

# **Fragile Identities: The Colonial Consequences of CJR Le Mesurier in Ceylon**

*By*

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## ABSTRACT

In the many layered life of CJR Le Mesurier in Ceylon are themes that repeat and recur throughout the British colonial world, touching on marriage and morals, religion and race, archival retention and colonial employment.

In particular, his strenuous litigious attack on assumptions of Crown title challenged the philosophic and legal framework of colonial land policy, revealing its ideological foundation, and illuminating the pattern and impulse of land policy throughout Empire.

The increasing effrontery of his actions induces an equally escalating reaction from colonial authority that pares away the preferred patina of civilizing mission to reveal a far more base intent – a colonial impulse more discernible and the actions of authority more disclosing - contributing to a much richer comparative understanding of the dynamics of colonial land dealings.



Cecil Le Mesurier in Western Australia c 1920s  
(Courtesy of Rod Cantley)

# Fragile Identities: The Colonial Consequences of CJR Le Mesurier in Ceylon.<sup>1</sup>

In the colonial narrative there are conforming types that constantly recur to the point of parody. As places of periphery colonies attracted the existentially displaced and the marginal remaking themselves, .... what Talleyrand called “restless men who need projects and unfortunate men who need hope.”<sup>2</sup>

Most fought encroachment by the *Other*. Some embraced it with enthusiasm or bent to the opportunities afforded, inviting retributive reaction from the prevailing imperial norm. This shifting sense of self, of fragile identity, often provided tableaux more revealing than ever intended, disclosing dramas of hyperbole and grandiosity as inflated as the colonial impulse itself.

Whatever the personal performance, though, enactment was choreographed within imperial parameters of ideology and policy, some explicit, most implicit and unvoiced. Assumptions of race and religion, marriage and morality are recurring colonial emphases as are the significant ideological and legal justifications of land policy at the heart of colonial acquisition.

The many layered life of Cecil Le Mesurier touches on a startling array of these colonial themes, none more significant than in the area of land policy and the ideological and legal justifications that sustained its pursuit, assumptions derived from the North American experience and elaborated elsewhere, not only in Ceylon but particularly in Australia. His land dealings and subsequent litigious machinations eloquently encapsulated the evolving assumptions of this core colonial preoccupation: Le Mesurier's exaggerated effrontery drove the actions of authority into stark and revealing, relief .

## Dismissal.

In January 1896 the Acting Governor of Ceylon Sir Edward Noel Walker wrote to the Assistant Government Agent and District Judge at Matara on Ceylon's south coast, Cecil Le Mesurier, ordering his dismissal. His offence was apparently simple – Mr Le Mesurier had converted to the Mohammedan faith and married.

At first sight it would appear all the late nineteenth century articles of racist and religious intolerance had been brought to bear, the transgression of boundaries that would form the basis of a ‘scandal’ meriting dismissal. Deciphering such a narrative is often made clearer if the thoughts concealed in secret dossiers are revealed to the present. For few files lie within the embargo of “Secret and Confidential” unless considered extremely sensitive or likely to embarrass.

Le Mesurier entered the cloisters of secrecy when he wrote to the Secretary of State for Colonies protesting his dismissal, backed up by the dreaded ‘questions in the House’. He obviously had friends and some influence. He had also written to his “Dear Brother”, the Mohammedan member of the Legislative Council, Abdul Rahiman,<sup>3</sup> an early Ceylonese nationalist, seeking his support and calling his dismissal “an attempt by Christians to dishonour the faith of Islam”.<sup>4</sup> He

<sup>1</sup> This paper was written while the author was a Resident Scholar at the Pemberley International Centre at Haputale Sri Lanka in 2004. I extend my thanks to the support of Prof. Yasmine Gooneratne. I wish also to thank Mr Panditaratne, Kandy, for his inestimable advice and knowledge of colonial Sri Lankan history, and the Sri Lankan National Archives for access to colonial archives.

<sup>2</sup> Cited in Williams, G. *The Expansion of Europe in the Eighteenth Century* (London: 1966) p245.

<sup>3</sup> He was a member of the moderate “Ceylon Social Reform Society” (1905) along with office holders like prominent nationalist Sir Ponnambalam Arunchalam and well known art historian Ananda Coomaraswamy [see *Ceylon National Review* July 1906 p1. Colombo Museum Library]. In their literary organ the *Ceylon National Review* they proposed constitutional changes that can only be described as modest. [see *Ceylon National Review* “Reform of the Legislative Council” Vol. II No. 4 July 1907. ]

<sup>4</sup> Sri Lankan National Archives (hereafter SLNA) RG 65/153A Secret & Confidential Files of the Ceylon Government. Letter Le Mesurier to Abdul Rahiman MLC, 13 January 1896.

signed with his new name Abdul Hamil.

Though he had offered initial support, as the controversy erupted Abdul Rahiman wilted and turned his correspondence over to the Governor. Now he wanted it known that Le Mesurier was dismissed “not for changing faith but of his own misconduct”. He hoped the Governor would “give an elaborate reply” in the Legislative Council, because the “bulk” of the island’s Muslims are “unpolished and fond of talking idle talk”.<sup>5</sup>

Rahiman’s obsequious attempt to ingratiate himself<sup>6</sup> – on one occasion he asks the Governor “to pardon one for disturbing your valuable time in such a worthless gnat”<sup>7</sup> (sic) – shows all too often the underside of colonial relations despite public adherence to ‘nationalist’ ideals. He was after all an appointed not elected member of the Legislative Council and thus reliant on the continuing good favour of the Governor. And the Governor was happy to protect his informant by classifying his disclosures as ‘secret’.

The sequence of events leading up to Le Mesurier’s dismissal lie in his conduct as a public servant where he had become a thorn in the side of government in a manner that was to leave some peculiar and lasting impressions on law and governance in Ceylon.

Cecil John Reginald Le Mesurier was conceived in exaggeration and delivered into the world at Cephalonia in the Ionian islands in 1855 to the “Greek princess”<sup>8</sup> Nicolina Zancoral. He joined the Ceylon Civil Service on July 8 1875<sup>9</sup> and rose modestly through the ranks till he was appointed in March 1889 Assistant Government Agent (AGA) at Nuwara Eliya, the hill station favoured by the British as an escape from the lowland heat. The position of Government Agent (GA), even an Assistant GA, was one of formidable power in Ceylon – a veritable local potentate.

Le Mesurier, in a parody of British colonial energy, threw himself into a formidable list of works for the ‘improvement’ of the people. Without government assistance he introduced trout ova from England and Labeo cabasu from India<sup>10</sup> – though this probably had more to do with his vigorous sporting interests – introduced new crops like castor and barley, and pioneered the introduction of cotton and the fodder species *Paspalum conjugatum*,<sup>11</sup> along with swans and partridges.<sup>12</sup> Some of these efforts in a modern world of ecological sensitivity might be questionable but in those times of robust Progress, it was positive Improvement.

Foremost among his ambitious projects was the establishment of the Bodi-Ela Settlement – which resettled 200-300 families – and the Ma-Ela and Galaboda schemes, all linked with irrigation programmes involving restoration of the ancient bunds,<sup>13</sup> one of those British enthusiasms after 1855 that typically blended “paternalism and self interest”.<sup>14</sup> The Bodi-Ela was a private scheme without official government sanction though the Governor Sir Arthur Gordon (later Lord Stanmore)

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<sup>5</sup> RG 65/153A Secret & Confidential Files of the Ceylon Government. Letter Abdul Rahiman to Sir Edward Noel Walker Acting Governor, 17 Jan 1896.

<sup>6</sup> RG 65/153A Secret & Confidential Files of the Ceylon Government. Letter Le Mesurier to Abdul Rahiman. 22 January 1896. Letter sent after it was clear Rahiman had betrayed his correspondence marked “Private and Confidential” to the Governor. Part of the problem was that a community rival, Mr Haniffa, who Rahiman revealed to Le Mesurier that he “hated”, had aided Le Mesurier in his conversion. Haniffa was now making it uncomfortable for Rahiman by stirring communal feeling. In the hot-house atmosphere of intense incestuous colonial and communal rivalry it is not surprising that Haniffa is Rahiman’s nephew .

<sup>7</sup> RG 65/153A Secret and Confidential. Letter Rahiman to Walker 16 January 1896.

<sup>8</sup> *The Ceylon Mirror and Galle Weekly Dispatch* Saturday 8 April 1899 p4. “Mrs Le Mesurier as an Eastern Diana”

<sup>9</sup> *Ceylon Civil List* 1895. He had acted as AGA Nuwara Eliya from June 1881.

<sup>10</sup> *Administrative Reports* 1889. C29 XIV.

<sup>11</sup> *Administrative Reports* 1889. C30XVII.

<sup>12</sup> *Administrative Reports* 1888. 83A Pt.1 X.

<sup>13</sup> *Administrative Reports* 1889. C27 Pt 1 VIII.

<sup>14</sup> Roberts, M. “Land Problems and Policies, c 1832 to c. 1900.” Chapt. II. de Silva (ed) *History of Ceylon Vol III. From the Beginning of the Eighteenth Century to 1948* (Peradeniya: University of Peradeniya Press Board, 1973) p140. Part of the motivation, as Roberts astutely observes, (p140) was that irrigation, by stimulating paddy production, would lessen reliance on dry grain *kurakkan* production on *chena* lands, a link that finds later expression in the story of Le Mesurier.

accepted the position of President of the scheme,<sup>15</sup> which helps explain Le Mesurier's formidable support in England where Lord Stanmore, after his return, added parliamentary "and long standing protection".<sup>16</sup>

### **The Grain Tax.**<sup>17</sup>

Le Mesurier's schemes were fully in keeping with the prevailing Liberal 'self-help' ideology and post-1865 parsimonious "pay-its-way"<sup>18</sup> principles of Ceylon governance. The pressing need for these resettlement schemes however, arose out of the devastating displacement of villagers wrought by severe drought in 1882-1885, failure of the *chena*<sup>19</sup> and *maha*<sup>20</sup> paddy crops, and more particularly, according to Le Mesurier, by of the impact of the government's tax on paddy<sup>21</sup> rice. Crop failure meant paddy farmers defaulted on their taxes and their property was seized and sold by the Government, compounding the problems of already impoverished paddy farmers and contributing to widespread starvation.<sup>22</sup>

Starvation was the emotional lever Le Mesurier employed with maximum effect to trumpet his resettlement schemes and to crusade for the abolition of the paddy tax. The peasantry did not "grow enough for their own consumption, much less for sale," Le Mesurier asserted, and the amount paid in tax would be better to "go into their own stomachs".<sup>23</sup>

The key though to the immense heat generated by Le Mesurier's crusade was principally ideological not humanitarian. There were echoes of the battle over Corn Laws that resonated with free market assumptions both in Ceylon and Britain. And it drew to its cause such influential British lobbyists as the Cobden Club, for there was "singular unanimity" that grain taxes, taxes on food, were "abhorrent in principle."<sup>24</sup>

Le Mesurier was thus building on a groundswell of dissension with a long history, even in Ceylon.<sup>25</sup> And he brazenly imported the issue directly into the public arena through his Government *Administrative Reports*. While intended and used as a means of drawing attention to legislative deficiencies, regional issues and program initiatives, *Administrative Reports* were never intended as a forum for debating government policy. And this is exactly what Le Mesurier managed and it did not endear him. He even used his *Administrative Reports* to publicly disagree with his superiors<sup>26</sup> who felt compelled to defend government policy.<sup>27</sup> It was public warfare waged through *Administrative Reports* – high noon at the printery.

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<sup>15</sup> *Ceylon Observer* 14 August 1889 "The Walpane Grain Cultivation and the Bodi-Ela 'Private Charity'"

<sup>16</sup> Meyer, E. "Land Grabbing in Sri Lanka: High Land Appropriation during the British Raj under the Impact of Plantation Demand" in Farinelli, F (ed) *Capitalist Form of Production in South Asia: Consequences of British Policies* (New Delhi: Manohar, 1991) p44.

<sup>17</sup> For a more comprehensive reading of the Grain Tax controversy see: Obeyesekere, G *Land Tenure In Village Ceylon: A Sociological and Historical Study* (Cambridge: CUP, 1967); Roberts, M. "Grain Taxes in British Ceylon, 1832-1878: Theories Prejudices and Controversies" *Modern Ceylon Studies* Vol.1, No.1 1970. Roberts, M "Land Problems and Policies, c 1832 to c. 1900" *History of Ceylon* Vol.III.

<sup>18</sup> Roberts "Land Problems....." p141.

<sup>19</sup> *Chena* was the term applied to a slow rotation (10-20 year) 'slash & burn' dry farming method of cultivation.

<sup>20</sup> *Maha* (NE Monsoon) = The October/November crop harvested in February/March. *Yala* (SW Monsoon) = planted May/June and harvested August/September. These seasons are based on the two monsoon growing seasons.

<sup>21</sup> "Paddy" simply refers to rice grown in a network of terraced, contoured and flooded fields.

<sup>22</sup> Leonard Woolf in *The Village in the Jungle* (New Delhi: Oxford University Press, 1913 reprinted 2004) has eloquently captured the precarious nature of village life and farming. Woolf, like Le Mesurier, was an Assistant Government Agent. He was stationed at Hambantota in the southern Uva Province and was fully familiar with the 'sharp' practices employed by various colonial intermediaries.

<sup>23</sup> *Sessional Paper* III of 1892: Dispatch No. 114 Havelock to Knutsford, 5 April 1891 Encl. Le Mesurier to Havelock 3 April 1891 to which Havelock draws particular attention.

<sup>24</sup> Roberts "Land Problems ...." p136.

<sup>25</sup> Roberts "Grain Taxes....." passim. Roberts gives a thorough overview and evolution of the policy.

<sup>26</sup> *Administrative Reports* 1888. 75A Pt.1 III.

<sup>27</sup> *Administrative Reports* 1887. 75A Sharp GACP.

The “obnoxious”<sup>28</sup> paddy tax and confiscation of land in default on taxes, he asserted, had wrought “a revolution in ownership of paddy lands”.<sup>29</sup> Between 1882-1886, 15% of fields had forcibly changed hands and “1048 of the late owners are dead and 382 of their families have left the district”,<sup>30</sup> Le Mesurier claimed.

The Island’s newspapers waged a fierce contest of principles. Ferguson of the *Ceylon Observer* claimed “no comparison” between the “grain taxes here and the Corn Laws...”<sup>31</sup> and in so saying made the comparison explicit. He further entrenched the comparison by accusing the “abolitionists” of being of the “Manchester School” and “bedfellows of Mr Bradlaugh”,<sup>32</sup> an omnibus smear if ever there was one.

The debate peppered the Colonial Office with memorials, missives and protest. George Wall, businessman and planter, writing as editor of the *Ceylon Independent*<sup>33</sup> detailed the widespread starvation Le Mesurier had brought to public attention.<sup>34</sup> This he reprinted and distributed to members of the House of Commons where the “evictions.....carried on by the thousands” and which were “*invariably followed by starvation and death*”,<sup>35</sup> were roundly condemned.

Le Mesurier’s prominent role earned the condemnation of Ferguson’s *Ceylon Observer*. He accused Le Mesurier of “reckless disregard for the truth”<sup>36</sup> and sneered at him as “this friend of the natives”.<sup>37</sup> He attacked his Bodi Ela scheme as one of his “madder” projects and with a swipe as well at the Governor, derided him for patronising Le Mesurier’s madness.<sup>38</sup>

The administration, in damage control, dismissed the incidence of starvation as “crude accusation”.<sup>39</sup> They commissioned a detailed Report,<sup>40</sup> and while questioning Le Mesurier’s statistics, had to admit, “in some isolated cases, death was hastened.... by such [land confiscation] sales”<sup>41</sup>. The policy had “caused considerable suffering”, it was admitted, but it was “not a result ... the Government could have apprehended” and thus no “useful purpose” could be served by further investigation.<sup>42</sup> It was a masterful and suitably justificatory response with just sufficient hand wringing to appear appropriately humane.

The public campaign however continued. John Whitefoord, a prominent planter of the Maha

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<sup>28</sup> Vythilingam, M. *The Life of Sir Ponnambalam Ramanathan* Vol 1 (Colombo: 1971) p344. Quoting a letter by Le Mesurier in a Government Dispatch to Secretary of State for Colonies.

<sup>29</sup> *Administrative Reports* 1888. 75A Pt.1 II, III.

<sup>30</sup> *Administrative Reports* 1887, 83A.

<sup>31</sup> Ferguson, AM & J. *Taxation in Ceylon with Special Reference to the Grain Tax: The import duty on rice balanced by a local excise levy and the proposal to substitute a general Land Tax.* (Colombo: AM & J Ferguson, Ceylon Observer Press, 1890) p 109.

<sup>32</sup> *Ceylon Observer* 14 August 1889 reproduced in Ferguson, *Taxation in Ceylon*...p viii. Bradlaugh was the Radical Free Thinker and parliamentarian denied his seat for refusing to take a religious oath and who later with Annie Besant was charged with obscenity for publishing an innocuous pamphlet on birth control.

<sup>33</sup> RG5/252 Dispatch No. 30 Gordon to SSC Jan 25 1890. Enclosure. Wall, G. *The Grain Tax in Ceylon* (Colombo: 1890). Wall was a member of the Grain Tax Commission, owner of several coffee estates and associated with one of the most prominent agency houses, George Hall & Co. See Roberts “Grain Taxes.....” p 137; Obeyesekera, G. *Land Tenure in Village Ceylon; A Sociological & Historical Study* (Cambridge: CUP,1967) p113. Also RG5/252 Dispatch No.3 January 25 1890.

<sup>34</sup> *Sessional Paper XXIX* of 1878. *Administrative Reports* 37A Le Mesurier AGA Nuwara Eliya 1887.

<sup>35</sup> Sir E. Watkin MP quoted in *Ceylon Observer* 21 August 1889 reproduced in Ferguson, *Taxation in Ceylon*... p xxvii. Italics are Ferguson’s.

<sup>36</sup> *Ceylon Observer* 24 August 1889 reproduced in Ferguson, *Taxation in Ceylon*... p xxviii.

<sup>37</sup> *Ceylon Observer* 14 August 1889 “The Walapane Grain Cultivation and the Bodi Ela ‘Private Charity’” reproduced in Ferguson, *Taxation in Ceylon*... p viii.

<sup>38</sup> *Ceylon Observer* “Grain Tax Settlements and the Policy of Sir Arthur Gordon’s Government.” 21 March 1890 reproduced in Ferguson, *Taxation in Ceylon*... p cxviii.

<sup>39</sup> RG5/252 Dispatch No 30 Gordon to SSC Jan 25 1890.

<sup>40</sup> *Sessional Paper XXIX*, 1889:2-4

<sup>41</sup> RG4/268 Colonial Office Dispatches to Ceylon. No.49 Knutsford to Gordon 28 February 1889.

<sup>42</sup> RG4/268 Dispatch No.49 Knutsford to Gordon 28 February 1889.

Uva Estate, detailed the distress inflicted on villagers “turned adrift” to forage food. “Is this English Justice!” he intoned, adding he could not “endure to see the misery the policy ... has produced.”<sup>43</sup> The Legislative Council, a generally tame instrument of government, became embroiled with Sir Ponnambalam Ramanathan spearheading a campaign,<sup>44</sup> which relied heavily on Le Mesurier’s reports, to urge a Select Committee. Ramanathan’s outspoken advocacy struck the resonant ‘Corn Law nerve’ in Britain and he was duly entered into the rolls as an honorary member of the Cobden Club.<sup>45</sup>

The public outcry made change unavoidable and in 1893 the new governor, Sir Arthur Havelock, “attracted to Le Mesurier’s contention[s]”<sup>46</sup> abolished the paddy tax and having done his duty was exiled to the suitably dull job of Governor of Tasmania.<sup>47</sup>

The credit for this change must certainly lie in “consequences brought to light”<sup>48</sup> by Le Mesurier for nothing focuses politically like a crisis of starving innocents. The spectre of starvation echoed another time and place, of an Ireland still in memory. It was hardly a campaign likely to charm the colonial administration who were attracted to the paddy tax because it was the only taxation measure that “will reach the village population”<sup>49</sup>. This was critical. The grain tax encompassed “the poorest section of the population living on a subsistence economy”<sup>50</sup> yet avoided key enterprises like the plantation sector, exempt from tax since 1824.

George Wall in his “pungent and brilliant attacks” accused these “untaxed agriculturists” of supporting a grain tax in order to avoid the net of a land tax.<sup>51</sup> The sensitivity on this point is clear in the defence of the grain tax. The *Ceylon Observer* ridiculed a suggested ‘tithe’ on coffee. By “all means”, it retorted in indignation, “when you have paid back the full amount of the planter’s purchase money with interest.”<sup>52</sup>

Beneath the pious outrage were some firmly held assumptions. The planters’ risk, sacrifice and enterprise are virtues of public good deserving minimal taxation, the perennial argument of business and privilege. The moral contrast is of the diligent planter and ‘indigent native’<sup>53</sup> whose reluctance to leave the village and accept an “honest means of making a living” meant, the *Ceylon Observer* stated, that “they deserve to die.”<sup>54</sup> It was an attitude that caused a storm of understandable protest yet voiced a continual colonial gripe.

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<sup>43</sup> RG5/251 Enclosure to Dispatch No 456 20 November 1889. Also letters to the *Ceylon Observer* Oct 1889 and 17 June 1889. There is little doubt Le Mesurier’s hand lay behind these letters however sincerely expressed. Whitefoord was a keen game hunter and stated he entered villages where government officers rarely ventured and thus knew first hand the effects of the grain tax [*Ceylon Observer*: Letters to Editor by Whitefoord, October 1889; 17 June 1889.] But Le Mesurier too was a keen game hunter, with a record kill of 109 beasts. [*The Ceylon Mirror and Galle Weekly Dispatch* Saturday 8 April 1899 p4 “Mrs Le Mesurier as an Eastern Diana”] And Whitefoord was also a subscriber to the Bodi-Ela scheme [*Ceylon Observer* 14 August 1889 “The Walapane Grain Cultivation and the Bodi Ela ‘Private Charity’” reproduced in Ferguson, *Taxation in Ceylon...* p viii.] so his acquaintance with Le Mesurier was undoubted.

<sup>44</sup> Vythilingam *The Life of Sir Ponnambalam Ramanathan* p342.

<sup>45</sup> Vythilingam p335. Ramanathan was supported by TB Panabokke, MLC for Kandy [*Ceylon Observer* 9 January; 11 January 1890] and a collaborator with Le Mesurier on a compilation of Kandyan Law [Le Mesurier, CJR & Panabokke, TB. “*Niti-Nighanduva*” or *the Vocabulary of Law as it existed in the last days of the Kandyan Kingdom* (Colombo: Govt Printer, 1880)]. TN Christie MLC similarly gave vocal support. Christie later was accused of collusion with Le Mesurier in some dubious land transactions. [*Ceylon Observer (Weekly Edition)* 21 January, 1902].

<sup>46</sup> Roberts, M. “Land Problems .....” p139.

<sup>47</sup> *Ceylon Observer* June 1901. Havelock passing through Colombo on his way to take the Governorship of Tasmania.

<sup>48</sup> Roberts “Land Problems....” p 138.

<sup>49</sup> *Administrative Report* 1887 75A. Report by Sharp GACP.

<sup>50</sup> Obeyesekera. *Land Tenure in Village Ceylon* p115; *Sessional Paper* III, 1890:90.

<sup>51</sup> Roberts “Grain taxes ...” p 132.

<sup>52</sup> *Ceylon Observer* August 1889 reproduced in Ferguson *Taxation in Ceylon...* p viii.

<sup>53</sup> see Alatas *The Myth of the Lazy Native* (London: Cass, 1977)

<sup>54</sup> *Ceylon Observer* 14 August 1889 “The Walapane Grain Cultivation and the Bodi Ela ‘Private Charity’” reproduced in Ferguson, *Taxation in Ceylon...* p viii.

Le Mesurier's campaign extended beyond colonial boundaries to participate in a wider imperial free market discourse, but it also underlined the disparity between the privileged position of colonial plantation and subsistence indigenous agriculture, an expropriation of significant ideological intent at the very core of colonial land policy.

However conscious he may have been of the implications, Le Mesurier's actions involved a grandiosity that invited retribution. His transfer in December 1891<sup>55</sup> to the Acting AGA position at Matara in the south was inevitable given his outspoken views and differences with his superiors. He left, though, a permanent reminder in the village of Lamasuriyagama<sup>56</sup> near Kandy and, as testament to his positive relations with the 'natives', a legacy of offspring still in Sri Lanka.<sup>57</sup>

### **Marriage & marriage.**

Le Mesurier married his first wife Juliette Le Noir, appropriately volatile and French, in London in March 1883 but in 1891 sought a divorce, accusing his wife in salacious detail of multiple instances of adultery, on board ship and among his colonial cronies, a charge she vigorously denied.<sup>58</sup> His initial plaint succeeded but was overturned in the Supreme Court, and confirmed by the Privy Council<sup>59</sup> which decided Ceylon courts had no jurisdiction since it involved persons resident but not domiciled, an important legal precedent in English matrimonial law that contaminated all other colonial jurisdictions. She countered by suing for a legal separation on the grounds of cruelty,<sup>60</sup> leaving Le Mesurier in an absurd matrimonial limbo. Cuckold and caught, he was debarred from remarriage and thus began his spectacular fall from grace.

Le Mesurier went to see the Colonial Secretary Sir Noel Walker in Colombo on 15 September 1895 and, according to Walker, Le Mesurier indicated that he had become a Muslim "partly from conviction and partly to enable him to marry".<sup>61</sup> Walker claimed he advised Le Mesurier not to proceed since it would "amount to a scandal" and preclude him from continuing "in high office".<sup>62</sup>

But even as Le Mesurier was seeing Walker the local community was abuzz with rumours that "a well-known member of the Civil Service had abjured Christianity and had converted".<sup>63</sup> The *Ceylon Independent*, "loath to credit the statement", investigated the newly minted Abdul Hamil Le Mesurier. It seems Le Mesurier had informed some members of the Civil Service who "laughed incredulously" creating "astonishment in the upper and lower circles in and around Colombo."<sup>64</sup>

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<sup>55</sup> *Ceylon Civil Lists*.

<sup>56</sup> Toussaint, JR. *Annals of the Ceylon Civil Service* (Colombo: Apothecaries Co Ltd, 1935) p171. This extraordinary ego inflation was implausibly excused as meaning 'Lama'(child)+'suriya'(sun)+'gama'(village) = 'village of the young or rising sun'.

<sup>57</sup> Personal contact with descendants of Le Mesurier's illegitimate offspring in Sri Lanka.

<sup>58</sup> Le Mesurier V Le Mesurier 1NLR160.

<sup>59</sup> Le Mesurier V Le Mesurier 2CLR21 1895; 64LJPC97 1895; AC517.

<sup>60</sup> Russell, E. *A History of the Law in Western Australia and its Development from 1829-1979* (Perth: UWA,1980) p168. Le Mesurier V Le Mesurier. The only grounds for judicial separation were desertion for 2 years, cruelty or adultery. Given denial of the latter and the time limit on the former, cruelty would have been the only grounds so it should be viewed with some caution as a reflection on Le Mesurier's character. It is also suggested that Le Noir sought the separation in order to secure the revenue from property she owned and which under 19thC matrimonial law was under the control of her husband. As *feme sole* she would have such benefits restored [*Ceylon Observer (Weekly Edition)* 23 January 1902. This was revealed in a libel case CJR Le Mesurier was at that time pursuing].

<sup>61</sup> RG5/272 Dispatch No 117 Walker to Chamberlain 3 April 1899.

<sup>62</sup> RG5/272 Encl. Disp. No. 186 May 30,1899. Including "Report on Proceedings – Le Mesurier Action against the Attorney General June 4 1897." Letter Walker to Le Mesurier 18 September 1895 produced into Court records. A prudent public servant and protecting himself., Walker's letter was written on the 18<sup>th</sup> September, two days after the meeting with Le Mesurier and after the matter had broken in the press. *Ceylon Times* 17 September 1895 "A Ceylon Civil Servant turns Mahomedan[sic]". Le Mesurier gives a somewhat different version suggesting Walker warned he would be dismissed if he married as a Muslim "but not if I lived in concubinage" but Le Mesurier "scorned the dishonourable suggestion". [RG5/272 Encl. Disp. No. 117 April 3, 1899. Memorial by Le Mesurier.]

<sup>63</sup> *Ceylon Times* 17 September 1895 "A Ceylon Civil Servant turns Mahomedan"

<sup>64</sup> *Ceylon Independent* 19 September 1895. "Abdul Hamil Le Mesurier A Civil Servant's Conversion"



The barely concealed mirth of the paper reported that Le Mesurier on 13 September 1895, several days before he saw Walker, had embraced Islam with the declaration of *Kalima*<sup>65</sup> before two Muslim clerics – “Rather easy business, thought our reporter”.<sup>66</sup> The paper did not doubt the reason. Le Mesurier’s divorce suit had “dragged on a wearisome existence” and though granted a legal separation he was “doomed some time longer to bachelorhood”. But now “all is changed” and a “bright vista lies before him.” And whereas at ten o’clock on the morning of his conversion he was denied another wife, at “half past ten or thereabouts” he could “take unto himself another four!”<sup>67</sup>

Of course the local Muslim community were in a “spirit of exultation” having “long wished that an English gentleman of position should embrace Islam in Ceylon”,<sup>68</sup> but a combination of derision and scepticism was the more widely held view. Even a Judge of the Supreme Court suggested that had Le Mesurier not failed in his divorce then his “faith would have remained a pious opinion”.<sup>69</sup>

The Government viewed his actions with scathing contempt as “ungenuine”<sup>70</sup> and set about his dismissal, not for conversion they claimed, but because “he purported to marry a lady according to the Mohammedan rites while his legal wife is alive and not divorced.”<sup>71</sup> The difficulty was the Ceylon Legal Code exempted Muslims from the law of bigamy – and didn’t distinguish English from non-English Muslims. The government file indicates just how utterly put out they were, feverishly raking over every aspect of the law. Despite the pious assertion that even “genuine conversion” did not confer, in “the case of an Englishman”, the right to “contract a polygamous union”,<sup>72</sup> the legal foundation was precarious. Despite a demeanour of imperial tolerance, Le Mesurier’s action deeply affronted assumptions of British racial and religious superiority, indicating an ‘obvious’ gap in the law that deeply perturbed government. Understandably Le Mesurier saw the “rush” to introduce a new marriage law some fifteen days after his second ‘marriage’, as intended to “render his second marriage a penal offence”. It was certainly suspiciously coincidental.

It is difficult to judge the authenticity of Le Mesurier’s actions, particularly given the convenience of the law in Ceylon and his obvious desire to remarry. Certainly in 1900 – five years after his profession of faith – the Courts determined that Le Mesurier could not be deprived of custody of his children since he was not in an adulterous relationship but “with his legal Muslim wife”.<sup>73</sup> This indicates a continuing adherence though by 1904<sup>74</sup>, when he migrated to Western Australia, he seems to have shed his Muslim faith and possibly his wife.<sup>75</sup>

Whether at the time he was a self-indulgent dilettante or genuine, he and his wife certainly entered into the new religious role with some enthusiasm. With the ardour of a convert he wore a

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<sup>65</sup> That there is no God but Allah etc.

<sup>66</sup> *Ceylon Independent* 19 September 1895. “Abdul Hamil Le Mesurier.”

<sup>67</sup> *Ceylon Independent* 19 September 1895. “Le Mesurier Divorce Suit”

<sup>68</sup> *Ceylon Independent* 19 September 1895. “Abdul Hamil Le Mesurier.”

<sup>69</sup> RG5/272 Dispatch No 117 Walker to Chamberlain 3 April 1899.

<sup>70</sup> RG5/153A Secret and Confidential. Rahiman to Walker 16 January 1896. This is Rahiman’s version of Gov. Havelock’s view of Le Mesurier which he describes as “nothing but a deceitful object”. The stilted English nevertheless has the ring of truthful reportage.

<sup>71</sup> RG65/153A Secret and Confidential. Letter Walker to Abdul Rahiman 16 January 1896. Rahiman quickly dropped his initial support for Le Mesurier. [RG65/153A Secret and Confidential. Letter Rahiman to Walker 15 January 1896]

<sup>72</sup> RG65/153A Secret and Confidential. Minute.

<sup>73</sup> *Overland Times of Ceylon*. 17 April 1900, p563. “Mr Le Mesurier and the Custody of a Daughter.” The Supreme Court of Appeal in the UK. The daughter was either Beatrice b.1887 or Irene b.1889.

<sup>74</sup> I am grateful for this information courtesy Rod Cantlay who is related to Rachel Mallam Le Mesurier’s 3<sup>rd</sup> wife: Le Mesurier arrived Western Australia 13 May 1904 by SS Persic (information from application for admission to WA Bar.)

<sup>75</sup> Curiously, according to the National Archives of Australia Series number A11802 1904-1905 Rivett-Carnac applied for a Trade Mark titled “Popof”, ‘an insect destroying preparation’ which indicates not only an odd interest but the possibility that she actually accompanied Le Mesurier to Western Australia. [Information courtesy Rod Cantlay].

fez, occasionally attended mosque<sup>76</sup> and is reputed to have re-modelled the façade of his Matara home to appear like that of a mosque.<sup>77</sup> His wife, Alice Marie Rivett-Carnac, appropriately, an illustrator of children's fairy tales,<sup>78</sup> was no 'native' however, but the product of an established Anglo-Indian family from Bengal<sup>79</sup> and the description of their honeymoon leaves no doubt they were still the archetypal colonials.

The marriage to Marie Rivett-Carnac, "a beautiful woman devoted to her husband" resulted in a honeymoon that would be the envy of "any rollicking English girl" – a shooting expedition into the jungle with "bear hunts and elephant hunts thrown in". An "Eastern Diana" indeed. She had sat up all night "watching a pool for bears to come down to drink", had done a "tremendous amount" of deer shooting "crawling along on hands and knees to get within range", peacock shooting too, and tracking leopards, but the "most exciting and dangerous" was elephant hunting. She shot only one elephant – "No other lady in Ceylon had shot one" – and had two feet lined with tamarind wood where they decorated her London drawing room as "receptacles for newspapers and correspondence". Though she now wore an "Oriental costume" there she had worn the usual jungle attire of "knickerbockers and tunic". All this she related with all the "ardour and affection of a true sports woman."<sup>80</sup> Sports woman she undoubtedly was, being later accused of shooting at a headman<sup>81</sup> in an altercation over disputed land, though there is no indication she had his head mounted or his legs turned into useful receptacles.

But though his honeymoon was of Hollywood proportions, his dismissal was not put in the shade. By early January 1896 the press was carrying rumours of Le Mesurier's dismissal.<sup>82</sup> The *Ceylon Times* recognised the underlying issue. Le Mesurier had "long been a *bête noir* of local government" and though endowed with many qualities – "able, resourceful, indefatigable and courageous to a fault" – at last "British Philistinism has... proved too much for him".<sup>83</sup>

The question was referred to Chamberlain for direction who was firm that Le Mesurier be dismissed if the "second so-called marriage is either admitted by him or proved".<sup>84</sup> The issue of apostasy however clearly contaminates Executive Council initiated correspondence, which wanted to know if he had "professed the Mohammedan faith".<sup>85</sup> Le Mesurier, in response 2 January 1896, rightly wanted to know "what aspects of my religion concerns the Ceylon Government" and what the relevance was to his "efficiency and character as a Public Servant".<sup>86</sup> On that basis today the case would undoubtedly collapse but these were not such times.

Walker, impatient to act and unwilling to leave unsanctioned "conduct which is not

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<sup>76</sup> Toussaint p172.

<sup>77</sup> This is part of the oral tradition of Le Mesurier in Sri Lanka that is rich but difficult to verify. Information courtesy Mr Panditaratna, Kandy.

<sup>78</sup> Wallace-Dunlop, M. & Rivett-Carnac, M. "The Flower Babies" reprinted in Hague, M. (ed) *Book of Fairies* (London:Harper-Collins, 2000) It is difficult to know whether she was author or illustrator of this ponderous tiny tome but according to the J.Scott-Coates "The Beautiful Kadija" *Ceylon Review* 1899 Vol.6 No.1 p. 4-5 she trained as an artist "under the best German masters".

<sup>79</sup> Toussaint p171. She was the daughter of Lt.Col. Rivet-Carnac, Military Secretary to the Gov. of Bombay. Also see Allen,C.(ed.) *Plain Tales from the Raj* p21, p37, p270.

<sup>80</sup> *The Ceylon Mirror and Galle Weekly Dispatch* Saturday 8 April 1899 p4. "Mrs Le Mesurier An Eastern Diana" A reprint of a story from the English paper the *Morning Leader* of 3 March.

<sup>81</sup> *Ceylon Observer* (Weekly Edition) [*Overland Observer*] 22 October 1901, p 1480.

<sup>82</sup> *Ceylon Times* 4 January 1896 "Le Mesurier will be called upon to retire."; *Ceylon Independent* "The Case of Le Mesurier" 3 January 1896. At first it was thought he would be asked to retire which Le Mesurier scotched [*Ceylon Independent* 7 January 1896. Letter by Le Mesurier.]

<sup>83</sup> *Ceylon Times* 3 January 1896 "The Case of Mr Le Mesurier."

<sup>84</sup> RG5/265 Dispatch No.16, 15 January 1896. Walker to Chamberlain. In response to Dispatch No.336 of 29 November 1895. Also RG5/272. Encl. Disp. 30 May 1899 for text of (Secy. of State for Colonies) Chamberlain's decision 29 November 1895.

<sup>85</sup> RG5/265 Dispatch No. 16, 15 January 1896. Letter 19 December 1895. See also RG5/272 Encl. Disp. 30 May 1899 Letter 19 December Ievers for Colonial Secretary to Le Mesurier.

<sup>86</sup> RG5/272 Encl. Disp. 186 May 30, 1899. Letter Le Mesurier to Col. Secy. 2 January 1896.

desirable,”<sup>87</sup> took Le Mesurier’s evasion as a “practical admission” and proceeded to dismiss him despite sanctimonious protestations that the “Government has no desire to deal harshly with Mr Le Mesurier” on the contrary they would give “all legitimate assistance” if he were to “devote his undoubted ability and experience...to something worthwhile.”<sup>88</sup>

Bertram Hill, Acting District Judge Matara on 7 January 1896 was instructed to take over the assistant agency and hand the letter of dismissal to Le Mesurier.<sup>89</sup> Le Mesurier refused to accept dismissal as “illegal” and asserted his right to continue “until prevented by a show of force”.<sup>90</sup> Hill was also instructed to retrieve from Le Mesurier an exact list of “missing” documents, a matter “to be attended to before anything else.”<sup>91</sup> While most were routine maps and Ordinances there were some of great interest – Registers and Wattorus (tax registers attachable to land title claims) for the region.<sup>92</sup> These were to assume critical importance in the light of Le Mesurier’s later land speculations.<sup>93</sup>

Le Mesurier thereafter made his case a public sensation. He accused Lt. Governor Walker of dismissing him without “any charge ...preferred” and without any opportunity “of defence or explanation”. He had “violated no law of God or man” and “broken no rule of the Public Service.”<sup>94</sup> The public response was swift. Henry J Carry of Camden Hill wrote deploring the decision – “private affairs should be absolutely ignored,” he wrote, and “if the Service is an *honourable* one” prejudices should have no part. He finished by adding, “I must say he is the pluckiest and most hard-working man I have met in the Ceylon Civil Service”.<sup>95</sup> Praise indeed by a person from his old administrative haunt.

The controversy spread abroad the colonial network. The *Indian Planters Gazette* charged as “bigoted” a government “that prides itself on.... non interference with .... religious beliefs.” The dismissal, they asserted, was for apostasy since he had broken no rule of the Public Service.<sup>96</sup> The *Times of India* reported too, particularly on the many meetings of Muslims to protest to the Ceylon government.<sup>97</sup> The degree the controversy spread abroad gives an indication of the furore it generated in Ceylon.

Given Le Mesurier’s connections it was not long, 10 July 1896, before the matter arose in the House of Commons with Chamberlain forced to defend the dismissal after the tabling of a petition Le Mesurier claimed had ten thousand signatures.<sup>98</sup> And local English papers took up the matter particularly when his attractive new wife arrived to plead her husband’s case. Even that oddity, the local Muslim chronicle *The Crescent* in Liverpool waded into the debate, accusing the ‘Ceylon’s Christian Cads’ in the press of “spiteful little paragraphs” and acting like swine “wallowing in filth”.<sup>99</sup>

As well Le Mesurier began a lengthy and bitter legal battle suing the Ceylon Government, through the Attorney General, for wrongful dismissal, foregone salary and damages for breach of

<sup>87</sup> RG5/265 Dispatch No 16, January 15 1896.

<sup>88</sup> RG5/265 Dispatch No. 261, 2 September 1896. Response to Memorial from Le Mesurier.

<sup>89</sup> RG26/287 Le Mesurier File. Also RG5/272 Encl. Disp. No. 186 May 30, 1899. Letter Taylor Acting Colonial Secretary to Le Mesurier 7 January 1896.

<sup>90</sup> RG26/287 Le Mesurier File. Letter 8 January 1896. Hill to Acting Colonial Secretary Gaylord

<sup>91</sup> RG26/287 Le Mesurier File. Letter 11 January GA Galle to Hill.

<sup>92</sup> RG26/287 Le Mesurier File. List of documents in Le Mesurier’s possession 11 January 1896.

<sup>93</sup> PF595 (59/108) “Le Mesurier Wattoru Registers”. Notes on Mr Short’s Inquiry to Col.Secy. 17 July 1900. Claim that Le Mesurier was in 1894-95 getting officers to make copies of *ola* (palm leaf) Wattorus which were no longer in the Kachcheri suggesting Le Mesurier converted them to his own use and had possibly been planning to do so before his dismissal.

<sup>94</sup> *Ceylon Times* 10 January 1896 Letter from Le Mesurier dated 8 January.

<sup>95</sup> *Ceylon Times* 8 January 1896.

<sup>96</sup> *Ceylon Independent* 5 February 1896 – reprinted from the *Indian Planters Gazette*

<sup>97</sup> *Ceylon Times* 1 February 1896 - reprinted from the *Times of India* 27 January 1896; *Ceylon Observer* 5 January 1896 “Meeting of Bombay Mahomedans”.

<sup>98</sup> RG5/266 Dispatch No. 261. 2 September 1896 Encl. Memorial from Le Mesurier to Chamberlain.

<sup>99</sup> *Ceylon Independent* 30 January 1896 “Ceylonese Christian Cads”. Quoting from the *Crescent* in Liverpool.

contract.<sup>100</sup> From the beginning the Government engaged in elaborate technical argument by applying to have the matter struck out on the grounds that the Attorney General could not be so sued.<sup>101</sup> In yet another decision that formed important legal precedent, the Courts determined clearly that Le Mesurier could sue – the Crown in its imperial guise was not exempt from legal action.

His right to sue was one thing, the merit or otherwise of his dismissal quite another. By June 1900, the Ceylon Supreme Court had refused his appeal against dismissal, a decision later upheld by the Privy Council. The grounds are interesting for it maintained that a public servant only held office at the “pleasure” of the Crown, and could be dismissed if “expedient”.<sup>102</sup> Further, no contractual arrangement or obligation could be construed by public service rules.

It was pure imperial privilege, an unquestionable ascendancy, which was also apparent in the approach and determination of land policy, the area of disputation that next exercised Le Mesurier’s energies.

### **Land Speculation and confrontation.**

In the period immediately after his dismissal Le Mesurier engaged in a flurry of land purchases and the initial motivation seems obvious and understandable. Now unemployed he had to find an alternate income and some of the purchases were logical and lucrative – lands with plumbago (graphite), a rich and under-exploited mineral. As a government official he was intimately aware of the issues of land tenure and purchase – including the loopholes of the system – and had set about availing himself of the opportunities.

It was this use of ‘inside knowledge’, including copies of “extracts from the old tax lists... obtained ... during his official connection”<sup>103</sup> that gave rise to righteous indignation. It was seen as an unfair “abuse” of his previous office<sup>104</sup> and “practical evidence of breach of trust”.<sup>105</sup>

At heart, though, the dispute was fierce and fratricidal. He had been ‘one of them’, of the brotherhood of civil servants, which meant he represented a quintessential betrayal. Equally, there seems little doubt that Le Mesurier was motivated at least in part by revenge for his treatment. In a way Meyer’s accusation<sup>106</sup> that Le Mesurier showed signs of paranoia is fair – he felt persecuted and the Government obliged by confirming his suspicions.

The government was suddenly awakened to “the growing evil of land speculation”, one “compounded by the provocative stance taken by ... Le Mesurier”,<sup>107</sup> a threat to the Crown’s own property speculation as Sir Noel Walker spelled out. If Le Mesurier’s claims were accepted it would “invalidate the Crown title to almost the whole of the .... Southern Province”<sup>108</sup> - and beyond. It was administratively intolerable, a threat that tacitly justified whatever action by government.

From all indications Le Mesurier engaged in an astonishingly broad sweep of deals. The government accused him of buying land from local villagers at nominal prices, which with good title would have been worth three or four hundred times the price.<sup>109</sup> He was also said to have selected valuable unoccupied pieces of land with plumbago and induced a villager, “for a consideration”, to grant the land by deed to him. He would then commence mining the plumbago, but since proving “the grant invalid”<sup>110</sup> involved inevitably protracted litigation, by the time the

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<sup>100</sup> *Overland Times of Ceylon* 21 June 1900, p859. “The Le Mesurier Case”.

<sup>101</sup> Le Mesurier V Attorney General of Ceylon 3NLR227.

<sup>102</sup> RG5/272 Encl. Disp. No. 186 Report on Proceedings Le Mesurier V AG June 4, 1897. Enclosed legal opinion.

<sup>103</sup> RG5/265 Dispatch No. 199

<sup>104</sup> RG5/272 Dispatch No. 117 Walker to Chamberlain 3 April 1899. p15.

<sup>105</sup> RG5/265 Disp West Ridgeway to Chamberlain 22 June 1896. Memorial by Le Mesurier. Response from GASP Letter No.339 of 1 June 1896.

<sup>106</sup> Meyer “Land Grabbing...” p43.

<sup>107</sup> Meyer. “Land Grabbing...” p42.

<sup>108</sup> RG5/272 Dispatch 117 Walker to Chamberlain 3 April 1899. Walkers response to a Memorial to Chamberlain

<sup>109</sup> RG5/272 Dispatch No.117 Walker to Chamberlain 3 April 1899. Walkers response to a Memorial to Chamberlain. Buying at between 12½ and 20 cents an acre land worth Rupees 50/- an acre [100 cents = R1/-].

<sup>110</sup> RG5/271 Dispatch No.57

matter was concluded the plumbago had been extracted. It obviously caused hair-tearing frustration.<sup>111</sup>

As far as Walker was concerned it amounted to “deliberate fraud” and he painted Le Mesurier in the most toxic tones as a “dangerous and unscrupulous agitator who will hesitate at nothing to achieve his ends”.<sup>112</sup> The language offers an intimation of attitude – not simply a danger but an ‘agitator’. There is in him an overtone of potent political threat, shades of his previous role in the paddy tax controversy.

Certainly, Le Mesurier’s obviously outraged – and probably outrageous – behaviour provoked administrative wrath and goaded the government into not only a legal but also a physical frontier confrontation. It was not long in eventuating. Land that Le Mesurier had purchased was abruptly gazetted as Crown and an ugly affray ensued. He was mining plumbago and according to the newly installed Mrs Le Mesurier the government “proceeded by acts of violence to eject his labourers,” while Le Mesurier himself was “mauled and forcibly ejected” from his land. Worse, when they were travelling on bullock carts to their estate they were held up and attacked and Mrs Le Mesurier felt “compelled to use fire-arms to protect myself from further outrage”.<sup>113</sup>

The Government also issued a “Gazette extraordinary” over forestland Le Mesurier claimed, and provocatively sent sawyers in to cut timber. A “small force” of police were sent for “protection” against assault by Le Mesurier’s employees “who adopted a threatening attitude”, according to the government. And in a reversal of accusation they accused Le Mesurier of not hesitating “to resort to armed violence”.<sup>114</sup>

This confrontation was directed by village headmen (*arachchi*) who in the British system of indirect rule were the instruments of policy and assumed a police role, so there can be little doubt they were acting on instruction. The Government Agent was quick to deny Le Mesurier’s charge that they “were ordered to resort to violence” though, he added with dissimilitude, they did have the authority to “prevent” the felling of timber on Crown land.<sup>115</sup>

Le Mesurier’s men were charged with trespass and the Police Magistrate imposed heavy fines, which on appeal were set aside by the Supreme Court. Le Mesurier complained vociferously about the Magistrate and Lt Governor Walker, forced to explain to the Colonial Office, had to admit that the Magistrate had been “indiscreet and had been censured” for losing his temper with Le Mesurier in court, though Walker suggested he was severely “provoked”.<sup>116</sup> Matters were clearly getting out of hand.

Le Mesurier too was charged with assault and another Police Magistrate imposed a similarly severe sentence of 3 months Rigorous Imprisonment. Again on appeal to the Supreme Court it was reduced to a fine.<sup>117</sup> The government even charged Le Mesurier with attempted murder, a charge dismissed as a “baseless fabrication” by yet another Police Magistrate.<sup>118</sup> Le Mesurier of course countered in kind, charging some headmen with assault.

Throughout Le Mesurier portrayed his actions as supporting poor, unlettered villagers reluctant to question government assertion of Crown title<sup>119</sup> and defending their right “to cultivate

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<sup>111</sup> RG5/271 Dispatch No. 95 March 18 1899. Particularly as the government itself was attempting at the same time to organise large-scale mining interests to exploit the plumbago resource. Details of proposals for European miners with machinery to mine plumbago as “native” methods were “primitive and wasteful”.

<sup>112</sup> RG5/272 Dispatch 117 Walker to Chamberlain 3 April 1899. Walker’s response to a Memorial to Chamberlain.

<sup>113</sup> *The Ceylon Mirror and Galle Weekly Dispatch* Saturday 8 April 1899 p4. “Mrs Le Mesurier as an Eastern Diana”

<sup>114</sup> RG5/272 Dispatch No. 117 Walker to Chamberlain 3 April 1899. This was initiated under new powers contained in the Forest Ordinance.

<sup>115</sup> RG5/265 Disp. No. 199 June 22, 1896 “Land at Matara and Le Mesurier” Response from GASP to Memorial from Le Mesurier.

<sup>116</sup> RG5/272 Disp. No. 117 Walker to Chamberlain. 3 April 1899.

<sup>117</sup> RG5/272 Enclosure Dispatch No.117 April 3, 1899. Walker’s response to Le Mesurier’s Memorial.

<sup>118</sup> RG5/272 Enclosure Dispatch No.117 April 3, 1899. Memorial by Le Mesurier. While these are Le Mesurier’s assertions, in no subsequent dispatch are these claims countered as they usually are if believed wrong.

<sup>119</sup> RG5/266 Encl to Dispatch No. 199 June 22, 1896 Memorial from Le Mesurier “Carnac Mills” Batticaloa 12 June

similar lands". The government saw him, as "stirring up the inhabitants of the Matara district to follow his example" which of course was "wholly indefensible"<sup>120</sup> and intended "to embarrass the government"<sup>121</sup>. He certainly seemed to have succeeded. However, even though Le Mesurier's new wife claimed "that the popularity that came to her husband through his kindness to the natives"<sup>122</sup> had led to his dismissal, it is difficult to see Le Mesurier as champion of native rights in this instance. Nevertheless, he certainly pointed up the inequality of the contest as he was to learn to his cost.

The intensity of the confrontation and intention to decisively defeat Le Mesurier was clear. By the end of 1902 Le Mesurier was being slowly ground into submission after years of litigation and associated costs. In January 1902 the Fiscal was instructed to sell the Le Mesurier's hill country Galmulle Estate of 115 acres to recover R2825/- in Crown costs against him.

What is clear from this case is that Le Mesurier had obviously been engaged, as the government accused, in suspect land dealings even while he had been a Crown employee. The Estate had been bought originally by Cecil Brooke Le Mesurier, Le Mesurier's father, at a Crown sale for R100/- under "the hammer of one of Nuwara Eliya's bygone AGA's".<sup>123</sup> This is the *Overland Observer's* way of adding a nod and a wink, for of course, that Assistant Government Agent was none other than the purchaser's son. But the paper also reported that the sale expected to realise R3450/-, a quite specific, knowing amount, which in the event was not realised. Insufficient bidding caused the land to revert to the Crown for an astonishing R105/-.

As in all parochial papers detail is often included without explanation because readers are assumed to be able to 'join the dots'. Obviously bidding was stifled for some reason, perversely leaving Le Mesurier's debt largely intact, which suggests some spiteful collusion and auction rigging by government officials – a not unusual occurrence. It was obviously 'pay-back' time. And the paper leaves that inference hanging.

While the evidence suggests Le Mesurier's purchases were highly speculative a wider imperial context needs to be taken into account in assessing his activities.

### **Land Title: An Imperial perspective.**

It is difficult to comprehend the complicated, bitter dispute that arose between the government and Le Mesurier without understanding the tortuous vagaries of land tenure in early Ceylon. Customary title under Kandyan Law or established by Dutch title, lacked the precision of the finely detailed surveys that were the foundation of British title.

Vague customary title was a Proctor's picnic and attracted lawyers like lice. It was an invitation for all and sundry to participate in land speculation when large-scale coffee production in the late 1830s created demand and escalating land prices. It amounted to a frontier land rush, an imperial, not simply local phenomenon – comparable with what took place in any number of colonies, like Australia, South Africa, New Zealand, Kenya and Malaya.

British imperialism was as much commercial as strategic with land policy one of its central aspects. That and cheap labour. Obviously if land and labour were virtually gratis even modest venture capital could be made to compound considerably – and most of those attracted commercially to the colonies were generally great in need and modest in funds.

In Australia the land was taken and the labour given – simple native dispossession and convict labour. Similarly the British arrival in Ceylon began as an immense land grab without moral regard that makes the later activity of Le Mesurier and others appear prosaic and the moral outrage of government officials positively sanctimonious – Le Mesurier and other land speculators were creatures of colonialism, not aberrant. Their activity may appear repugnant to the present – and

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1896.

<sup>120</sup> RG5/265 Dispatch No. 199 Miscellaneous West Ridgeway to Chamberlain. Letter from GASP 1 June 1896.

<sup>121</sup> RG5/265 Dispatch No. 199 Miscellaneous West Ridgeway to Chamberlain. Letter from GASP 1 June 1896.

<sup>122</sup> *Ceylon Mirror and Weekly Dispatch* "Mrs Le Mesurier as an Eastern Diana" Saturday April 8, 1899, p4.

<sup>123</sup> *Ceylon Observer* (Weekly Edition) [*Overland Observer*] 31 January 1902 p182.

rightly - but the distortion of archival perspective, of accepting at face value the indignation of official records, is a salutary caveat to research in this area.

Except for the quixotic period of Governor North, almost from the declaration of the Crown colony there had been an imperial assertion of a “catholic right” – a right universal rather than necessarily moral – “to all land not proven to have been granted at a former period”.<sup>124</sup> And proof of grant in a former period was pivotal to overcoming the imperial assertion of almost universal title. Sale of Crown land was the basis of commercial exploitation as it was in other colonies and even the price was fixed against a ‘standard’ that applied in the Australian colonies indicating an essentially unified, not particular, imperial approach among the British colonies.<sup>125</sup> The patterns recur.

In Ceylon too, labour was made available though it was pitifully cheap indentured labour from South India, more compliant than convicts, less surly than slaves, yet part of the pattern of British ‘unfreed’ labour that ornamented the Empire from its inception.

All these elements came together in Ceylon with the influx of British settlers in the 1830s demanding certain title, which, as Governor Mackenzie explicitly understood, made it “absolutely necessary to assimilate the laws of the Colony to that of the Parent state”.<sup>126</sup> He was one who certainly had reason to assert this imperative, being himself a fervent land speculator.

But it was not so much ‘assimilating’ local law to that of the centre, as it was reconciling local law with the colonial ideology of land acquisition. Appropriated land and unfreed labour buttressed the edifice of colonialism and attracted philosophical and legal justification. Property was always the cynosure of English common law, and *beati possidentis* [blessed are those in possession], though ‘possession’ became a highly elastic term in the colonial setting.

In the eighteenth century the North American colonial experience intersected an Enlightenment impulse of ‘reasoned’ explanation and from de Vattel<sup>127</sup>, Blackstone,<sup>128</sup> and Locke,<sup>129</sup> among many others, emerged a philosophical and legal doctrine, essentially an ideological foundation for colonial dispossession. The arguments are occasionally contradictory, recognising to greater or lesser degrees concepts of ‘native title’, however the essence of the contention is that “cultivation of the soil” is not simply an option but an “obligation imposed” by nature that overawes the rights of those of “an idle mode of life” who “roamed over” rather than “inhabited” the “vast tracts of land”.<sup>130</sup> This “uncertain occupancy” could not be regarded as “real and lawful taking of possession” and when Europeans “too confined at home” come to lands where the peoples have no “special need and are making no present and continuous use” these may be lawfully possessed and colonised.<sup>131</sup> The central determinant is *continuous use*. Property, as Locke pointed was created when a person “hath mixed his labour”.<sup>132</sup> The plough in the soil makes property. And it is this philosophical and legal assertion that colours the colonial concepts of property which constantly recur in the land litigation of Le Mesurier and spill over into other colonial jurisdictions.

In Australia the purported lack of proper *use* by native Australians led to an assertion of

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<sup>124</sup> CO54/171 16 July 1839. Assertion by Gov. Stewart Mackenzie to Lord Normandy. Cited in Vanden Driesen “Land Sales Policy ..”p36.

<sup>125</sup> Roberts “Land Problems....”p 125. From 1833 in Ceylon the price was 5 shillings an acre, as in Australia and followed the Australian pattern (which had increased the price to £1 an acre in 1842) by similarly increasing the price to £1 an acre in 1844.

<sup>126</sup> Roberts “Land Problems....” p120.

<sup>127</sup> de Vattel, E. *The Law of Nations* (3 Vol. Facsimile edition [original1760, Lon.] Carnegie Institute, Washington.)

<sup>128</sup> Blackstone, W. *Commentaries on the Laws of England* (Oxford: Clarendon, 1765)

<sup>129</sup> Locke, J. *Two Treatises of Government* (London: 1713)

<sup>130</sup> de Vattel, E. *The Law of Nations* (3 Vol. Facsimile edition [original1760, Lon.] Carnegie Institute, Washington.) chapt 7.

<sup>131</sup> de Vattel, E. *The Law of Nations* (3 Vol. Facsimile edition [original1760, Lon.] Carnegie Institute, Washington.) Chapt 18.

<sup>132</sup> Locke, J. *Two Treatises of Government* (London: 1713) p15.

*terra nullius* – an empty land.<sup>133</sup> In Ceylon a similar assumption of title is decipherable in the choice of language – they established *waste land* ordinances as though the land were inherently worthless when in fact their introduction dated from a time when the land was regarded as anything but worthless.<sup>134</sup> The language as always is revealing.

### **Waste Land Ordinances**

The traditional use of land in Ceylon was multiple. As Sir John D'Oyly (1774-1824), the most knowledgeable Englishman with respect to custom, suggested, "Every field . . . .has attached to it a garden and jungle around called *hen* [*chena*] which as a matter of course are transferred with it."<sup>135</sup> Village land practice extended into adjacent jungle *chena* lands,<sup>136</sup> known by the government euphemistically as 'appurtenances' and still further into forests for collection of 'bush' foods and medicinal plants as well as firewood and timber for building.<sup>137</sup> The inordinate interest Le Mesurier had in the nuances of customary practice, evidenced by his involvement in publishing D'Oyly's work on Kandyan law, indicates a very practical interest that goes to the heart of establishing rights to land "granted at a former period."

The universal claim by the Crown to all land without clear title was challenged when the advent of plantation agriculture made the issue pertinent and lucrative. Echoing the pronouncements of de Vattel, Blackstone, Locke *et al* , in 1837<sup>138</sup> the Court ruled that demonstrable *use* over time -*continuous use*- or 'prescription' ("prescription adverse to the Crown"<sup>139</sup> or *adverse possession*) abrogated Crown title. More importantly, the Court found that the onus of proof of ownership rested with the Crown. The importance of prescriptive rights led in Ceylon to the fairly regular issue of the quaintly termed Certificates of Quiet Possession, in bureaucratic jargon, CQPs. The language again is revealing – that such adverse possession is something to be effected quietly (even with some implied stealth). Unfortunately Le Mesurier was incapable of anything resembling Quiet Possession.

But the problem that emerged in 1837 was clear and ominous. If the Crown had to prove ownership against every casual user of *chena* land then Crown title would crumble almost in its entirety. The government moved to introduce the *Ordinance* of 1840, which entirely reversed the onus of proof such that the prescribed user had to demonstrate title or the right of *use* evidenced by the past payment of taxes or services.<sup>140</sup>

It is this key feature that goes to the heart of Le Mesurier's speculative efforts since

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<sup>133</sup> see Reynolds, H. *Law of the Land* (Ringwood: Penguin, 1992) for a comprehensive discussion of the issues of property in the Australian and wider international colonial context.

<sup>134</sup> The Ordinance No.12 of 1840 was entitled the *Crown Lands Encroachment Ordinance* but commonly known as the *Waste Land Ordinance* by which title the important 1897 Ordinance No.1 *An Ordinance related to claims to forest, chena, waste and unoccupied lands (Waste Lands Ordinance)* was known.

<sup>135</sup> cited in Hayley, FA. *The Laws and Customs of the Sinhalese or Kandyan Law* (New Delhi: Navrang, 1993, first published 1923) p271. See also D'Oyly, J [Edited by Le Mesurier, Panabokke & Turner] *The Sketch of the Constitution of the Kingdom of Kandy* (Colombo: Ceylon Government Printer, 1929) and Le Mesurier & Panabokke *Niti Nighandiwa or The Vocabulary of Law as it existed in the Last Days of the Kandyan Kingdom* (Colombo: Ceylon Government Printer, 1880)

<sup>136</sup> *Chena* (or *Hen* in Sinhala) was dry farm land (in contrast to paddy) subject to occasional 'slash-and-burn' cultivation on a long rotation of up to twenty years, depending on fertility.

<sup>137</sup> While there has been a post-colonial debate (see Roberts, M. "The Impact of the Waste Lands Legislation and the Growth of Plantations on the Techniques of Paddy Cultivation in British Ceylon: A Critique" *Modern Ceylon Studies* Vol.1 No.2, 1970.) about the importance of these lands to sustaining village culture, the issue here is the arguments employed to facilitate alienation for sale to plantation interests.

<sup>138</sup> In 1838 the Maha Mudaliya, Illangakoon, obviously aware of a court precedent in 1837, laid claim to 8000 acres and the District Court again ruled in favour of prescription against Crown ownership. The fact that 'native' litigants in 1838 initiated these challenges underlines the notable fact that land speculation was from inception a game for all ethnic players, not merely British bounders and imperial predators. The tendency for post-colonial discourse to paint indigenous interests as pure victim ignores and indigenous opportunism, greed being a universal human quality.

<sup>139</sup> Hayley *The Laws and Customs*..... p271. Prescription or *use* was a key element of the English law of land tenure.

<sup>140</sup> Under Kandyan custom the right of use was often granted in exchange for services to the king.



providing evidence of taxes or services was inordinately difficult, a fact that made courts tend to favour a plaintiff against the Crown.

Title to paddy lands, defined by clear boundaries and regular cultivation and *use*, was relatively simple, but providing evidence of customary *use of chena* lands where cultivation had a ten or twenty year cycle, was considerably more difficult – and to forest lands, almost impossible. And these were the lands coveted by the plantation sector. Conveniently, colonial economic interest in land was the inverse of actual customary use and capacity to demonstrate title, a neat dovetail with European legal theory and the 'right' of the Crown to appropriate. One can only speculate on the possible legal contortions that would have emerged had the plantation sector reversed its interest and coveted paddy fields.

The capacity of the Crown to claim and dispose of land was essential to the expansion of plantation coffee in the 1840's, a "mania for planting" where even "The Governor and his civil servants dabbled in speculation and scalded their fingers."<sup>141</sup> Some like Anstruther, Colonial Secretary, "earned a measure of notoriety as land speculators."<sup>142</sup> And these were the same officials responsible for drafting the *Waste Lands Ordinances*.

It was a 'frontier' experience familiar in America, Australia and any number of other colonies, a scramble for land facilitated by Government Agents who assumed the mantle of Solomon in their role, though often their behaviour was more simian than sage. The powers conferred, assumed and exercised were extraordinarily broad and liable to compromise. In the imperial context, Le Mesurier's means of renewing his financial status by land speculation was less lurid than it may at first appear. It was, rather, a well-worn path of colonial enrichment, though where most speculators did so quietly, what distinguished Le Mesurier was his crusading confrontational style.

### **The Importance of Records.**

The seed of dispute that was later to embroil Le Mesurier is observable in the AGA Diary of the Matara *kachcheri*.<sup>143</sup> Once again Le Mesurier was embroiled in "a difference of opinion" with the Government Agent, significantly, over *chena* titles. While the GA asserted payment of tax did not indicate private ownership, "I say on the contrary that such an entry [payment of tax] is quite as much an indication that land is private as it is Crown."<sup>144</sup> Le Mesurier claimed that on his arrival in Matara in August 1895 he found an order from the GA in Galle to "destroy old receipts" in order to prevent reference to them as evidence.

As I considered this would be absolutely wicked in the absence of specific instructions to the contrary I refused to allow this order to be carried out.<sup>145</sup>

It was a provocative statement in keeping with the character that also shows the vulnerability of Crown title and the preparedness of Government officials to shore up Crown title by whatever means. It explains the anger engendered when he later so effectively used those same records to his own ends. Le Mesurier may have begun as a simple speculator, but it became slowly evident he was

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<sup>141</sup> Rigg, CR "Coffee Planting in Ceylon" *The Ceylon Examiner* 16 June 1852, cited in, de Silva, KM. "Studies in British Land Policy in Ceylon –1: The Evolution of Ordinances 12 of 1842 and 9 of 1841" *Ceylon Journal of Historical and Social Studies* Vol.7 No.1, January-June, 1964, p29. For a list of officials involved in speculation see *The Second Report on Ceylon* (1850 (evidence of Ackland p 303) and *Third Report on Ceylon* (evidence of Tennent) pp352-3.

<sup>142</sup> de Silva "Studies in British Land Policy..." p29.

<sup>143</sup> He was confirmed in the position in 1894 and appointed District Judge, Badulla. *Ceylon Civil Lists*.

<sup>144</sup> RG26/153 Diary of the AGA Matara, 17 November 1895

<sup>145</sup> RG26/153 Diary of the AGA Matara, 17 November 1895. See also PF95 19 July 1898 Lewis to Col. Secy. & Minute 20 Jan 1896 "Wattoru Lists Matara Kachcheri" where Lewis discusses Le Mesurier's claims. It is clear Elliot and Lushington thought it was probably a good idea because they were only used to make 'false claims'. But if they were worthless why encourage their destruction? See particularly Lewis Annexure 1690, 7 October 1898 where he claims the destruction of Wattoru by "fire as proposed by Mr Lushington would I admit have been an easier solution" Exclamation in margin!

engaged in a much wider guerrilla campaign of land claims against the government “prompted partly out of revenge for his dismissal”<sup>146</sup>, as Lt. Gov. Walker perceptively understood. He targeted the government’s greatest vulnerability – the paucity of records – and this had some odd repercussions.

He demanded the right to inspect records including those held in the Colombo Museum and at first, Walker admitted, every obstacle was placed in his path.<sup>147</sup> There was a justifiable suspicion that Le Mesurier was “fishing for evidence”, in search of records that potentially could be subject to purchase and claim,<sup>148</sup> though it was probably more of a crusade than a land grab.

Pressure from Le Mesurier, in this contest of wills, forced the government to begin to “examine and index the Dutch records”.<sup>149</sup> Mr Anthonisz, Assistant to the Registrar General was directed in January 1899 to sort the archives and immediately turned up portions of lost Dutch Cocus Registers of land and set about transcribing them. The claim by officials that they always “had intended”<sup>150</sup> cataloguing the files and that their actions had nothing to do with Le Mesurier’s persistence rings hollow. The haphazard disorder of documents were rearranged for access, and Anthonisz appointed the first national archivist, something for which modern researchers have Le Mesurier to thank.<sup>151</sup>

### **The Ordinance of 1897 & Special Officer for Land Settlement JP Lewis.**

The initial success of Le Mesurier in his suits and appeals to the Supreme Court was undoubtedly instrumental in forcing the government to introduce legislative amendments, which emerged as the *Waste Lands Ordinance* 1 of 1897. This substantial modification of the *Ordinance* of 1840 offered further Crown “privileges in the matter of abstention from proof of title”.<sup>152</sup> The Ordinance was fiercely debated in the House of Commons, an attack spearheaded by Lord Stanmore, ex-governor of Ceylon<sup>153</sup> and Le Mesurier’s stalwart supporter. It remained, though, a formidable Ordinance even after Chamberlain forced amendments on the Ceylon government.<sup>154</sup>

It is difficult not to suggest that the Ordinance of 1897 had Le Mesurier in mind. At a conference of Government Agents in 1896 Le Mesurier is clearly the ghost of conferences past. It dealt almost entirely with the crisis in land claims and the “very burning question” of *chena* land.<sup>155</sup> The problem was, as one stated, “wider than Le Mesurier” and in so saying indicated preoccupation with Le Mesurier.

The new *Waste Lands Ordinance* of 1897 was tabled conspicuously after the Supreme Court had disallowed attempts by the Government to confiscate Le Mesurier’s land. Walker airily asserted the Ordinance was well in train before the Court decisions and that “Mr Le Mesurier is . . . the only person in the colony who has taken objection to the proposed legislation which interfere with his unscrupulous land speculations,”<sup>156</sup> a comment that tends to confirm Le Mesurier’s contention the Ordinance took aim at him.

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<sup>146</sup> RG5/272 Dispatch No 117 Walker to Chamberlain 3 April 1899

<sup>147</sup> RG5/272 Dispatch No 117 Walker to Chamberlain 3 April 1899

<sup>148</sup> RG4/317 Dispatch 189 Waste Land Ordinance. Report of Lewis 4 March 1899. Le Mesurier had, according to Lewis, applied for records to over 200 lands from 1830-1884 yet only four referred to lands he actually claimed,

<sup>149</sup> RG5/272 Dispatch No 117 Walker to Chamberlain 3 April 1899. They had been soldered in tin lined chests when Anthonisz uncovered them in the Colombo Museum. For an extensive discussion on Le Mesurier’s claims on records see PF595.

<sup>150</sup> RG5/271 Dispatch 370 October 3, 1899.

<sup>151</sup> RG5/271 Dispatch 370 of 3 October 1899. Also RG4/317 Dispatch 189 Waste Land Ordinance. Report of Lewis 17 August 1899.

<sup>152</sup> Hayley p275

<sup>153</sup> *Ceylon Mirror* “Debate in House of Commons on Ceylon Waste Lands Ordinance” August 26, 1899.

<sup>154</sup> RG4317 Letter Chamberlain to Le Mesurier 29 June 1899

<sup>155</sup> RG5/266 Enclosure to Dispatch 295 28 October 1896 Papers on Conference of Government Agents 1896. They were obviously unmindful of the awful pun.

<sup>156</sup> RG5/271 Dispatch No. 57. West Ridgeway to Chamberlain 28 February 1899. Response to Memorial from Le Mesurier

The new Ordinance also introduced an enforced and protracted investigation by Special Officers for Land Settlement of all claims against the Crown, delaying the kind of legal action many of the land speculators had refined to an art form. It was an aggressive stance asserting the prerogative of government to determine and manage land title – to force adjudication away from the courts and into its own hands. Le Mesurier in understandable response, according to government, took “every possible objection to prevent claims from being adjudicated.”<sup>157</sup>

The degree the new Ordinance focused on Le Mesurier is discernible in the appeals against its application. Out of the 149 lots of land in dispute under the new Ordinance, the government claimed, 107 were “amicably settled” and 42 were referred to the Court. Of these 42, 28 were by Le Mesurier, leaving only 14 other contested cases for the remainder of the Island.<sup>158</sup> While the prominence of Le Mesurier in contested matters might, as the government intended, reflect on his honesty, it could also indicate a determination to give no quarter. And it makes it difficult to avoid Le Mesurier’s claim the Ordinance was an attempt to “render legal and valid what the Supreme Court has pronounced illegal”,<sup>159</sup> though his grandiose belief that he alone was the target ignores the many other prominent speculators. The obsession with Le Mesurier though is undeniable given that the files for 1899 alone concerning Le Mesurier are some 5-6cm (3in.) thick.

But even after the Ordinance of 1897, Le Mesurier still continued to have wins. The Ordinance could not be applied retrospectively and the government resorted, after its losses, to continue to pursue Le Mesurier by common law action.<sup>160</sup> It was a relentless pursuit – on both sides – a ‘range war’ that would fit the script of a Hollywood frontier epic. And the starring role as Le Mesurier’s nemesis was the cadaverous figure of the Special Officer for Land Settlement, JP Lewis, who set about with the time, resources and awesome determination to defeat Le Mesurier who he regarded as “virulent and abominable”.<sup>161</sup>

It was with contempt that he accused Le Mesurier of exploiting villagers by buying up land cheaply – “so much for the philanthropist”,<sup>162</sup> he added with disdain, referring to Le Mesurier’s reputation during the paddy tax controversy. His previous ‘efforts’ were neither forgiven nor forgotten and Lewis treated Le Mesurier as a wily adversary – “the cunning of this Petitioner is now apparent”. Le Mesurier would demand the government produce evidence of its title knowing, as Lewis acknowledged, that it could not. The strategy then, Lewis believed, was to claim the government was holding back “(a la Le Mesurier)”.<sup>163</sup> What Lewis reveals is not just Le Mesurier’s purported “cunning” but the continual anxiety regarding the tenuous nature of government title.

To Lewis, Le Mesurier was utterly odious and he was triumphant that “this little plot for further harassing the government has been frustrated,” when a land claim in the District Court went against Le Mesurier. And he repeated with relish the comments of the court that Le Mesurier was “shadowy” in what “cannot be called a very honourable proceeding”.<sup>164</sup> On appeal to the Supreme Court however the government had to concede 28 cases<sup>165</sup> and earned considerable censure by the Court for its attempts to claim retrospectively under its new Ordinance, behaviour described by the *Times of Ceylon* as “not only disgustingly trivial, it is pestiferous.”<sup>166</sup>

Undeterred, Lewis shifted strategy, as Le Mesurier quickly found, to action under ordinary

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<sup>157</sup> RG5/272 Report on the Letter of the 17<sup>th</sup> May 1899 from Mr Le Mesurier to the Colonial Office.

<sup>158</sup> RG5/271 Dispatch No. 57. West Ridgeway to Chamberlain 28 February 1899. Response to Memorial from Le Mesurier

<sup>159</sup> RG5/271 Dispatch No.57 West Ridgeway to Chamberlain 28 February 1899. Memorial by Le Mesurier.

<sup>160</sup> RG5/271 Dispatch No. 371 of 3 October 1899. Indicating a successful prosecution of Le Mesurier under common law.

<sup>161</sup> PF595 (59/108) Report by Lewis 11 November 1899

<sup>162</sup> RG4/317 Dispatch 189 Waste Land Ordinance. Report of Lewis June 1899.

<sup>163</sup> RG4/317 Dispatch 189 Waste Land Ordinance. Report of Lewis 4 March 1899.

<sup>164</sup> RG4/317 Dispatch 189 Waste Land Ordinance. Report of Lewis 4 August 1899

<sup>165</sup> RG4/317 Encl. Dispatch No. 189. June 20, 1899. Memorial Le Mesurier to Chamberlain

<sup>166</sup> *Times of Ceylon* 31 May 1898 “How the Crown Helps Le Mesurier”

law.<sup>167</sup> In one case in 1901 the Crown sued for the recovery of about 2000 acres valued at R20,000/- as well as R28,000/- in damages and costs for material (plumbago) removed by Le Mesurier in the course of his operations.<sup>168</sup> This not only indicates the size of some of Le Mesurier's acquisitions but the level of costs mounting against him, and, as Lewis noted, "there are numerous judgements against him". The steadily accumulating court costs provided an opportunity to eliminate Le Mesurier by enforcing sales of his lands. Lewis justified this on the grounds that they would not recover otherwise since Le Mesurier, he suggested darkly, was transferring property into the names of other parties (including his new wife<sup>169</sup>) "besides mortgaging them up to the hilt".<sup>170</sup> It was a war of attrition and provocation,<sup>171</sup> a choreography of spite and hatred that overtook any aspects of right and justice that may have existed initially.

The toll was obviously going to eventually tell and in 1900 it was not surprising that Le Mesurier succumbed to the pressure and became seriously ill. Even the usually critical papers reported his admission to the Vauxhall Hospital in London with some sympathy and viewed with concern reports that doctors had an "unfavourable view of his condition".<sup>172</sup> It is suggested that Le Mesurier had cancer of the colon and was operated on by a Russian surgeon who took him on when everyone else had given up. He survived, it is said on a yoghurt concoction devised by Siberian peasants.<sup>173</sup> Whatever the truth it is in keeping with the man's inflated nature.

It was the end of Ceylon life and though forced into bankruptcy<sup>174</sup> by his first wife, he was admitted to the English bar in 1902.<sup>175</sup> In 1904 he immigrated to Western Australia and in doing so followed a well-worn path of Anglo-Indians and Anglo Ceylonese to the Antipodes. There he 'married' Rachel Mallam and practised law until his death 11 December 1931.<sup>176</sup> It is not surprising that his new Australian colonial excursion involved land and other business speculation with inevitable and interminable litigation including a challenge to the Australian government's new Bankruptcy Act.

### Colonial Consequences.

Le Mesurier embraced his colonial vocation with an enthusiasm that extended into surprising spheres. For example, he was a member of the Geographic Society and wrote a definitive introduction to the Nuwara Eliya hill country district, principally aimed at planters of course but with considerable detail about topography, irrigation and cultivation.<sup>177</sup> He also wrote in the learned journals of the day, the realm of enthusiastic amateur ethnologists, about Kandyan law,<sup>178</sup> customs,

<sup>167</sup> RG4/317 Encl. Des. No. 189. Memorial by Le Mesurier to Chamberlain. 20 June 1899. Also RG5/271 Disp. No. 371 October 3, 1899 Judgment entered for the Crown in a common law action at Matara DC that had earlier been dismissed on technical grounds.

<sup>168</sup> *Ceylon Observer* (Weekly Edition) 15 May 1901 "More Le Mesurier Litigation" p697.

<sup>169</sup> *Ceylon Observer* (Overland Observer) p1066 July 28 1902. Report of a long running case from 1896 where Mrs Le Mesurier is being sued successfully by the government.

<sup>170</sup> RG4/317 Dispatch 189 Waste Land Ordinance. Report of Lewis June 1899.

<sup>171</sup> RG5/272 Encl. Dispatch No. 117. September 3, 1899.

<sup>172</sup> *Ceylon Observer* (Weekly Edition) the *Overland Observer* 16 July 1900 p929

<sup>173</sup> Personal communication: Rod Cantlay who heard the story from his aunt Rachel Mallam, Le Mesurier's 3<sup>rd</sup> wife. See also PF11527 Box390. Transcription of Le Mesurier's bankruptcy proceedings 23 August 1903. Claims "cancer of the intestines" and had a number of operations in England.

<sup>174</sup> PF1527 Box 390 High Court of Bankruptcy 25 August 1903 Public Examination. Wife sought his bankruptcy because he had not returned the marriage settlement after legal separation and had instead put the money in Trust for their children against her wish. Since the Trust could not be undone she sued him. The bitterness between the two can be seen in a letter to Rachel Mallam in 1937 from Le Noir forbidding her to use the name "Le Mesurier". The hatred went beyond death. Information Rod Cantlay.

<sup>175</sup> *Morning Post* Wed 29 July 1903 "Barrister's Position"

<sup>176</sup> *Western Australian* 15 December 1931 p12.

<sup>177</sup> Le Mesurier, CJR. *Manual of the Nuwara Eliya District of Ceylon* (Colombo: Skeen Govt. Printer, 1893)

<sup>178</sup> Le Mesurier, CJR. & Panabokke, TB "Niti-Nighanduva" or the *Vocabulary of Law as it existed in the last days of the Kandyan Kingdom* (Colombo: Govt. Printer, 1880)

games, cultivation practices, language and sayings, religious ceremonies and superstitions, and about the ancient aboriginal people of Ceylon, the Veddas.<sup>179</sup> Clearly his commitment to the land and people was genuine and knowledgeable.

His crusade to end grain taxes was fervently felt. He observed first hand the impact on villagers and sought within the scope of administrative discretion to alleviate the hardship. However his reaction was not simply a response to local events but participated in issues and assumptions of a wider colonial context – the powerful liberal free market philosophy that saw taxes on food as odious. It was a crusade too that illustrated the nature of colonial land policy and the disparity between the plantation and peasant sectors of the economy.

His legacy was odd and often unintentional and his actions illuminating.

His matrimonial saga formed important legal precedent at the time in all British colonial jurisdictions. For a population scattered about the Empire – a place of steamy possibility - it established formidable obstacles to initiating action for divorce which now turned on an abstruse determination, not of where one resided but where one was domiciled – not always easy to resolve. The obstacles were substantial enough that common sense justice eventually forced legislative change, but, depending on the jurisdiction, that often only altered well into the twentieth century.

Even his suit against dismissal established legal precedent in the manner in which the government in Ceylon – or any other Crown Colony or even post-colonial entity- could be sued and established clearly that colonial employment rested not on binding regulation or contractual obligation but on mere imperial whim, employment quite literally at the 'pleasure' of the Crown.

The religious apostasy at the heart of his dismissal was not as odd as it might appear at first. English conversion to Islam or Hinduism in 18<sup>th</sup> century India<sup>180</sup> was notable but not peculiar, as was conversion to Buddhism in Ceylon.<sup>181</sup> It was part of a wider orientalist fascination with religious alternatives in the 18<sup>th</sup> & 19<sup>th</sup> century that never strayed far from the underlying impulses of Protestantism. Not for Le Mesurier a contemplative Buddhism, rather the austere activism of Islam, a kind of 'muscular Christianity' under Allah.

But it was his land speculation and litigation – both on spectacular scale - which provide the most significant contribution to colonial understanding. Le Mesurier's activity galvanised government determination to control land title, but by elevating the contest to extreme confrontation he inadvertently laid bare both the underlying ideological assumptions of colonial land title and the extremely tenuous legal foundation upon which it rested. Relying on *prescription* or *use*, which was philosophically consistent with 18<sup>th</sup> century legal theory made evidence of *use* crucial. Without much more than bald imperial assertion of title to rely on, almost any evidence of *use* undid Crown title. And the problem for colonial authority was that it brought in tow a legal system of 'independence' that believed its own publicity and acted accordingly.

The need for evidence of *use* accounts for Le Mesurier's obsessional preoccupation with the colonial records, tax records and land grants reaching back into Dutch and Portuguese times which quite unintentionally prompted the formation of a national archive, a quirky legacy indeed.

Even reversing the onus of proof of title or prescription did not entirely solve the dilemma or entrench government assumption of authority and ownership. Increasingly draconian Ordinances asserting Crown control became necessary, revealing, among the legal and philosophical niceties,

<sup>179</sup> Le Mesurier, CJR. "The Veddas of Ceylon" *Journal of the Royal Asiatic Society (Ceylon Branch)* Vol IX, No.32, 1886 p336-347.

"A Short Account of the Principal Religious Ceremonies Observed by the Kandyans of Ceylon" *JRAS(CB)* Vol VII, No.23, 1881 pp32-48.

"The Kandyan Game of An-Keiya" *JRAS(CB)* Vol VIII, No.29, 1884 pp462-488.

"Sinhalese Proverbial Sayings" *The Orientalist* Vol.I 1884 233-235 & 275-277.

"Customs & Superstitions connected with the Cultivation of Rice in the Southern Province of Ceylon" *JRAS (Great Britain)* Vol.17 p367-372.

<sup>180</sup> see Dalrymple, W. *The White Mughals* (London: Flamingo, 2003)

<sup>181</sup> see Powell, M. *Manual of a Mystic: FL Woodward, a Buddhist Scholar in Ceylon & Tasmania* (Canberra: Karuda Press, 2001)

an absolute imperial determination to control distribution and sale of valuable land against any assertion of customary use and title .

Colonialism begins and ends in dispossession however benign the disposition. Land was the cornerstone – that and unfreed labour. It was the primary vehicle of colonial enrichment as evidenced by exemption from tax of the lucrative plantation sector while heavily taxing peasant subsistence. Enrichment was a core colonial purpose despite imperial fictions of benevolence, impartiality and altruism, and Le Mesurier's efforts parodied these colonial fictions and goaded the Crown into increasingly more blatant assertions of colonial title.

Ironically it was this colonial determination that provided the legal foundation for the monumental post-colonial reorganisation of land title in Sri Lanka. While advanced as an anti-colonial policy to redress imperial distortion, the Land Reforms of 1972 & 1975 used the authority and legal presumptions hammered out in the colonial period - to which Le Mesurier unintentionally contributed – as the legal foundation for nationalisation of land. It was, in fact, a legal and logical, if grotesque, extension of colonial inflation and assertion of land title - after all colonial usurpation is essentially a form of 'nationalisation'.

Le Mesurier's protracted litigation not only reflected a long history of disputation over land tenure in Ceylon but also reached into the heart of a wider imperial land policy, “a commonplace of Colonial history”<sup>182</sup> in whichever region of the Empire. He was an exasperating man of flailing energy that struck a chord wherever he turned. The kindest summation of him was offered by the Chief Justice of the Western Australian Supreme Court in yet another of his litigious digressions – Le Mesurier “believes in the justice” of his claims but is “too sanguine an optimist and ... has too vivid an imagination”.<sup>183</sup> He was a grandiose figure of towering confidence that propelled him beyond the boundaries of possibility but he was far from unique in the colonial context. Rather it was a type either attracted, or eventually created, by the awesome power of colonial administrative experience till they became like caricatures of themselves, grandiose yet fragile identities.

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<sup>182</sup> Vanden Driesen, I. “Land Policy and some Aspects of the Problem of Tenure- 1836-1886; Part II”. *University of Ceylon Review* Vol.XX No.1&2, 1857, p52.

<sup>183</sup> National Archives of Australia 1923A100078/11923/5A: McMillan CJ in Copley's Bank V Le Mesurier 13 May 1923 Supreme Court of W.A.