

CHAPTER V.The Land Problem

The land problem, one of the most serious and certainly the most complicated problem facing the Penang Presidency, was the result of the absence of a clearly formulated policy in the early years of settlement. The crux of the problem lay in the different types of land alienation adopted from time to time without consideration being given to their incompatibility or possible illegality. The resulting confusion affected the morale of the landowners and hence the state of agriculture, because proprietors were unwilling to take the risk of planting new crops if their land tenure was uncertain. The land problem therefore directly affected the economic prosperity of the island. As such it was a constant concern of the administration which was already burdened with increasing yearly deficits, and subject to criticism by the Court of Directors.

The different titles under which lands were held in 1805 had their origin in the respective policies of the early administrators and in the continuously indecisive attitude of the Bengal Government. Lands at this time were held firstly, on verbal permission of "general

notoriety"; secondly, on a certificate termed a "measurement paper", which was considered as a preliminary to a more regular deed from Government; thirdly, on "cutting papers", a form of written permission begun by Macdonald; and lastly, as definite grants issued by Leith and Farquhar, which gave the property described to the holder and his heirs in perpetuity, without reservation except for a small annual quit rent.¹ The difficulty was that ownership transfers of these lands had been made with the knowledge of government, thereby giving a certain degree of legality to what were often meant to be temporary measures.²

When the first settlement was made on Penang, Light gave encouragement to persons to clear the land by recognising that such land became the property of the clearer. The license to clear the jungle was considered an absolute pledge from government that the cleared land was secured to the clearer and his heirs in perpetuity. Subsequently, lands were sold to or transferred from one individual to another on the authority of verbal pledge

1. Penang Consultations 10 March 1808, Minute by W.E. Phillips, SSR (IOL) XIX, 242-4.
2. The following discussion owes much to Lee Chye Hooi, The Penang Land Problem 1786-1841 (Academic Exercise, University of Malaya, 1957), and the Minute quoted frequently therein, namely, W.E. Phillips, Minute on Landed Tenures 15 August 1823, Papers and Correspondence relating to the Land Revenue Administration of the Straits Settlements 1823-1837, (Singapore 1884).

alone, which tended to complicate the situation.³ Light achieved his aim in attracting settlers, and within a short time, much of the eastern part of the island was cleared. Such wholesale alienation of land had unfortunate effects both within Georgetown, where the government later found itself with insufficient land, and in the country districts of the island, where large estates accumulated in the hands of a few Europeans, many of whom had no intention of cultivating the land they owned.⁴

Light did in fact issue twenty-eight written grants from about the year 1789. The number of grants was limited because a written title required a proper survey of the land, which was generally impossible with the state of the establishment at that time.⁵ Light must have been aware of the growing complexity of the situation, and in 1790 he therefore stopped the issue of perpetual grants and introduced instead a title called a "measurement paper", which was a certificate from the Land Surveyor defining the boundaries of the tract of cleared land. The "measurement paper" contained no provision for

3. Phillips to Pearson 16 April 1806, Penang Consultations 24 April 1806, SSR (IOL) XIII, 369; Penang Consultations 10 March 1808, Minute by Phillips, SSR (IOL) XIX, 240.
4. Stevens (1929), 379-81; see Chapter I, 19-20.
5. Stevens (1929), 392-3; Lee Chye Hooi (1957), 3.

perpetuity rights, nor was there any mention of quit rent, because it was considered as an interim certificate pending the issue of a formal grant by government.⁶ The fact that these "measurement papers" were not replaced later led to difficulties over the legality of these documents.

In January 1790 the Bengal Government sent to Penang the long expected instructions on land distribution, which empowered Light to divide land into lots and distribute them to new settlers, ensuring that the lots did not exceed the ability of the person to cultivate them. But no instructions were given as to the exact nature of the titles.⁷ These orders, which were largely ineffectual, reflected the ignorance of the Bengal Government concerning the land situation in Penang. Similar ignorance was demonstrated by the subsequent orders from the Supreme Government revising the policy which had been favoured since the first days of settlement. It was laid down that from 1 January 1795 land was not to be given to settlers in perpetuity but was to be leased instead for a limited period of five years. Since settlers would not accept land on such limited tenure, Macdonald recommended to the Supreme Government that the orders should be withdrawn.

6. Penang Consultations 10 March 1808, Minute by Phillips, SSR (IOL) XIX, 243; Lee Chye Hooi (1957), 8.
7. Penang Consultations 10 March 1808, Minute by Phillips, SSR (IOL) XIX, 240-1.

and this was done in January 1797. At the same time the ¹⁹⁴ question arose of the legality of former grants, and the Supreme Government was obliged to confirm all earlier grants of land in perpetuity, whether verbal or written. ⁸

From 1797 permission to clear jungle was granted on the original basis of perpetuity, and Macdonald introduced a new provision which was known as the "cutting paper". This was a written document giving permission to clear the ground, and constituted a preliminary to an official grant. Documents issued on this basis had the advantage, from the government's point of view, that land could be resumed even after the ground was cleared, provided that compensation was paid to the clearer at \$5 per orlong of cleared land. The right of reclamation was never enforced, and much of the land cleared under these terms was given over to pepper cultivation and other valuable cultures, so that the occupiers claimed to hold a prescriptive right to the soil, especially as sales of "cutting papers" had been sanctioned, and duties paid to government ⁹ on their registry. Furthermore, when a "cutting paper" was exchanged for a "measuring paper", the official preliminary to the issue of grants, the government's right of resumption virtually ceased. The

8. Phillips to Pearson 19 April 1806, Penang Consultations 24 April 1806, SSR (IOL) XIII, 370; Penang Consultations 10 March 1808, Minute by Phillips, SSR (IOL) XIX, 241-2; Lee Chye Hooi (1957), 12; See Chapter I, 20.
9. A register for this purpose was established in 1793 by Light, who also imposed a 2% duty on the price of all land transactions. All sales of land were also countersigned by Light. See Penang Consultations 10 March 1808, SSR (IOL) XIX, 242.

"cutting papers", however, continued to be issued for over twenty-five years, and by 1823, 760 had been issued, covering an area of 10,842 orlongs. But since no piece of land under a "cutting paper" was ever reverted to government, the measure failed to achieve its original object.¹⁰

Macdonald, during his period as head of government, ordered a general measurement to be taken of all lands cleared previously, and stated his intention of issuing new grants. But he died before this was done, and his successor, Sir George Leith, acting on instructions,¹¹ called in all existing grants and directed a second measurement of cleared lands to be made by the Surveyor, Philip Manington. The survey had not been completed when Leith was relieved by Farquhar. Leith's new policy of granting land provided for the distribution of lands after re-survey to the new grantee and his heirs in perpetuity, without any reservation except for the payment of a small annual quit rent to government.¹² The method of acquiring land was described by Farquhar in his Report

10. Phillips to Pearson 16 April 1806, Penang Consultations 24 April 1806, SSR (IOL) XIII, 370-1; Penang Consultations 10 March 1808, Minute by Phillips SSR (IOL) XIX, 242; Lee Chye Hooi (1957), 13; Tregonning (1958), 330.
11. Barlow to Leith, JIA, V, 159.
12. Phillips to Pearson, 19 April 1806, Penang Consultations 24 April 1806, SSR (IOL) XIII, 371; Penang Consultations 10 March 1808, Minute by Phillips, SSR (IOL) XIX, 243-4.

of 1805. The procedure was to make an application to the Surveyor for a license to clear the land, after which he issued a "measurement paper" describing the extent, boundaries and site of the land when it was cleared. Then provided the Company did not require the ground, a grant could be obtained which gave the holder freehold property without limitation, subject only to the payment of a quit rent, and in the case of sales to ¹³ duty of 2% on the amount of the transaction. By 20 September 1805¹³ the number of grants issued in this manner totalled 1,756, and embraced an area of 8,817 orlongs. In addition there were equally large tracts of land that had long been cleared and cultivated, but the clearer of which had not¹⁴ been issued with any formal title.

II

Such was the position of land tenure on the arrival of the members of the new Presidency Government in September 1805. Complaints were soon made about the actions of their predecessors, such as the "impolicy"

13. Farquhar's Report (1805), (Appendix No. 14), SSR (IOL) IX.
14. Penang Consultations 10 March 1808, Minute by Phillips SSR (IOL) XIX, 241-. The number of grants made by Leith was more numerous than those made by Farquhar. See Index to Duplicates of Original Land Grants as re-registered in pursuance of Order in Council 1831. Five Volumes, in Penang Land Office Archives. For example of grants see Appendix V B.

of calling in original grants and the granting of new ones to the existing proprietors, the incorrect registration of land titles and the general disorder of the records in the Land Office.¹⁵

An additional source of confusion was the instructions of the Directors, who like the Bengal authorities did not fully understand the land situation in Penang. The dispatch of April 1805 from London showed that they were misinformed on two points. They were misled into thinking that the resumption clause in the "cutting paper" was inserted in all grants, and that the 1794 resolution restricting land grants to five year leases had never been withdrawn.¹⁶ The Directors instructed that the quantity and titles of lands held by Europeans was to be ascertained for the purpose of resuming lands which had been transferred or acquired by Europeans, where no bills of sale had been registered in the Company's books. Referring to grants, the Directors stipulated all future grants of land to Europeans were to be made on long leases and not in perpetuity. These were to be renewable on the payment of an initial fine and a quit rent which was to increase with the extension of cultivation. The

15. Remarks on Farquhar's Report, SSR (IOL) IX.

16. London to Penang 14 April 1805, para. 55, 58, JIA, VI, 27-8; Lee Chye Hooi (1957), 14-15.

Company was to have the power of resuming those portions¹⁹⁸ of land which were deemed to be necessary for public and other purposes. No grant in excess of 300 orlongs was to be made to Europeans except for special reasons, and finally, the clearing and cultivation of the island was to be encouraged by making small grants of land to the Chinese.

17

In an effort to sort out the confusion, the Penang Government decided to withhold all further grants of land, a decision which was transmitted to the Court of Directors in November 1805. In this document the Directors were informed of the land situation in Penang. After a brief reference to the types of grants, the dispatch pointed out that those grants which had already been made to individuals were regarded as freehold property, because they did not contain any clause entitling the Company to resume uncultivated lands. The government also informed the Directors that Europeans had already acquired considerable estates on Penang, and that a record of titles under which these lands were held would be duly transmitted. The need for a proper survey of the island was stressed, this being the reason for their application to Bengal for a Land Surveyor.

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17. London to Penang 14 April 1805, para. 56-8, JIA, VI, 27-8.

18. ~~Penang to London 12 November 1805, para. 61-4, JIA, VI, 88-9.~~ Also in SSR (IOL) IX, "Extracts from letters to and from Prince of Wales Island (18 April 1805 - 7 April 1808) relative to the Court's orders of April 1805 on grants of land, state of cultivation and other injurious effects which are said to have resulted from the same."

These exchanges of 1805 between Penang and London initiated a voluminous and protracted correspondence concerning land grants and their effects on the state of cultivation and the economic well-being of the island, which ended only after the arrival of fresh instructions from the Directors in January 1810. A letter of February 1807 from the Directors was short and inconclusive. More would be known, they felt, of the exact state of cultivation after the completion of the intended survey.

Surprise was expressed that grants of land issued to individuals were considered as freehold property and that the grants had no clause entitling the Company to resume waste and uncultivated lands. In Farquhar's Report the Directors considered it "absolutely stated" that the Company's right of resumption on payment of \$5 per orlong had been reserved, and the Penang Government was directed to enquire carefully into the matter.

In the second letter concerning land from Penang to the Directors in July 1806, a statement of the land granted to Europeans was included, with a description by Phillips, the Collector, of the different land tenures prevailing in the island. The government drew attention

19. London to Penang 18 February 1807, para. 39-40, SSR (IOL) IX. This definitely proved the misunderstanding apparent in the 14 April 1805 despatch from London.

to Phillips' statement that applications were being made to him daily for regular grants in lieu of the papers formerly granted to clearers. The Directors were informed that "dangerous consequences" would arise from the lack of proper regulations and the unsettled claims of the landowners, which could not be determined before the arrival of a regularly constituted law authority, or of instructions from London. ²⁰ In a further letter to the Directors in January 1808 the Penang Government affirmed that among the different tenures held on the island, the right of resumption was applicable only to lands held under "cutting papers", that is, documents supplied to the original clearer which were cancelled to the subsequent issue of grants. It also stated that nothing had been done to remove the difficulties which were hampering the ²¹ cultivation and prosperity of the island.

A more lengthy despatch from Governor Macalister in April 1808 expressed increasing concern over the diminishing area under cultivation in Penang. The setback which he attributed to the Directors' orders of 1805 and the lack of confidence in the government could only be restored by the immediate issue of proper grants. Cultivation

20. Penang to London 31 July 1806, para. 12-17, SSR (IOL) IX.

21. Penang to London 29 January 1808, para. 39-40, SSR (IOL) IX.

had decreased, the value of land was depreciating, and even those grants with regular titles were only one-third of their former value. Since the arrival of the Presidency Government the clearing of lands had stopped and no grants had been issued. Many industrious cultivators, after waiting over ten years for a formal grant, and were sufficiently depressed by the fall of pepper prices, were forced to abandon their plantations and let them return to their original state of jungle. The slow issue of formal grants had originated during the previous administration, when the land Surveyor had insufficient staff to complete the necessary surveys. In addition, because of convenience to the Surveyor, the issuing of grants [grants being given on the land being measured] had begun at the centre of the island, while the clearing of land had begun at the extremities of the island. Those who were demanding grants felt as entitled to them as those who had already received them, and confidence in government could only be restored by the immediate issue of grants where promised on the faith of "cutting papers". Otherwise the apathy among landowners would have serious economic and financial consequences for the island.

In January 1810 instructions were at last received from the Directors clarifying the previous confusion over

22. Penang to London (Macalister to Secret Committee)
7 April 1808, para. 12-18, SSR (IOL) IX.

land grants and introducing a new system of land alienation. Persons who had been permitted to clear lands on the understanding that a regular grant would be subsequently issued, were to be given grants on the conditions usually required by the paramount owner of the soil. Whenever a written paper of any form ["measurement" and "cutting paper"] had been issued and its authenticity established, a claim to the possession of regular grants was valid. In cases where it was reasonably certain that verbal permission to clear land had been granted, based on the "general notoriety" of the fact, and on subsequent undisputed possession of that land, the possessor was regarded as entitled to receive a regular grant at the previous rent or at a small quit rent. Concerning future grants of land, the 1805 specification of 300 orlongs was considered to be too large. The new grants were not to exceed 50 orlongs, and grants could be made only if the applicant was considered capable of clearing the land within a reasonable time. Further grants could be made later if required. Europeans were permitted to hold grants on the same tenure as other settlers, but their grants were to contain a proviso that no European was entitled to proceed from Europe to take possession of lands devolving on him in Penang. A further safeguard was added that land not cultivated within a certain period of time after

the grant was made was to revert to the Company.

Uncultivated lands could not be sold by grantees, and all lands were to be liable to a land tax and all grants to a registration fee. A survey was to be taken of the island, and reports compiled on all grants made, and on the state of mortgage loans which were controlled chiefly by Europeans.²³ This new system of land tenure, a liberal one which recognised the necessity of issuing perpetual grants, though only on certain conditions, continued as the basis of land policy until 1827, when it was replaced²⁴ by Fullerton's leasing system.

III

The land problem was lessened but by no means solved by the implementation of the instructions of 1810 from the Directors. The need to clarify the confused state of land tenures on the island still continued, while the necessity of encouraging cultivation and increasing revenue from land was paramount. Following the decrease in cultivation and the value of land after 1805, due to the fall of pepper prices and the refusal to issue grants, the Penang Government naturally wished to encourage renewed cultivation, especially in crops likely to contribu

23. London to Penang 28 April 1809, Penang Consultations 18 January 1810, para. 7-21, SSR (IOL) XXVI, 57-63.

24. Lee Chye Hooi (1957), 15.

to the island's revenue. But the economic depression that beset Penang after the British occupation of Java, and the absence of a market for Penang's export crops had adverse effects on agriculture. In 1814 Phillips admitted that cultivation was in a "lamentable state of deterioration", and that nearly half the land formerly cultivated had been abandoned and was reverting to its original forest state.²⁵ Nevertheless the Penang Government continued to encourage cultivation by giving financial aid for short periods to prospective planters.²⁶

The need to clarify the different land tenures was closely connected with the necessity of increasing Penang's revenue. Only written grants yielded quit rent, [~~\$1 per grant~~], while all other titles to land [~~verbal licenses and "measurement" and "cutting papers"~~] included no obligation whatsoever for payment of rent. For this reason, a good proportion of landowners were reluctant to exchange documents which were already considered valid by the Court of Directors and involved no financial obligations, for regular grants with their quit rent clauses. Much of the confusion lay in the incorrect procedures that had been carried on in the Registry from the time of its establishment in 1792.

25. Penang Consultations 25 June 1814, Minute by Phillips, SSR (IOL) XLIV, 1430.

26. For example, loans to cotton planters. See Chapter VI.

The "measurement" and "cutting papers" were entered in the register in the same manner as regular grants, and by accepting the registration fee of 2%, the government gave some degree of legality to such transactions. Moreover, the registration of bills of sale or transfer of lands was not compulsory, so that the confusion in the system of land registration made the task of tracing the alienation of property and the fixing of titles almost impossible. However the Registry did serve a useful purpose in the collection of the duties on the sale of houses and lands.

A further complication in the problems of clarifying grants, of the recording of titles to land in the register and of increasing the collection of quit rents, arose from the presence of "judicial" or "Sheriffs sales" of lands which began in 1811. These were not recorded in the Collector's office and therefore were not subject to the 2% registration fee or to quit rents. Furthermore, since these records did not appear in the register, no complete list of land titles could be compiled. The matter was brought up in 1814 by David Brown, who requested that transfers of property made legal by bills of sale from the Sheriff might be recorded in the Collector's office, if they were exempted from the 2% registration

duty. Such a measure, he pointed out, would bring the register nearer to completion, and facilitate the collection of quit rents. Because of the advantages involved, Brown's request was granted, and the Collector was advised to keep a register of further deeds of "Sheriff's sales".²⁸

The settlement of land tenures was continually impeded by the lack of a proper survey of the island or of individual estates during the early years of the settlement. The acute shortage of assistants during Light's time made a survey impossible. He was assisted only by a native land measurer, Abdul Latiff, who carried out the measuring of land required for the "measurement paper". A later survey begun in Leith's time by Philip Manington was still incomplete by 1805. The need for a complete survey was recognised by the new government, and a request was made that a Surveyor be sent from Bengal. In 1806 Jeremiah McCarthy arrived at the Presidency and began surveying various districts of land, [a few of these still survive today], but on all accounts, he appears not to have been satisfactory. In 1815 J.J. Erskine expressed 'surprise and regret' that the survey, still incomplete, should have been so protracted and expensive. McCarthy submitted plans of the districts of Sungei Tiram,

28. Brown to Phillips 4 January 1814, Phillips to Clubley 6 January 1814, Penang Consultations 11 January 1815, SSR (IOL) XLVIII, 48-54.

Byan Lepas and Batu Moam, adding that the difficulty of access and lack of roads had prolonged the survey. Other districts which he had been ordered to survey, three in the north and two in the south, still remained to be done. ²⁹

As he left the Presidency soon afterwards, the survey remained incomplete, and contributed to the difficulties of tracing certain land grants. A report made in 1818 brought to light another effect of the lack of any accurate survey in the early years of settlement. When many proprietors of land either died or abandoned their holdings because they were no longer profitable, many neighbours of this deserted property took the opportunity of joining it with their own, and claiming it by adding plans of such pieces to their own "cutting papers". They then obtained new grants for the whole ground on the support of Surveyor McCarthy, and nothing could later be proved in the face of a legal grant. It was suspected that a number of people, including David Brown, had ³⁰ increased their lands in this manner.

The generally low quit rent that was collected was due not only to the existence of landed tenures which did not require any payment, but also to the lack of any

29. Minute by Erskine 21 March 1815, Penang Consultations 23 March 1815; McCarthy to Council 23 March 1815, Penang Consultations 30 March 1815, SSR (IOL) XLVIII, 528-9, 598-600.

30. Ibbetson & Phipps to Clibbey 18 September 1818, Penang Consultations 21 September 1818, SSR (IOL) LXVII, 159-60.

means of enforcing payments where due. Just as in the other branches of revenue, the accumulation of arrears took place. Little was done about the arrears until 1813 when a proclamation was issued announcing government's intention of resuming possession on behalf of the Company of grants of land on which proprietors refused to pay the arrears of quit rent by 30 April 1814.³¹ In July 1814 the Collector reported that the arrears of quit rent due for the year 1811/12 had been reduced from \$911 to \$803, and those for 1812/13 from \$1080 to \$926. For 1813/14 the collections of quit rent had reached \$1534, with \$760 to be collected, which consisted of arrears for lands whose owners were either absent from the island or who refused to pay. The largest arrears of \$347 belonged to the estate of the late James Scott. Referring to this situation, Council decided that since many of the proprietors with arrears of quit rent were absent from Penang, the date fixed by government for imposing its penalty should be changed from 30 April 1814 to 1 January 1815.³² But as far as evidence shows, no steps were taken to carry out the penalties laid down by the original proclamation. In November 1815 a statement of

31. Penang Consultations 16 December 1813, SSR (IOL) XL, 2121; also Cullin and Zehnder (1905), 37.

32. Phillips to Clubley 27 July 1814, Penang Consultations 30 July 1814, (Enclosure, List of unpaid quit rent bills for 1813-14), SSR (IOL) XLIV, 1662-5.

the yearly arrears of quit rents was submitted by the Collector showing that the arrears were the same as they had been over a year previously. The Collector explained that these arrears consisted of small quit rents for waste lands whose proprietors were neither in occupation of their property nor to be found on the island. A sum of \$350 was still owing from the estate of James Scott, but since most of the sales of parts of his estate had not been registered in the Collector's office, it was out of his power to claim the arrears from the current possessors.³³

In 1817 the Company's Law Officer, Archibald Duff, was requested to give his opinion of suitable legal action to be followed for recovering the increasing arrears of quit rent. Government was authorized, he said, to seize the houses, horses, goods etc. of the grantees, even if they were absent from the island, and sell the same for the payment of the arrears of quit rent. However the government could not seize and sell lands in a similar manner without a judgement of the Court to that effect. Such an arrangement could be made if government supplied details to the Law Officer. Council discussed the recommendations made by Duff,³⁴ but apparently failed to

33. Phillips to Clubley 10 November 1815, Penang Consultations 16 November 1815, SSR (IOL) LI, 91. See Appendix V D.

34. Penang Consultations 16 October 1817, Duff to Phipps, Phipps to Clubley, SSR (IOL) LXII, 434-6.

reach a decision on the matter. In 1818 Bannerman strongly expressed the need to enforce the forfeiture clause of the 1813 resolution against those who had not paid their arrears of quit rent. Because of government's laxity in enforcing its payment, he said, not only had arrears accumulated, but the situation tended to encourage indifference to improving grounds on which no payment of quit rent was made. Furthermore, if the forfeiture of those grants of land which had remained uncultivated was enforced, the transfer of such grounds to other proprietors would bring about renewed cultivation. The Collector was therefore requested not to register the sale or transfer of any grants of land upon which arrears of quit rent were claimed. It was also decided that accumulated arrears which had been transferred to successive proprietors would have to be paid by the present occupant, since it was his duty to discover, when he made the purchase, whether there were any arrears of quit rents. Finally, for the purpose of inquiring into the legal procedures of recovering these arrears, the Paymaster, Ibbetson, and the Accountant, Phipps, were appointed Superintendents of Company Law Suits.

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35. Penang Consultations 12 June 1818, Minute by Bannerman, SSR (IOL) LXVI, 469-73.

In order to recover its debts, the Recorder in 1818 advised the Company to resume all lands mortgaged to them, [by the pepper and cotton planters for example], particularly as the debt exceeded the value of the property and rendered unlikely the possibility of any future repayment.³⁶ Then, late in 1818, Bannerman ordered that law suits be commenced against landowners refusing to pay quit rents. But when an "amicable suit" claiming ten years' arrears of quit rent was brought against David Brown, the Recorder's judgement was against the Company, on the grounds that Brown was able to produce receipts for quit rent payment for the previous two years, thus causing the government to forfeit the right to collect the arrears due by previous holders of the grant.³⁷ A beneficial result of this judicial defeat, however, was Bannerman's introduction of an additional clause designed to enforce the payment of quit rent in all future grants. On the failure of a landholder to make an annual payment, a grant would be rendered null and void and the land would revert

36. Ibbetson and Phipps to Clubley 18 September 1818, Penang Consultations 21 September 1818, SSR (IOL) LXII, 157.
37. Cullin & Zehnder (1905), 37; Lee Chye Hooi (1957), 18. This judgement arose not only partly because of the traditional discord between government and Judiciary at Penang, but also because in Penang, unlike the Indian Presidencies where the Courts had no control over revenue matters, there was no distinct separation of government and judicial powers in revenue matters. Lee Chye Hooi (1957), 37.

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to the Company. Even so, little could be done to enforce the payment of previous arrears, owing to the reasons stated by the Collector in his reports, and the hostile attitude of the Judiciary.

Because of these problems connected with land, the amount derived from that source constituted only a small proportion of Penang's total revenue. After 1805, the diligence of the Collector and his enlarged establishment increased the collections of quit rent and of duties on the sale of houses and lands. Nevertheless, the amount derived from quit rent in this period never exceeded \$2724 [1807/8], and the revenue obtained from the duties on sales of houses and lands reached its maximum of ^{only} \$5,085 in 1806/7. The amounts which fluctuated from year to year, never made any substantial contribution to the reduction of Penang's yearly revenue deficits.³⁹

IV

Another facet of the land problem in Penang was the settlement of Europeans on the island. Unlike the already densely populated areas of British influence in India, Europeans in Penang, along with Asian settlers, were

38. Lee Chye Hooi (1957), 18.

39. See Chapter IV and Appendix V C.

allowed to clear and claim ownership of land on the practically unoccupied island. Within a short time a relatively small number of Europeans had occupied much of the land within Georgetown and had appropriated for themselves extensive estates outside it. The disadvantage of large tracts of good land being left uncultivated and being used for speculation was offset by the advantages gained from the introduction of European capital and initiative, which was beneficial to the island's economic development if not to the Company's revenues. The accumulation of large estates and economic power in the hands of James Scott until his death in 1808, and in those of David Brown until 1824 left much to be desired, but in the case of Brown at least it was compensated by the initiative with which he embarked on various agricultural experiments, and the part he played in the public affairs of the island.⁴⁰

The attitude of the European settlers towards law and authority provided many a problem for successive Governments from Macdonald's time until well after the establishment of the Presidency. The lack of a system of law before 1808 was partly to blame, but the uncooperative, and indeed rebellious, attitude of some of these

40. See Chapter VI and Chapter III.

Europeans would not have been tolerated in a longer established British settlement. In spite of their attitude to government, the landowners did take some part in public affairs, such as the Committee of Assessors and the Police. The Committee of Assessors, consisting of a group of both European and native landowners and merchants had been begun in 1800, to "levy assessments, make and repair the streets and superintend the market of Georgetown." In 1807 it also formed a special Committee of Roads and Bridges to superintend the building and repairing of roads and bridges in and outside Georgetown. A new chairman and committee were elected yearly, and the body, for forerunner of the Town Council, performed valuable work in municipal affairs.

Legally, Europeans were forbidden by the Act of 1783 [23 George III] to reside within the limits of the Company's exclusive trade area without permission, and "unlicensed" Europeans were liable to certain penalties. The Europeans in Penang, however, defended their right of residence on the basis of their having become legal proprietors of the soil.⁴¹ In 1808 all Europeans other than Company servants were ordered to inform government

41. Stevens (1929), 401; JIA, VI, 620; Penang Consultations 24 July 1807, Meeting of Landholders, SSR (IOL) XVII, 571-3.

42. Lee Chye Hooi (1959), 49-50.

of the license or authority on which they were residing in Penang, so that the provisions of the above act could be enforced. Of the fifty to sixty Europeans who submitted returns, about half appeared to have settled without any particular permission, while the rest claimed to have received verbal permission from various early Governors. Many of these had been in Penang for as long as twenty years, and had received definite grants of land.⁴³ In 1809 the Penang Government appealed to the Directors for investment with the powers provided by the above Act to enable it to take measures against such unlicensed Europeans, but no reply was received. Similarly, no mention of European landed proprietors on Penang was made when the new Act of 1813 [53 George III] was passed. Bannerman brought up the question of European influence again in 1818 when he pointed out that if the Europeans' claim to residence as landed proprietors was made valid, other more "obnoxious" Europeans could come to Penang and defy all the Company's residence restrictions. The Directors in reply to Bannerman's report of 1823 settled the matter by granting an express license to all European settlers in Penang.⁴⁴

43. Penang Consultations 20 March, 3 May 1808, SSR (IOL) XIX, 230, 511-31.

44. From Lee Chye Hooi (1957), 51.

Compared with Penang, the land problem in Province Wellesley was practically non-existent. Unlike Penang, it did not undergo extensive European settlement, a process which along with the resulting confusion of land tenures was more or less complete in Penang before the acquisition of Province Wellesley in 1800. In contrast with Penang island, which was practically uninhabited in 1786, Province Wellesley in 1800 had a small number of inhabitants, both in the town of Prai and in the country areas, where a predominantly Malay population had settled long before its cession to the British. The pattern of settlement changed only in the 1820's and 1830's after the Siamese invasion of Kedah in 1821 led to an influx of Malays into the territory, and when Europeans and Chinese also settled there and acquired land.

Because of the absence of a land problem, only four references were made to land in Province Wellesley in the official documents prior to 1819. The correspondence that took place in 1811 showed the type of land settlement in that territory. When an application was made to the Collector's office for a regular grant, Council ordered that within six months the registry should take place of all similar claims to land in Province Wellesley ⁴⁵ so that formal deeds could be issued to the proprietors.

45. Hall to Clubley 19 March 1811, Penang Consultations 22 March 1811, SSR (IOL) XXX, 359-60.

In December 1811 seventeen claims were submitted to government, all supported by particulars concerning the size and location of the claim, the authority under which settlement had been made and the type of cultivation carried on. The majority of claimants appeared to be Malays

who had cleared land either without permission or with the authorization of "cutting papers".⁴⁶ Presumably, definite grants were issued to these claimants, as most had been settled there for years, and the Penang Government had recently been ordered by the Directors to recognise previous written and unwritten grants as valid.

In 1813 a dispute took place between Tuankoo Soleyman and Che Im concerning the ownership of a piece of land in Province Wellesley which had originally belonged to the late Temenggong prior to the cession of the territory to the Company. On the advice of the Collector,^{was} it decided in favour of Che Im, who had a "regular deed of thirteen years standing".⁴⁷ In September 1817 a number of applications were made for the "clearing and possessing" of land in Province Wellesley. A majority of Malays and some Indians made over thirty applications for land,

46. Hall to Clubley 2 December 1811, Penang Consultations 5 December 1811, "Register of Claims to Grants for Lands cleared on the opposite Territory, with the particulars relating to each." SSR (IOL) XXXI, 1563-9. See Appendix V E for details of claims.

47. Penang Consultations 23 September 1813, Phillips to Clubley, SSR (IOL) XL, 1586-9.

ranging from three to twenty orlongs in size, in four districts of the territory. In accordance with the policy begun in 1811, these petitions for a total of 200 orlongs of land were granted.⁴⁸

James Low, writing in the 1830's, commented on land policy in Province Wellesley at that time. A large portion of land there, he said, was held at various rates of quit rent, rarely exceeding one-tenth of the gross grain produce. In spite of a license being required to settle in Province Wellesley, many Europeans were proprietors of land there. Persons wishing to cultivate land had first to apply to the Collector, and a native land measurer was sent to examine the ground and roughly estimate its boundaries. The applicant's name was then registered at the Collector's office, where he received a written permit to clear and cultivate the land for a period of one to five years free of rent. When the land was cleared and cultivated a correct survey was made and a lease issued at a rent from one to four sicca rupees per orlong.⁴⁹ This was similar to the procedure on Penang island of issuing "cutting papers" as a preliminary to a grant.

48. Macalister to Clubley 6 September 1817, Penang Consultations 11 September 1817, SSM (IOL) LXII, 307-9.

49. J.R. Low, A Dissertation on the Soil and Agriculture of the British Settlement of Penang or Prince of Wales Island (Singapore 1836), (microfilm), 5, 130, 171.

VI

It is evident then that the land problem inherited by the Presidency Government in 1805 was full of complications, and only after many years of patience and effort was the confusion in land tenures and land records overcome. But the results of Light's policy of unlimited land alienation were never really eradicated, and although his policy may have appeared justified at the time, it was at the expense of causing later problems whose results were still apparent twenty or thirty years after his death. By 1819 the problem of settling land tenures still remained complicated, and was not settled finally until the 1840's, after Fullerton's leasing system had proved unsuccessful.