appendix II, (No. 6.) Letter dated Macao 17 June 1841, printed in the Hongkong Gazette of the 25th June 1855,—and 'Laws of Hongkong,' p. 3; see Appendix II, (No. 6.)

Evidence of the Hon. Mr Edger in Appendix I. Evidence of R. C. Antrobus, Esq., in Appendix I.

Letter of the 4th March 1844, in Appendix II, (No. 6.)

Letter of Mr Gordon, of the 6th July 1843, in Appendix II, (No. 7.)

Extracts from the Report of Mr M. Martin, July 1844, and Sir John Davis's Despatch and Letter, each dated the 20th August 1844, in Appendix II, (No. 8.)

Letter of Sir E. Belcher, R.N., (Enclosure No. 3 in Lord Stanley's private despatch of 15th November 1843, in Appendix II, (No. 9.) Circular Letter of Mr Gordon, dated 28th April 1843, in Appendix II, (No. 10.)

Letters of the 1st, 2d, 4th, 5th, 8th, and 10th May, 1843, to the Land Officer from eight firms of Merchants.

Extract of Letter from Messrs Dent & Co. Co., to the Land Officer, dated the 3d May 1844, in Appendix II, (No. 11.)

Lord Stanley's private despatch of 15th November 1843, in Appendix II, (No. 12.)

Lord Stanley's despatch of the 3d January, 1844, in Appendix II, (No. 13.)

Memorandum of His Excellency Sir John Bowring, of the 18th October, 1855, in *Appendix* (No. 14.)

Hongkong Blue Books from 1846 to 1855.

Evidence of Andrew Shortrede, Esq., in *Appendix* I.

Evidence of the Honble: Mr Edger, in *Appendix* I.

Ibid.

Evidence of R. C. Antrobus, Esq., and Y. J. Murrow, Esq., in *Appendix* I.

Mr Antrobus's evidence, in *Appendix* I.

Mr Murrow's evidence, in *Appendix* I.

Letter of Messrs Lindsay & Co., applying for Sea-frontage, and Mr Duddell's counter memorial, both of which were referred to the Commission by His Excellency, in *Appendix* II, (No. 17.)

Evidence of Mr Murrow and Mr Duddell, in *Appendix* I.

Notification of the 10th November, 1855, in *Appendix* II, (No. 15.)

Evidence of Mr Pustau, in *Appendix* I.

Evidence of the Honble: Mr Edger, in *Appendix* I.

Minutes of the 8th, 9th, and 10th March, 1856, in *Appendix* I.

Evidence of Mr Murrow, in *Appendix* I.

Evidence of Mr Duddell, in *Appendix* I; and compare that of Mr Shortrede.

Ibid.

Evidence of Mr Murrow and the Honble: Mr Edger, in *Appendix* I.

Evidence of Andrew Shortrede, Esq., in *Appendix* I.

Letter of Mr Rienaecker of the 5th January, 1856, in *Appendix* II, (No. 16.)

It is also the first year in which a surplus, sufficing to the undertaking and completion of the great work, has been declared in the Colonial Treasury. The more pressing among the other works contemplated by Sir Henry Pottinger, and enumerated by Mr M. Martin as improbabilities or impossibilities, have by succeeding Governors been, one by one, accomplished. If the Praya be now commended, the project cannot be said to have slumbered in the interval.

Neither can it with truth be said that anything ever occurred to disabuse the public mind of the belief which was certainly there in 1843 and 1844, as to the intentions of Government. Vague and ambiguous assertions to the effect that "the Government always led the Marine-Lotholders to believe that they were at liberty to reclaim 'seaward for themselves,' have been freely ventured;—but these, wholly unsupported by even the attempt at proof, by degrees narrowed themselves, first to the period of the first formation of the Colony,—and, when that was proved to have been impossible, then to the period of the first issue of Crown Grants,—and so from period to period, until at length they have dwindled down to two dubious cases, which are said to have occurred during the Governorship of Sir George Bonham,—one in the Year 1854, the other at a date not stated to us. It is only with specific instances like these that it is possible to grapple; and the particulars of these two instances will be found not undeserving of a brief passing notice, independently of the fact that they are the only cases adduced before us to prove anything like an official "encouragement" having been ever given to any purprestures on the part of Marine Lotholders, past or present.

A gentleman who has confessed a purpresture committed by himself in 1854, and who had more than once asserted, with some emphasis, the existence of a "general understanding that lands reclaimed would not be interfered with by Government, nor the parties' rights of access to the Sea prejudiced by the Act," was at length asked to state the circumstances which had produced that impression, so far as he and his firm were concerned. His answer is a curious illustration of the proneness of these gentlemen to deceive themselves. It appears that the present Surveyor-General, Mr Cleverly, and the late Governor, Sir George Bonham, gave him, in 1854, a verbal assurance that he would not be prosecuted or called to account for his encroachment. "They gave me," he adds, "no further 'assurances.' This mere indemnity against punishment,—if it be even that,—he at once interpreted into a renunciation or waiver of a Crown right! Another witness, also a Marine-Lotholder, was perfectly satisfied, he said, that he had received very recently an encouragement from the Governor himself to encroach upon the sea-shore in front of his lot, and reclaim it. On being requested to condescend to particulars, he stated that the Governor in question was Sir George Bonham,—that Sir George Bonham had told him, in answer to his questions, that he had no power to authorize his intended purpresture, or to make him any "title" to the land when he should have reclaimed it,—that all that he (the Governor) could say was, that, unless his (the tenant's) neighbors complained, Government would not prosecute him for the encroachment,—and that, in his (the Governor's) "private opinion," the tenant would be "all right;"—but that the tenant must understand, that what he might do would be done at his own risk, and that he (the tenant) must hold himself responsible for the consequences. It is difficult to appreciate the amount of "encouragement" contained in these words of Sir George Bonham.

One useful suggestion may be gathered from this mass of incoherent asseveration and unsupported pretention, and it is,—that the representatives of Her Majesty in this island cannot be too careful to avoid even the appearance of concession of Crown rights, lest perchance it be turned against the Crown at some distant day, into evidence of acquiescence in favor of a larger or more general one. In this point of view alone we would strongly advise Your Excellency, in the matter of the application of Messrs Lindsay & Co., referred to us for our opinion, not to take it into consideration until the plan of the Praya has been finally approved and made public, and the work commenced. In considering whether any indulgence ought to be shewn to the Marine-Lotholders, beyond the not unreasonable one of overlooking the encroachments already committed, and of allowing as well those offenders as the holders in general to become purchasers, without competition, of the reclaimed lands fronting their respective Lots, it is surely a very important fact that, with the exception of Mr Murrow and Mr Duddell, who approved of the Government Notification of the 10th November last,—Mr Pustau, who attended the Meetings of Marine-Lotholders, but "took no part either way" in the proceedings which ended in the too liberal proposals of Government contained in that Notification being rejected by a very large majority of the Marine-Lotholders,—the Hon. Mr Edger, who did not attend the meetings, but appears to have approved of their result,—and R. C. Antrobus, Esq., of the firm of Messrs Lindsay & Co. (the only one completely identified with the majority of that class of Crown tenants, and their November meetings),—not one has either presented himself to be examined, nor acceded to our invitations to that effect. One gentleman, indeed, who, with Mr Antrobus, distinguished himself as one of the most active promoters of those meetings, and who represented his firm there (that of Messrs Dent & Co.), at first consented to come and be examined on a day specially named to suit his convenience; but he neither appeared, nor excused his non-appearance. On this subject we beg to refer to our Minutes, and will merely add, that the general unwillingness of the Marine-Lotholders, who profess to apprehend loss or injury to themselves by reason of the formation of the Praya, to afford any evidence in illustration of their asserted claims to equitable consideration, ought of itself to deprive the claimants of all expectation that their supposed claims will receive any consideration at all. It cannot be supposed that their mere allegations are to be taken as proofs.

We have been thus far minute in tracing the real history of the Marine-Lot question, because it is the only key to the solution of the Second Question referred to us. Those Marine-Lotholders who have hitherto reclaimed portions of the Crown's domain without title from the Crown, and have converted the lands so reclaimed into their own "tenement and farm,"—an offence in itself for which they are even now liable to punishment,—cannot, as it seems to us, stand in a better position than those Marine-Lotholders whom the Crown may think fit to admit into occupancy and enjoyment of those portions of the Crown's domain, which will, by or at the expense of the Crown, be reclaimed hereafter. In either case a full rent ought to be received;—and we think that the rate payable upon ordinary Crown Lands, sold in Lots for building purposes, affords a very moderate criterion whereby to determine the amount. It is, we think, a mischievous suggestion that some deduction should be made in favor of those who have reclaimed but not built houses to let, nor derived profit in the shape of toll or otherwise, or of those who, being hereafter admitted into occupation of lands to be reclaimed by the Crown, shall content themselves in like manner with the mere enlargement of their borders, not seeking therein their own pecuniary advantage. It would be a difficult distinction to establish in the proof;—and, were it ever so well established, still there remains the objection, well put by another witness, that it is not the inclination of the tenant to use his holding in this or that manner, but the use and occupation in whatever manner, that imposes the liability to rent. We may add that, in either case, the detriment to the public is the same. The land is equally withdrawn from public use. The Crown is but the Trustee for the Public.

Another distinction, which has been rather hinted at than suggested, would deserve to be called puerile, but that the consequences to which any recognition of it must lead, are of frightful moment. It would seem that there are those who distinguish "China houses" from "European houses," and apply a different rule to the one and to the other. It is admitted that the holder of the property, however unwilling to build, has the right to change his mind, and build and let to tenants; and one witness goes so far as to say that such a case may be considered a reason for an enhancement of his rent. But as to "China Houses," there appears to be no doubt. The witnesses say that these have already, in proportion as they have been erected upon the reclaimed lands, injured the rentals of the houses in the Queen's Road, and tended to convert it into a back street. They ought therefore to be heavily assessed; not so the European houses so erected. Their cost is great, and the risk enormous;—they have a strong tendency to disappear into cavities formed by the wash of the sea,—and, whilst they last, they are used as Offices and Stores, and not for Chinamen's dwellings.

It appears to us that the mere enunciation of this theory suffices to shew its folly and injustice. Nor can we accede to the opposite opinion, advanced by one respectable witness, that in assessing these rents, a distinction should be made in favor of Chinese Crown Tenants. An absolute equality of rights and duties, without regard to colour, to creed; or to condition, is the only sound basis of all government. In this remote part of the British Empire, inhabited by a handful of Europeans and 70,000 Asiatics, it would be above all impolitic to do anything which might seem to call that truth in question;—and we must strongly protest against every such attempt, in whatever interest it may have been ventured.

Upon a general review of all the considerations to which we have adverted, we think that the Government will not be justified in allowing any distinction whatever between lands reclaimed by intruders, and lands reclaimed by the Crown, in assessing the amount of rental. In either case the rate of rent should be one, uniform and equal. If Mr Rienaecker's computation of £9031, as the sum total of rent to be received from the frontage of the existing eighteen Marine Lots, be approved by Your Excellency, the rate of Assessment by which it is to be levied will be one of 15s. to every 100 superficial feet. But whether that or a more moderate revenue be anticipated from the lands in question, the rate by which it is to be assessed ought to press equally upon all who have to bear it.

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We conclude our observations upon this branch of the subject matter of reference, by reminding Your Excellency that it is perfectly optional with the Government, either to sell to such as will bid for them any reclaimed lands which the holder of the Marine Lot in the rear may decline to take, or to proceed under the resumption clause of his lease, and oust him from the Lot itself. In the latter case, it rests with the Surveyor-General alone to decide the question of his compensation;—and on that point again we remark a very extraordinary error which appears to exist as to the duty of Government, and which is stated—erroneously perhaps—by one witness, who labors under the delusion, to have been produced, so far as he was concerned, by a conversation with the late Acting Attorney-General.

III. A witness, whose opinions deserve all attention, considers that the co-operation of the willing Marine Lot-holders with the Crown as representing the unwilling, will tend to the more easy, cheap, and expeditious execution of the proposed work. He also thinks that Your Excellency's Government has not the means at present to bear so large an outlay, and that it will therefore be an improvement upon the plan proposed in the First Question, if the modification suggested by the Third be adopted. In that case, he thinks, the Government might advantageously agree with the Lotholders, on executing their portions of the Praya to the satisfaction of the Surveyor-General, either to repay them their outlay, or to remit their rent of the lands reclaimed by them, for a period proportioned to the amount of expenditure incurred. On the other hand, we have been assured by a Marine Lotholder who takes an active part against the Government plan in any shape, that he believes that the Marine Lotholders never will co-operate with the Government in the execution of a work to which they are, upon principle, most hostile. Every other witness who has been examined dissents from Mr Shortrede's view, and agrees with Mr Antrobus in the opinion that the decision of this question is, in fact, involved in that of the First Question; the reasons by which they are to be determined being in fact the same, if not in degree, at least in principle. We confess that such is also our opinion.

IV. The Bonham Strand portion is regarded by those witnesses, who are familiar with the locality and the peculiarities which belong to it, as the portion least open to animadversion, and as one which ought, if the arrangements of the Government permit, to be begun and accomplished with all possible despatch. Concurring thoroughly in that opinion, we would direct Your Excellency's especial notice to the evidence of a gentleman by whom the Praya has been considered in a sanitary point of view, and to that of another gentleman by whom it has been similarly regarded in its relation to a proper system of Police, and which have left no doubt in our minds that, if any Section of the work ought to be begun or finished before the residue, that Section is precisely that which Your Excellency describes as the Bonham Strand portion of the Praya.

V. Some diminution appears to have been long going on in the depth of water at the several wharves and landing-places. The recess or wash of the sea is a probable cause, and to this the large accumulations of earth and rubbish brought down by the drains and sewers, particularly in the rainy season, are certainly to be added. What was the line of low-water mark at the formation of the colony, is said to be that of the present high-water mark. It is an evil more likely to increase than diminish; and, far from agreeing in the strictures contained in the Colonial Treasurer's Letter of the 5th January 1856, as to the too great extent of the plan of the Surveyor-General (Mr Cleverly), we think that it may be well worth His Excellency's consideration whether some further extension of the plan may not be advisable to be adopted. One intelligent witness indeed is of opinion that the Praya ought to be carried so far into the sea as "to enable large steamers and ships to lie alongside, and passengers and goods to pass to and fro without being obliged to employ boats." The point deserves all consideration. But whether the Praya can be carried to that depth seaward is a question of ways and means, which Your Excellency alone can determine.

The arrangements for enabling the public to enjoy their rights of access to the sea, for the purpose of shipping and landing, embarking and disembarking, are described as having been from the early days of the colony altogether inadequate. There can be no doubt that they are now palpably and disgracefully so. All persons, except the owners of private wharves, suffer enormous inconvenience and damage from this state of things. It is probable, too, as related by one witness, that the unfortunate Chinamen, ignorant of their rights and our duties, are the principal sufferers; and that the facility thus afforded of "squeezing" their traders, by extortions in the name of "toll thorough," is a temptation which some Marine Lotholders have not had the virtue to resist.

Private wharves are of course private property, and the owners do what they will with their own. It is stated that they are, generally speaking, now anxious to accommodate the public with the use of their wharves, whether for goods or passengers; but, if this be true, it is a truth hard to be reconciled with their own theory, that the loss of privacy, consequent upon the formation of a Praya, can be either a "nuisance", or an "annoyance", or an "injury to" those gentlemen in their business. One and the same contradiction pervades their entire case. At one moment they are represented as persons who have been forced to encroach on the sea in order to get landing-places for the community; and as having reclaimed ground, constructed sea-walls, and built wharves for the common use of the public, not merely for their own. At another moment we are told, on the same authority, that they do not want any Praya at all,—that they do not want any land to be reclaimed,—and that they object to be made to occupy and pay rent for it. It is quite clear that the sooner these contrarieties are smoothed, and an intelligible and broad rule laid down whereby to adjust the hitherto violated common law rights of the Crown and the public with the personal interests of the leading Merchants, the better alike for the few and for the many. We think that the claim to erect and maintain private wharves is a privilege, and as a privilege that it ought to be jealously regarded. The enjoyment of it must not be suffered to operate to the common annoyance of the subjects, or to the prejudice of the Crown. The fullest access to and from the Praya, seaward and landward, is a matter of public right. We think that the suggestions appearing in our minutes of evidence on this head are useful;—but we forbear to express any opinion as to their sufficiency,—a matter which may be thought doubtful. Neither are we prepared on our own part to add to the recommendations which have been laid before us, some which have occurred to ourselves, but which, so long as the port is unprovided with a system of police, we think impracticable. Otherwise we might have offered a few words upon the expediency of providing cranes and other conveniences of the kind at moderate but adequate rates of remuneration to the Government, and of establishing by stringent regulation the order of embarkation and disembarkation at the public wharves. But as we heartily concur in thinking that the whole and sole supervision of the work whilst in progress, and the conservation of it when finished, ought to be vested in the Surveyor-General, with full powers to carry his instructions into effect, we also think that these details of his general duty may be safely confided to the security which his official responsibility affords. We also think that, until the Praya is completed, as little as possible should be conceded to any Marine Lotholder in addition to his existing sea-frontage,—in order that the existing accommodations at the command of the public, for landing and shipping of goods and passengers, miserable as those accommodations are, may not be further diminished.

In concluding our Report, we hope to be allowed to mention a fact which has occasioned all of us the greatest satisfaction in the discharge of the onerous and important duties with which we have been charged. We have been enabled to conduct our Enquiry in public, so far at least as regards the taking of evidence. It is impossible to overrate the great addition which the publicity of the examination gives to the authority of the evidence. But this is not the only advantage. We close our Enquiry in all certitude of being free from the reproach of partiality and injustice, as we are unquestionably free from the kindred one of concealment.

All which we humbly certify to Your Excellency.

T. CHISHOLM ANSTEY, A.G.
WILLIAM COWPER,
Captain—Commanding Royal Engineer.
J. C. POWER.

Council Room, Government Offices, 24th March, 1856.

To HIS EXCELLENCY
SIR JOHN BOWRING, LL.D.,
&c., &c., &c.

Evidence of Andrew Shortrede, Esq., in Appendix I.

Evidence of Y. J. Murrow, Esq., in Appendix I.

Evidence of Andrew Shortrede, Esq., in Appendix I.

Evidence of R. C. Antrobus, Esq., in Appendix I.

Evidence of Messrs Antrobus, Murrow, Pustau, and Duddell, in Appendix I.

Evidence of Mr Duddell in Appendix I.

Evidence of Mr Shortrede, Ibid.

Evidence of Mr Murrow, Mr Duddell, and Mr Antrobus, in Appendix I.

'Plan' and Letter of the Surveyor-General of the 23rd December, 1855; and also Letter of Mr Rienecker of the 5th January 1856, in Appendix II., (No. 18 & 16.)

Evidence of Mr Shortrede, in Appendix I.

Ibid. And evidence of Mr Duddell in Appendix I.

Evidence of A. Shortrede, Esq., and Hon. Mr Edger, in Appendix I.

Evidence of the Hon. Mr Edger, in Appendix I.

Ibid.

Ibid. And Evidence of Mr Antrobus in Appendix I.

Evidence of Andrew Shortrede, Esq., the Hon. Mr Edger, Y. J. Murrow, Esq., Wm. Pustau, Esq., and G. Duddell, Esq.

Ibid, and Ibid. See the application of Messrs Lindsay & Co., in their letter of

and Mr Duddell's counter memorial of the referred to the Commission by His Excellency.

See the Notification of the 5th March 1856,—published in the 'Friend of China' of that date,—in the 'China Mail' of 6th March 1856,—and the 'Hongkong Government Gazette' of the 8th March 1856.