

## GOVERNMENT NOTIFICATION.—No. 274.

The following Report on the Land Court, for the year 1900, is published.

By Command,

T. SERCOMBE SMITH,  
*Acting Colonial Secretary.*

Colonial Secretary's Office, Hongkong, 11th May, 1901.

No. 10.

LAND COURT,  
HONGKONG, 4th March, 1901.

SIR,

I have the honour to forward my report on the work of the Land Court for the seven months ending December 31st, 1900.

The Department was constituted as from the 1st June, Mr. H. E. POLLOCK being appointed President, myself Member. Mr. J. H. KEMP was gazetted Registrar, and on his removal to the Magistracy on 28th November Mr. WOOD was gazetted Registrar in his place.

2. I found on taking up my duties that matters were in the following state.

The Survey on a scale of 16" of between 30,000 and 40,000 acres of the New Territory had been completed leaving the remainder of the mainland and the whole of the islands to be dealt with.

*Demarcation.*

It had not been possible to arrange for any demarcation either precedent to the survey or follows with it and no holdings therefore were shown on the maps which had been completed. A large number of claims to land had been brought in at Tai Po and at Ping Shan for the purposes of the Rough Rent Roll, but the form in which they were laid, though possibly adequate for the purpose for which they were received, was neither sufficiently full nor sufficiently clear for them to serve as the basis of an investigation into title.

3. It was necessary therefore to provide in the first instance a suitable form of claim and this was drawn up by the President and myself. A Demarcation Staff had also to be improvised and after experiments lasting over several weeks I obtained the sanction of His Excellency for the enlistment of 20 Chinese to be trained as demarcators to accompany the Indian Surveyors in the field and obtain particulars of the ownership of holdings.

4. The enlistment and training however of the Demarcation Staff required time and meanwhile it seemed advisable to commence getting in claims as rapidly as possible leaving where necessary the identification of the land claimed to be completed when the lot number tickets had all been issued. This has caused a good deal of delay; for persons who have first laid a claim in the Court, and subsequently received a lot number ticket on demarcation usually imagine that nothing further is necessary so that it has often proved very difficult to get them to come to the office and produce their tickets. I have arranged that in future demarcation shall have a clear start in each district before the receiving of claims begins and that no claim shall be received unless the appropriate lot number ticket is produced at the same time.

*Commencement at Kowloon City.*

5. The Law Committee of the Legislative Council had recommended that if possible the land facing Hongkong and lying to the south of the Kowloon watershed should be first dealt with on account of its growing importance as an outlet for the expansion of the Colony and of its far greater superficial value relative to the rest of the New Territory. I therefore decided to make Kowloon City the first base of operations and by the courtesy of the Trustees I obtained as an office the building used before the Convention as a general Meeting House and School room within the Walled City.

The area including Kowloon City and extending to the Lyeemun Pass was well adapted to be taken as a test of the work that would have to be done containing as it did (a) padi and vegetable land, (b) house and shop property, and (c) fishing grounds and foreshore. Furthermore it was reasonable to suppose that its proximity to Hongkong would render the people more amenable to Western methods and better able to understand the meaning of what they were required to do than might have been the case with villagers in more remote districts.

*General procedure.*

6. I think it may be expedient to sketch generally at the outset the procedure I have adopted so as not to render necessary further explanation upon particular points relating to the work of the Land Court.

The initial step is to select and mark out the boundaries of a District and a notification from His Excellency in the Gazette then fixes a date after which no claims in respect of that district will be received by the Court. Notices are published directing claimants to attend the Court where the proper forms are filled in for them by the clerical staff. A demarcation party is sent out and persons are invited to attend and give particulars of ownership pointing out their land, the outlines of which are then put in on the Cadastral Map with an appropriate lot number.

7. Finally if we suppose that the last day for receiving claims in "X District" is the 31st July, on the 1st August the Court will be in possession of the following documents:—

- (a.) Cadastral maps showing the exact position of every claim.
- (b.) A statement prepared by the Survey Department giving the areas of every claim in acres to two decimal points.
- (c.) The claim forms signed by the claimants themselves.
- (d.) The demarcation books giving particulars as to ownership, nature of cultivation, etc. collected on the ground.

The first step is then to send the Cadastral maps to the Public Works Department. Under section 15 of the Ordinance all persons in occupation of land as to which claims have not been presented by the last day fixed by His Excellency are trespassers against the Crown. The land claimed should be marked off by boundary stones from the unclaimed, the latter being thenceforward the property of the Crown.

8. The undisputed claims must then be separated from those which are contested. The latter can be easily picked out for where the same lot number is found on more than one claim the ownership of the land to which that number relates is obviously contested, while conversely where there is only one claim to a lot, the ownership of that lot is not in dispute.

By far the major portion of the land either under cultivation or covered by buildings is held by persons whose claims to the ownership is not disputed. The average areas of individual holdings are so small and their value to the possessor so great that it is not remarkable that the ownership is as a rule perfectly well known and uncontested, especially seeing that much cultivated land bears three crops a year and is consequently hardly ever left fallow. I estimate that omitting Sham Shui Po which bristles with difficulties, and perhaps the strip of coast from Ngau Tau Kok to Lyeemun the percentage of disputed claims will not be more than about 5%.

9. The disputed claims having been put on one side those which are undisputed must be carefully sifted to ascertain whether there is any effective occupation. Where the land is and has been for any considerable time under cultivation or where there are inhabited buildings on the land, I take it the Government will as a general rule confirm the occupiers in their possession, even though they have no real title whatever. But where the land is unoccupied and consists of foreshore or waste hill land the titles will need careful scrutiny. Taking as general the axiom that the Chinese Government recognized no ownership not authorized by a registered instrument it is unlikely that many persons would have been at the expense of paying taxes and registration fees for land which under Chinese rule was practically valueless. Many persons on the other hand, now that there is a ready market for such land will be anxious to assert rights of ownership which they never possessed or which have long lapsed to the Crown in consequence of the abandonment of the land.

In other cases also exclusive rights of fishery or of wood and grass cutting may have been granted to individuals who are now anxious to claim full ownership of the land over which they exercised these rights. These are the cases which present questions really difficult of solution, many of which may not be satisfactorily settled for some years to come.

10. It will be seen from what I have said in the foregoing paragraphs that until a good deal of work has been done on the land the judicial functions of the Court do not begin to be exercised. As soon as the last day for receiving claims is past all the land in a District that has not been claimed should be marked off as Crown Land.

When all the claims are collected the separation of those which are undisputed will leave a comparatively small residuum for the Court to deal with. The undisputed claims are immediately available and can be handed over to form the basis of a permanent rent roll.

*Staff.*

It would accelerate the work of the Court considerably to have two more Cadets who might be styled Assistant Registrars to work in advance of the Court and prepare the ground for its operations. All the claims would by this means be got in, compared with the maps, and tabulated before the Court

was ready to sit. Mr. Wood is at present performing this very useful work at Tai Po and I see no reason why he should not after six months' experience of the work of Registrar be given a limited jurisdiction in undisputed claims.

This would make the settlement more than twice as rapid as it is now. Five-sixths of the cases would be dealt with before reaching the Land Court which would not then be occupied with the innumerable details which have to be dealt with in the preliminary stages.

Supervision of the demarcators in their work with the Survey Staff and of the Clerks occupied in taking claims is an absolutely necessary preliminary to the hearing of cases. It is useful and interesting work though of course not judicial and it is an excellent training in the handling of a staff and the lesser details of land work.

#### *Late claims.*

11. It invariably happens that after the last day for receiving claims in a district has passed there are persons who come in with more or less plausible reasons why they have not been able to present their claims in good time. Some of these have registered their deeds at the Land Office and have rested happy in the belief that they have thereby done everything that is necessary. Others have had their titles looked at in the Tai Po or Ping Shan Rent Roll Office and say that they did not understand that they had to come in again. Others have been at sea or in some village inland or in Singapore or Java not returning until the appointed day was over.

I take it that before the law such persons have no rights at all. Section 15 of the Ordinance makes it quite clear that they are in the position of mere trespassers against the Crown. It would however be inexpedient to ignore them, for this would mean the handing over to Government as Crown land, of areas on which were settled many *bonâ fide* occupants whose claims Government would in equity feel itself bound to enquire into at some later date.

I have adopted the course of making a separate roster for these late claims informing the parties that the land has lapsed to Government but that I will make a report on their cases to His Excellency who will deal with them as he thinks fit. Possibly in most cases it will be found best for Government to allow them titles on the payment of a small fine as an example to others.

#### *Survey.*

12. It has been very fortunate that the Colony has had the services of a staff of trained Indian Surveyors under a responsible experienced head to prepare the Cadastral maps. The work if undertaken piecemeal by the local establishment must have proved long and costly for there appear to be no properly qualified Chinese Surveyors in the Colony while the expense of employing Europeans on such work would have been quite prohibitory.

It still remains however to arrange for the survey of such claims as are too large to come within the ordinary Cadastral plotting. For them it is necessary to fix fresh points and traverse lines and the 16" scale is not convenient for large tracts of land.

#### *Claims received.*

13. I have during the past seven months received claims in respect of:—

I. Survey Districts Nos. I-IV comprising that portion of the New Territory which lies South of the Kowloon watershed and is bounded on the East by Li U Mun and on the West by Lai Chi Kok. In all 5,675 claims comprising 7,583 lots have been received in respect of this area. The demarcation of No. IV District is not yet complete owing to the survey having omitted to traverse some of the padi land in the smaller valleys North of Lai Chi Kok, but this work is being pushed on as rapidly as possible.

II. Claims have also been received in respect of the following islands:—

Tsing I or Chung Hue.  
Ma Wan.  
Ping Chau.  
Ni Ku Chau.  
Cheung Chau.

In all 880.

As no claims were received in respect of—

Cheung Chau Ching,  
Cowe Chau (Kau I Chau),  
Chau Cung,  
Patung,

these islands are now by virtue of section XV of the Ordinance Crown land.

14. Claims are being received at Tung Chung in Lantau Island where also a small demarcation party is at work. Demarcation is in progress at Tai Po where Mr. Wood has recently opened an office for the reception of claims.

It would prove a great economy both of time and expense to detach another Cadet to perform the same work at Ping Shan so that when the Land Court transferred its operations to that district the ground would be cleared in advance of all but the really important cases. Up to the present everything has had to be dealt with by the head office, but there is no reason why this should continue now that we have a system in working order and a trained clerical staff.

15. I have added to this report some Notes on Land Tenure in the New Territory with suggestions as to the form of titles and the system of registration to be adopted when the Court has finished its work.

I wish to acknowledge my obligations to the interesting Memorandum on Land published in the Colonial Secretary's report dated 7th February, 1900.

I have the honour to be,

Sir,

Your most obedient Servant,

H. H. J. GOMPERTZ,  
*Member of Court.*

The Honourable J. H. STEWART LOCKHART, C.M.G.,  
*Colonial Secretary.*

## SOME NOTES ON LAND TENURE IN THE NEW TERRITORY.

### *General theory of Chinese Tenure.*

It is the commonly received opinion that in China the Crown is the universal land lord in whom the ultimate ownership of all landed property is vested.

Williams says (Middle Kingdom Vol. II, pp. 1-2) :—

"The land is all held directly from the Crown, no allodial property being acknowledged; if mesne lords existed in feudal times they are now unknown. The conditions of common tenure are, the payment of an annual tax; the fee for alienation; a money composition for personal service to the Government, a charge generally incorporated with the direct tax as a kind of scutage. The proprietors of land record their names in the district and take out a 'hung-k'i,' or red deed, which secures them in possession as long as the ground tax is paid," that is to say that land once granted by the Crown remained the property of the grantee as long as—but no longer than Crown Rent was paid on it.

2. In many parts of the Empire and notably in the San On District of the Kuang Tung Province there are large tracts of land so infertile as to possess hardly even a nominal value. These lands it would be the natural desire of Government to see taken up on almost any terms and it is not surprising to find that it was the custom for a grant of such lands to be made to proper persons without premium on their complying with the regulations laid down for applicants.

The name of the person applying was entered on the register with the area desired—a description of the land—and the class of tax proper to be paid.

The following extract from a translation by T. T. Meadows of the Provincial Laws and Regulations of the Province of Kuang Tung, published in 1846 by the Governor and Governor General, gives the prescribed form of application for persons wishing to take up land hitherto uncultivated :—

- (a.) The party who intends bringing a piece of land, no matter of what extent, into cultivation, must first repair to the local authority and present a statement containing his individual and family names, and indicating the piece in question; which will then be registered as ground being brought under cultivation. After it has been brought into cultivation, so as to form a regular piece, a plan must be drawn showing its extent in every direction, which must be presented to the local authority, with the request that it may be surveyed: and the latter will after the survey grant a deed placing the cultivator in full possession.
- (b.) Odd patches not forming complete lots, the extent of which does not perhaps amount to 10 mau, and which are barely fit for growing vegetables and miscellaneous produce, need not be reported, &c., &c., as above, at the time their cultivation is undertaken, but only after they have been reclaimed; an exemption granted, "in order to manifest compassion for the cultivators." Whoever has at a former period spent labour and money in cultivating any such piece of land without the cognizance of the authorities, and who has succeeded in reclaiming it, shall be allowed to give information thereof; on which the land in question will be surveyed, and a deed given for it by the local authorities.

The sense of these two paragraphs seems quite clear. A person wishing to take up Crown land might do so on the condition of—

- (1.) Reporting to the proper authority.
- (2.) Getting a deed issued to evidence his possession. This evidently holds good for all land, but in the case of odd patches amounting to less than 10 mau the cultivator need not report until he has already reclaimed the land.

3. No Government professing to derive revenue from the soil can hope to collect that revenue effectively unless the regulations as to registration and enrolment of title are complied with; and that unauthorized occupation was regarded with great disfavour in China is sufficiently shown by the following quotation from Staunton's Ta Tsing Leu Lee, Book II, Section 90:—

“Whoever fraudulently evades the payment of the land-tax, by suppressing or omitting the register of his land in the public books, shall be punishable in proportion to the amount of the chargeable land omitted, in the following manner:—When the unregistered land amounts to one mau, and does not exceed five mau, with 40 blows; and for every additional number of five mau so suppressed, the punishment shall be increased one degree, until it arrives at the limit of 100 blows. The unregistered lands shall be forfeited to the State, and the arrears of the land-tax (computed according to the period during which it had been unpaid, the extent of the land, and the rate at which it would have been chargeable), shall be at the same time discharged in full.

When the land is entered in the register, but falsely represented, as unproductive when productive, lightly chargeable when heavily chargeable; or if the land is nominally made over in trust to another person, in order to exempt the real proprietor from personal service, the punishment, whether corporal or arising out of the payment of the arrears of the tax, shall be inflicted in the manner and according to the scale above stated; but instead of a forfeiture of the lands, the register of them shall simply be corrected, and the assessment and personal service of the real proprietor be established agreeably thereto.

If the head inhabitant of the district is privy to any breach of the law, but does not take cognizance of it, he shall be equally punishable with the original transgressors.”

*Anomalies in the New Territory.*

4. Having regard to the opinion of Williams that no allodial property was recognized but that all land was held directly from the Crown, and in view again of the extremely explicit provisions for registration and the severe penalties following on disobedience, how are we to explain the curious state of things prevalent in the New Territory? It is impossible not to be convinced after even a most superficial examination of the claims brought in that—

- (1.) Many large tracts of land are now claimed by persons who have never paid Crown Rent on them—who never reported their occupation such as it was—to the authorities and whose claims have never been in any way recognized by the Chinese Government.
- (2.) Very many persons have been paying under the name of tax annual sums to families who professed to be giving an account of these sums to the District Treasury but who as a matter of fact very often did nothing of the kind and who in many cases had no real title to more than a very small fraction of the territory over which they collected this rent.

*Suggested explanation.*

5. I hope to be able to show that these claims have their origin in one or the other of two sets of conditions prevalent in the New Territory.

The first of these was the disorder and unrest prevalent for generations past in the districts bordering on the Canton delta. Usually a clan or family had a registered deed for a small area on which they undoubtedly paid Crown Rent but it is quite certain that they collected large sums under the name of Land-tax of which they have never given any account to the authorities.

The explanation usually offered by the people themselves is that these clans are the representatives of the first settlers in the locality.

6. We know that about 1665 A.D. the coast districts of S. E. Kuang Tung were laid waste for a distance of three leagues inland in order to deprive the Ming partisan “Koxinga” of any base of operations (Williams' Middle Kingdom, Vol. II., 180). After this leader had been conciliated and peace restored on the coast it would no doubt be some time before any large number of persons had settled in the depopulated districts. It is alleged that the Central Government made small grants of money to encourage immigration from other districts. The early settlers would receive as much

land as one family could cultivate, on easy terms. One can imagine an immigrant family established in a valley under a deed say for 10 acres of land adopting an attitude of superiority towards later arrivals. No doubt the cultivation was shifting according to the season—swampy and low-lying land being taken up when the year was a dry one to be abandoned in favour of better drained fields when the rains were heavy.

7. In this way the clan would at one time or another have worked the greater part of the valley though the actual amount of land at any one time under cultivation might not exceed the legitimate ten acres. Newcomers wishing to settle would be told that the land belonged to the clan who were responsible for the tax. The strangers would have nothing to gain by objecting to pay. Any refusal would mean bad blood and possibly litigation with the result that the Government would get the tax and that the old settlers would have a lasting feud with the new arrivals.

Other immigrants would similarly find it to their interest to keep in with the clan and in time every settler in the valley would be paying them a fixed yearly sum under the name of tax although none of it would ever reach the coffers of the Government.

8. This I take to have been the usual manner in which clan rights over land came to be so universally asserted. The country bordering on the Canton delta has always been turbulent and lawless and the great difficulty of communications in a mountainous region no doubt made the Magistrates willing to condone such frauds on the revenue. No doubt the clan would pay a proportion of their receipts as hush money. When the District Magistrate was honest this would be absorbed by his underlings, when he was not it would form a useful addition to his slender stipend.

9. I estimate that four-fifths of the land tax in the New Territory passed through the hands of an intermediary before reaching the Government. The system I have described was not however the only cause of this. The second cause was undoubtedly the desire of evading the heavy registration fees charged in the District Land Office.

In the first place unless a man had a "heading"—a page with his own name or that of his ancestor in the register—it cost him not less than \$100 to begin his registration. Even when he had this heading in the register there were fees legitimate and otherwise, to be paid and the trouble and delay of going to the District City.

10. The result was that very few sales of land were registered. The more usual course was for the transaction to be evidenced by a white, *i.e.*, an unregistered deed containing a covenant by the purchaser to pay the vendor a yearly sum to meet the tax which the vendor continued to pay as before. This was frequently done even when the vendor parted with the whole of the land held by him under a red deed when in order to save the purchaser the trouble and expense of registration the latter took a white or unregistered deed as evidence between himself and the vendor of the transaction and of the payment of the purchase money. He might also get the original red deed to be kept as security against subsequent dealings with the land by his vendor. Thus the taxes were still paid in the old name though the land had passed into other hands.

It is possible I think to find in one or other of these sources the origin of all the clan claims in the New Territory. That is to say: either a clan has forced later immigrants to pay to itself an imposition under the name of land tax; or the clan (or individual members of it) has parted with land under a white deed and still continues to be responsible for the tax.

#### *Ownership of land how acquired.*

11. It may not be amiss to recapitulate briefly the various methods of acquiring land in the New Territory.

First by grant from the Crown.—On application to the District Magistrate for unoccupied waste, or for newly formed alluvial land, a notice was posted reciting the application. Then, after five months if no objection had been lodged a grant issued stating the area and class of the land and the tax payable.

Secondly by purchase.—The law required that every deed of sale should be registered and the amount of tax due transferred into the purchaser's name. In most cases the instrument was not registered, the vendor continuing to pay the tax and the purchaser indemnifying him by a yearly contribution. It was however usual in such cases as I have stated above for the vendor to hand over the prior registered deed to the purchaser to secure the latter against any subsequent dealings with it to his prejudice.

#### *The Perpetual Lease.*

12. Thirdly by perpetual lease.—This was by far the most common method of dealing with land in the New Territory.

The effect of a grant of land from the Crown was really to make the grantee a perpetual lessee subject to the payment of the proper Crown Rent. Something analogous was adopted by private individuals. When the transaction was intended to be registered it was usually called a sale, being

in effect the transfer of the perpetual lease granted by the Crown from the vendor to the purchaser who took the place of the former as the person inscribed as tax payer in the register. When as was usually the case it was preferred to dispense with registration, a sale was inconvenient, for it left the vendor responsible for the tax and without any covenant of indemnity from the purchaser. On the other hand under a perpetual lease the purchaser got practically the full rights of ownership and could mortgage or lease or even sell the property provided always that the rent reserved under the old lease was punctually paid. The vendor got an annual sum sufficient to indemnify him for the tax to be paid but had otherwise no further interest in the land.

13. I have said that the annual sum reserved was sufficient to indemnify the vendor for the tax it was supposed he would continue to pay, but its amount was often very much larger than this. Frequently the rent under a perpetual lease is a full rack rent the explanation no doubt being that in such cases the true relationship of land lord and tenant exists and that through habit people in the New Territory have come to prefer this form of alienation to a regular sale.

14. The perpetual lease was sometimes in writing but very much oftener it was oral merely and so general was it and so popular that it seems usually to have been presumed in the absence of any explicit agreement between the parties. Thus if A builds a house on B's land and B ratifies his action by accepting rent the implied condition is that subject to the payment of annual sum initially fixed and not liable to be raised A can continue in occupation of the land and that B has meanwhile no interest therein beyond the receipt of this annual rent. B has it is true the reversion if A die without heirs but that is a remote contingency in China where in default of issue adoption is freely resorted to.

15. The annual rent may be very small—this usually means either that a capital sum was paid originally or that the value of the land was so insignificant that no more rent was reserved than was necessary to meet the tax. It may again amount to almost the full annual value of the land and in some localities this is said to be as high as \$3 and \$4 a mau—though in view of the exceedingly elastic ideas of measurement current amongst the villagers it is impossible to place much reliance on their figures.

16. The interest of the lessee then amounts to this—that as long as the rent is paid the land belongs to him and to his heirs forever. It seems beside the purpose to ask whether he can leave it by will for the will as we know it does not exist in the New Territory. If the lessee parts with the possession and the rent is not paid he remains liable to the lessor for the amount. The lessor on the other hand has a perpetual right to receive the rent originally stipulated for. He cannot increase it nor can he alienate more than the right to receive this annual sum. The land reverts to him if the lessee's family becomes extinct.

17. In several cases that have come to my notice since the Convention landlords have realized that in view of the recent enhancement in the value of property it is to their interest to compound with their perpetual lessees and resume for a money payment their original interest in the land. I anticipate frequent attempts to override the rights of lessees by persons who have recently acquired land for parts of which such leases have been originally granted. It may be well to note, that out of the several hundreds of such leases which have come to my notice I have not found a single instance of the lessee's rights not being respected under Chinese rule.

A man could only sell his land subject to the rights of any persons on it who had taken such a lease from him and the only result of the transfer was that the rent reserved under the lease became henceforward payable to the new landlord.

In several sales of land that have taken place since the Convention the purchasers have I believe failed to recognize the importance of ascertaining whether such leases had been previously granted on the property and they have now to face the alternative of either buying out the lessees or being satisfied with the very small annual rent which is all that remains of the landlord's rights.

#### *Mortgages.*

18. Fourthly by a mortgage.—Mortgages of land are very common transactions in the New Territory. The Chinese mortgage, as I have found it, is like the Welsh mortgage of the text books, a conditional sale. It may be in writing but is very often oral and in spite of the great strictness of Chinese Laws upon the subject it is hardly ever registered. It is faithfully described in the following account of a Welsh mortgage taken from a well known Text book :—

“What is known as a Welsh mortgage is a transaction whereby the estate is conveyed to the mortgagee, who is to go into possession and take the rents and profits as an equivalent for his interest, the principal remaining undiminished. In such a transaction there is no contract, express or implied, between the parties, for the repayment of the debt at a given time, and though the mortgagee has no remedy by action to enforce payment of his money, yet the mortgagor or his heirs may redeem at any time.”

It is only necessary to add that these mortgages when not evidenced by a deed are a fertile source of litigation. If the value of land should go up the mortgagor naturally claims to redeem but the mortgagee frequently resists on the ground that the sale was unconditional.

The mortgagee being from the nature of the transaction in possession becomes the owner for the time being of the property subject to the possibility of redemption at some future time by the mortgagor. Mortgages are frequently assigned three or four times over and this of course increases the possibilities of dispute when the original owner comes to redeem.

19. Short leases of agricultural land for a year are not uncommon but present no features worthy of particular attention—they are usually determined at the end of either the Spring or the Autumn harvest by six months' notice on either side.

20. After a District has been dealt with by the Land Court and all claims finally heard and determined there are two important questions that still remain to be considered.

Firstly.—Who are the persons to be made liable for the Crown Rent and in what proportions?

Secondly.—What titles are to be issued to persons having interests in land and what form of registration is most suitable?

*Crown Rent—Incidence of.*

21. As regards cases where the cultivator is himself the owner holding direct from the Crown and paying his own taxes there is of course no difficulty.

It will be found, however, that a large proportion of the land is held on perpetual lease. In such cases Government should I consider deal directly with the (perpetual) lessee and make him responsible for the Crown Rent. He should then be allowed to deduct the amount he contributes as Crown Rent from the sum he pays his landlord.

If the lessor's rent is small in amount—this means either that he received full value for the land originally and that the annual payment was arranged simply to cover the taxes for the payment of which he continued liable—or that he had no real title to the land but has levied this amount under the name of tax from persons who were not in a position to resist the claim.

In such cases the lessor will no longer get anything; for the Crown Rent to be now paid by the lessee will be greater in amount than the old rent under the lease and there will be nothing left for him.

If however the relation between the parties was really that of landlord and tenant the sum paid will approximate more nearly to a rack rent and this sum less the amount paid for Crown Rent by the lessee will still come to the hands of the lessor.

22. In many cases the perpetual lessors are absentee landlords with no other concern in the land than the receipt of their rent, as for instance the Li family on the northern half of Lan Tao. In such cases the tendency will be for the lessee to buy out his lessor and gradually to get the full ownership subject to the rights of the Crown, into his own hands. Where conversely the lessors are powerful and wealthy families resident in the neighbourhood of their lands the tendency will probably be the other way and they are more likely to buy out the cultivator and either till the land themselves or let it on annual lease.

In the case of a mortgage the mortgagee, if he be, as he usually is, in possession, should pay the Crown Rent: the mortgagor has often severed all connection with the land and gone to California or to Singapore whence his return is at least problematical.

*Titles.*

23. Next as to the form of title. In my opinion it will be safest to keep at any rate for the present to the tenures which obtain and are well understood among the people.

A person who has a grant of land from the Chinese Government has in effect a perpetual lease subject to the payment of Crown Rent. If he converts the land to other uses than those to which it was put when he first took it up, his Crown Rent may be raised, but, subject to this and perhaps to some reservation with regard to minerals the land is his own, as long as he continues to pay the tax.

Such person need not I think be given ordinarily a Crown lease. He should be entered on a Register as a "Customary land holder" and be permitted to have an extract from this Register as evidence of his title upon payment of a small fee. The rights and liabilities incident to such tenure might be summarily defined in a short Ordinance which however we need be in no pressing hurry to draft. After a year or two's experience we shall know much more about New Territory customs than we do at present.

24. Such a certificate of title to be issued on payment of a small fee would be amply sufficient for the ordinary cultivator. It would not however satisfy the needs of Europeans who might wish to acquire land and it would probably be of little use to a registered company taking up land for industrial purposes. The proper course would be for them to make their own arrangements with the cultivator who would then surrender his rights to the Crown in favour of the purchaser and this latter would be granted a Crown Lease on such conditions as to the payment of Premium, Crown Rent and Fees as the circumstances might seem to warrant.

Under the Chinese regime waste areas were frequently granted on easy terms subject, however, to an increase of Crown Rent, if the grantee converted the waste into agricultural land, or if he erected buildings thereon.

Land for which a Crown Lease might be issued would of course come under the ordinary law of the Colony as regards registration and so forth.

But the ordinary cultivator should I think be spared for the present the technicalities of English Law.

It is easy to see how the desire to avoid the expense of registration has complicated the land question in China by rendering unregistered transfers almost universal. Our aim should be to devise a system so simple and so cheap that the Chinese will find it more convenient to comply with the law than to evade it.

#### *The Torrens System.*

25. The best model is I think the system of Land Registration adopted in the Native States of the Malay Peninsula in the Settlement of Malacca which is a modification of the well known Torrens System, introduced by the late Sir WILLIAM MAXWELL. The peculiarity of this system is, that it makes the ownership of property pass by entry in the register: title by registration being substituted for title by deed.

Its main outlines are well described in the following quotation from Sir WILLIAM MAXWELL'S Essay on the Torrens System, paragraphs 4, 5, 25, 26, 27, 28, 29 and 30:—

- “ 4. Legal expenses incident to the sale and purchase of land were heavy, and every addition to the deeds forming the chain of evidence of title increased the cost of subsequent dealings.
- “ 5. It was, therefore, with a firm persuasion that great grievances were imposed upon the Australian Colonists by the English law of real property that Mr. TORRENS (now Sir ROBERT R. TORRENS, K.C.M.G.) proposed, in 1857, in South Australia, a system of his own invention, adapted from the practice attending the transfer of shipping property, which, reduced to its elementary principle, substitutes title by registration for title by deed.
- “ 25. A certificate of title is issued to every person entitled to any estate of freehold in possession in land under the Act. Every certificate is in duplicate. One duplicate is given to the proprietor, the other is retained in the Lands Titles Office. The certificates in the office constitute the register book, which, in the words of Mr. TORRENS, is the pivot on which the whole mechanism turns. Every certificate is marked with the number of the volume and the folium of the register book. Crown Grants of land bought since the Acts came into operation are also issued in duplicate, one of which is bound up in the register book, and such grants are, in all respects, equivalent to certificates of title.
- “ 26. So far, it will be said, the title is simplified, but how is this simplicity to be retained,— how will future complications be prevented? This is the problem which the Act endeavours to solve.
- “ 27. For the purpose of facilitating transactions, printed forms of transfer, mortgage, lease, and other dealings, are to be procured at the Lands Titles Office. Any person of ordinary education can, with very little trouble, learn to fill them up in the more simple cases without professional assistance. If a proprietor holding a certificate of title wishes to sell the whole of the land included in it, he fills up and executes a printed form of memorandum of transfer to the purchaser. The transfer is presented at the Office, and a memorial of the transfer is recorded by the proper officer on both duplicates of the certificate of title. The purchaser, by the recording of the memorial, stands in precisely the same position as the original owner. If only a part of the land in a certificate is to be transferred, such part is described in the memorandum of transfer, the transfer is noted on both duplicates of the original certificate; a fresh certificate is issued to the purchaser for the part transferred; and the original certificate is noted as cancelled with respect to such part. This process is repeated on every sale of the freehold, and it will thus be seen that every person entitled to a freehold estate in land under the Act has but one document to show his title, through however many hands the property may have passed, and such document vests in him an absolutely indefeasible title to the land it describes.
- “ 28. If the proprietor wishes to mortgage or lease his land, or to charge it with the payment of a sum of money, he executes, in duplicate, a memorandum of mortgage, lease, or encumbrance, in the form provided by the Act, altered so as to meet the particular circumstances of the case. This is presented at the Lands Titles Office with the certificate of title; a memorial of the transaction is entered by the proper officer on the certificate of title and on the duplicate certificate forming the register book. The entry of this memorial constitutes registration of the instrument and a

“note, under the hand and seal of the proper officer, of the fact of such registration is made on both duplicates of the instrument. Such note is conclusive evidence that the instrument has been duly registered; one of the duplicates is then filed in the office, and the other is handed to the mortgagee, or lessee. The certificate of title will thus show that the original proprietor is entitled to the land it describes, subject to the mortgage, lease, or encumbrance; while the duplicate instrument held by the mortgagee, lessee, or encumbrancee, will shew precisely the nature of his interest. Each person has and can have but one document of title, and this shows conclusively the nature of the interest he holds, and to that interest his title is indefeasible. If a mortgage is paid off, a simple receipt is indorsed on the duplicate mortgage held by the mortgagee. This is brought to the office, and the fact that the mortgage has been paid off is noted on the certificate of title. Here a striking inconvenience of the old system is done away with. Few things are more perplexing to simple minds than the necessity which that system imposes of a deed of reconveyance when a mortgage has been paid off. A mortgage under the Act does not involve a transfer of the ‘legal estate,’ although the mortgagee is made as secure as if such transfer had taken place. The necessity, therefore, for a deed of reconveyance, when the mortgage is paid off, at once vanishes. If a lease is to be surrendered, it has merely to be brought to the office with the word ‘surrendered’ indorsed upon it, signed by the lessor and lessee, and attested, and the proper officer will note the fact that it has been surrendered, on the certificate of title. Mortgages or leases are transferred by indorsement, by a simple form. The Act provides implied powers of sale and foreclosure in mortgages; and in leases, implied covenants to pay rent and taxes, and to keep in repair, together with power for the lessor to enter and view the state of repair, and to re-enter in case of non-payment of rent or breach of covenant. All these may be omitted or modified if desired. In order to save verbiage, short forms are provided, which may be used for covenants in leases or mortgages, the longer forms which they imply being set out in the Act. Thus, in a lease, the words ‘will not without leave assign or sublet,’ imply a covenant ‘that the said lessee shall not, nor will, during the term of such lease, assign, transfer, demise, sublet or set over, or otherwise, by any act or deed, procure the lands or premises therein mentioned, or any part thereof, to be assigned, transferred, demised, sublet, or set over, to any person whomsoever, without the consent in writing of the said lessor first had and obtained.’

“29. Every person, therefore, entitled to a freehold estate in possession, has (if his land is subject to the Act) a certificate of title, or land-grant, on which are recorded memorials of all mortgages, leases, or encumbrances, and of their discharge or surrender. If he transfers his entire interest, a memorial of the transfer is recorded on the certificate, and the transferee takes it subject to recorded interests. The transferee can, if he chooses, have a fresh certificate issued in his own name, and in that case the old certificate is cancelled, and the memorials of the leases or mortgages to which the land is subject are carried forward to the new one. If a proprietor transfers only a part of his land, his certificate is cancelled so far, a fresh certificate is issued, and memorials of outstanding interests are similarly carried forward. Memorials of dealings with leases or mortgages are noted on the duplicate lease or mortgage held by the lessee or mortgagee, and on the folium of the register book. The Officers of the Department, therefore, and persons searching, can see at a glance the whole of the recorded dealings with every property; while each person interested can see, by the one document he holds, the precise extent of his interest.

“30. The foregoing extracts give a very clear exposition of the general effect of the system of transfer by registration. It cannot be too emphatically pointed out that it is not the execution of the memorandum of transfer, lease, or mortgage, but its registration in the Lands Titles Office, that operates to shift the title. No instrument, until registered in the manner prescribed by the Act, is effectual to pass any estate or interest in any land under the operation of the Act, or to render such land liable to any mortgage or charge; but upon such registration, the estate or interest comprised in the instrument passes, or the legal effect of the transaction, whatever it may be, is complete. Registration takes effect from the time of production of the instrument, not from the time of the actual making of the entry.”

26. There must be 100,000 separate lots of land held in individual ownership in the New Territory and of these probably 90,000 are in the country to the North of the Kowloon Watershed.

Land to the South of this range and bordering on the harbour might very well remain under the ordinary land system of the Colony; it is only for land which will in most cases remain in the hands of the peasant cultivators that I recommend a new departure.